REINSURANCE (E) TASK FORCE

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Draft Pending Adoption

Draft: 8/14/20

Reinsurance (E) Task Force
Virtual Summer National Meeting
August 6, 2020

The Reinsurance (E) Task Force met via conference call Aug. 6, 2020. The following Task Force members participated: Chlora Lindley-Myers, Chair, represented by John Rehagen (MO); Raymond G. Farmer, Vice Chair, represented by Ryan Basnett (SC); Lori K. Wing-Heier represented by David Phifer (AK); Jim L. Ridling represented by Blase Abreo (AL); Elizabeth Perri (AS); Ricardo Lara represented by Monica Macaluso (CA); Michael Conway represented by Rolf Kaumann (CO); Andrew N. Mais represented by Kathy Belfi (CT); David Altmaier represented by Carolyn Morgan and Virginia Christy (FL); Doug Ommen represented by Carrie Mears and Kim Cross (IA); Dean L. Cameron represented by Nathan Faragher (ID); Robert H. Muriel represented by Susan Berry (IL); Stephen W. Robertson represented by Roy Eft (IN); Vicki Schmidt represented by Tish Becker (KS); Sharon P. Clark represented by Jeff Gaither (KY); James J. Donelon represented by Stewart Guerin (LA); Gary Anderson represented by Christopher Joyce (MA); Eric A. Cioppa represented by Robert Wake (ME); Mike Causey represented by Jackie Obusek (NC); Jon Godfrey represented by Matt Fischer (ND); Bruce R. Ramage represented by Lindsay Crawford (NE); Chris Nicolopoulos represented by Doug Bartlett (NH); Marlene Caride represented by John Tirado (NJ); Barbara D. Richardson represented by Perter Rao and Gennady Stolyarov (NV); Linda A. Lacewell represented by Mona Bhalia (NY); Jillian Froment represented by Dale Bruggeman (OH); Glen Mulready represented by Eli Snowbarger (OK); Elizabeth Kelleher Dwyer represented by Jack Broccoli (RI); Kent Sullivan represented by Jamie Walker (TX); Todd E. Kiser represented by Jake Garn (UT); Scott A. White represented by David Smith and Doug Stolte (VA); Michael S. Piecik represented by David Provost (VT); and Mark Afable represented by Randy Milquet (WI).

1. **Adopted its June 9 Minutes**

   Mr. Rehagen stated that the Task Force met June 9 and took the following action: 1) adopted its March 11, Jan. 29, and Dec. 8, 2019, minutes; 2) discussed whether *Actuarial Guideline XLVIII—Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation (Model 830)* (AG 48) should be considered to be “substantially similar” to the *Term and Universal Life Insurance Reserve Financing Model Regulation (#787)* for purposes of accreditation; and 3) adopted the new *Uniform Checklist for Reciprocal Jurisdiction Reinsurers* and revisions to the *Uniform Application Checklist for Certified Reinsurers*.

   Ms. Belfi made a motion, seconded by Mr. Milquet, to adopt the Task Force’s June 9 minutes (Attachment One). The motion passed unanimously.

2. **Adopted its 2021 Proposed Charges**

   Mr. Rehagen stated that the proposed 2021 charges include minor revisions to the 2020 charges, and the charges related to the 2019 revisions to the *Credit for Reinsurance Model Law (#785)* and the *Credit for Reinsurance Model Regulation (#786)* had been incorporated during the prior year.

   Ms. Macaluso made a motion, seconded by Mr. Eft, to adopt the 2021 proposed charges of the Task Force, the Reinsurance Financial Analysis (E) Working Group, and the Qualified Jurisdiction (E) Working Group (Attachment Two). The motion passed unanimously.


   Mr. Kaumann provided the report of the Working Group. He stated that the Working Group met March 11 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings, to adopt the new *Uniform Checklist for Reciprocal Jurisdiction Reinsurers* and revisions to the *Uniform Application Checklist for Certified Reinsurers*.

   Mr. Kaumann stated that the Working Group monitors 33 certified reinsurers that have been recommended for passporting, and the reviews of these certified reinsurers must be completed before year end. He stated that the Working Group will begin discussions to determine the best and most effective approaches for the financial solvency surveillance of the reciprocal jurisdiction reinsurers in the next several months.
Mr. Kaumann made a motion, seconded by Mr. Wake, to adopt the report of the Reinsurance Financial Analysis (E) Working Group. The motion passed unanimously.

4. **Adopted the Report of the Qualified Jurisdiction (E) Working Group**

Mr. Wake stated that the Working Group has not met during 2020. He stated that during the fall of 2019, the Working Group completed several projects related to the 2019 revisions to Model #785 and Model #786, and he noted that the Working Group also completed the re-reviews of the qualified jurisdictions that were due prior to Jan. 1, 2020, and the initial reviews of the reciprocal jurisdictions that are not subject to covered agreements.

Mr. Wake stated that the Working Group has been approached by three countries that have shown interest in becoming qualified jurisdictions. He stated that the Working Group intends to perform the initial reviews of these countries over the next several months. He noted that the Working Group stands ready to assist with any issues.

Dan Schelp (NAIC) stated that the Working Group has committed to updating the *Process for Evaluating Qualified and Reciprocal Jurisdictions* to include a process for termination of a qualified jurisdiction or reciprocal jurisdiction.

Mr. Wake made a motion, seconded by Mr. Kaumann, to adopt the report of the Qualified Jurisdiction (E) Working Group. The motion passed unanimously.

5. **Received a Status Report on the States’ Implementation of the 2019 Revisions to Model #785 and Model #786**

Mr. Rehagen stated that as of July 7, 11 U.S. jurisdictions have adopted the 2019 revisions to Model #785, and 17 jurisdictions have action under consideration. He noted that Virginia has adopted the revisions to Model #786, and Kentucky, Pennsylvania, and West Virginia currently have action under consideration. He stated that the maps showing the adoption of the 2019 revisions to Model #785 and Model #786 were included in the meeting materials (Attachment Three).

Mr. Rehagen stated that the 2019 revisions to the models must be adopted by the states prior to Sept. 1, 2022, which is when the revisions are expected to become an accreditation standard. He noted that Sept. 1, 2022, is also the date at which the Federal Insurance Office (FIO) must complete its federal preemption reviews under the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (EU Covered Agreement). He noted that the COVID-19 pandemic has slowed the adoption process, and several state legislatures have temporarily closed or have primarily focused on the pandemic. He stated that the Task Force will provide support to the states to meet this deadline, and it will communicate with the U.S. Department of the Treasury (Treasury Department) and the FIO, as necessary. He noted that there have not been any specific conversations with either the FIO or the European Union (EU) about extending this deadline, but there have been some preliminary discussions with the FIO on the status of state adoptions.

Mr. Rehagen stated that the SMI Dashboard is updated regularly to show the current adoptions of several model laws and regulations, and it can be found on the Financial Condition (E) Committee’s webpage. He noted that Mr. Schelp and Jake Stultz (NAIC) can answer any technical questions during the legislative process, and Holly Weatherford (NAIC), Legislative Counsel, is working directly with the states on the adoption of the 2019 revisions to Model #785 and Model #786.

Karalee C. Morell (Reinsurance Association of America—RAA) stated that there has been a significant amount of work completed by the state legislatures, but the process has been slowed by COVID-19. She noted that several states had to stop all legislative activity earlier in early 2020, and she noted that with the potential risk of a second wave of COVID-19, the states must plan around any potential further legislative recesses in the next few months. She stated that the EU Covered Agreement effective dates are not flexible. She noted that the RAA can assist the state legislatures during the adoption process.

Mr. Kaumann asked if the RAA has talking points that they can provide to the states. Ms. Morell stated that she can provide the RAA talking points directly to anybody that requests them. Mr. Schelp noted that the NAIC has a legislative packet with talking points and other information that has been distributed to the state legislative liaisons, and NAIC staff can resend those to any states that need them during the legislative process.

Having no further business, the Reinsurance (E) Task Force adjourned.
The Reinsurance (E) Task Force met via conference call June 9, 2020. The following Task Force members participated: Chlora Lindley-Myers, Chair, represented by John Rehagen (MO); Raymond G. Farmer, Vice Chair, represented by Daniel Morris (SC); Lori K. Wing-Heier represented by David Phifer (AK); Alan McClain represented by Mel Anderson (AR); Ricardo Lara represented by Monica Macaluso and Kim Hudson (CA); Michael Conway represented by Rolf Kaumann (CO); Andrew N. Mais represented by Kathy Belfi and Jim Jakielo (CT); Trinidad Navarro represented by Dave Lonchar (DE); David Altmaier represented by Carolyn Morgan (FL); John F. King (GA); Doug Ommen represented by Carrie Mears (IA); Dean L. Cameron represented by Nathan Faragher (ID); Robert H. Muriel represented by Eric Moser (IL); Stephen W. Robertson represented by Roy Eft (IN); Vicki Schmidt represented by Tish Becker (KS); Sharon P. Clark represented by Jeff Gaither (KY); James J. Donelon represented by Stewart Guerin (LA); Gary Anderson represented by Christopher Joyce (MA); Eric A. Cioppa, represented by Robert Wake (ME); Matthew Rosendale represented by Steve Matthews (MT); Mike Causey represented by Jackie Obusek (NC); Jon Godfread represented by Matt Fischer (ND); Bruce R. Ramge represented by Lindsay Crawford and Justin Schrader (NE); Chris Nicolopoulos represented by Doug Bartlett (NH); Marlene Caride represented by John Tirado (NJ); Barbara D. Richardson represented by Joel Bego (NV); Linda A. Lacewell represented by Michael Campanelli (NY); Jillian Froment represented by Dale Brugmann (OH); Glen Mulready represented by Andrew Schallhorn (OK); Elizabeth Kelleher Dwyer represented by Jack Broccoli (RI); Kent Sullivan represented by Jamie Walker and Mike Boerner (TX); Todd E. Kiser represented by Jake Garn (UT); Scott A. White represented by David Smith and Doug Stolte (VA); and Mark Afable represented by Randy Milquet (WI).

1. Adopted its March 11, Jan. 29, and 2019 Fall National Meeting Minutes

Mr. Rehagen stated that the Task Force met March 11, Jan. 29, and Dec. 8, 2019. During its March 11 meeting, the Task Force: 1) adopted a recommendation that the 2019 revisions to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786) be an accreditation standard for risk retention groups (RRGs); and 2) discussed whether Actuarial Guideline XLVIII—Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation (Model 830) (AG 48) should be considered to be “substantially similar” to the Term and Universal Life Insurance Reserve Financing Model Regulation (#787) for purposes of accreditation. During its Jan. 29 meeting, the Task Force adopted technical revisions to Model #787.

Mr. Eft made a motion, seconded by Ms. Obusek, to adopt the Task Force’s March 11 (Attachment One-A), Jan. 29 (Attachment One-B), and Dec. 8, 2019, (see NAIC Proceedings – Fall 2019, Reinsurance (E) Task Force). The motion passed unanimously.

2. Discussed Whether Compliance with AG 48 Should be Considered “Substantially Similar” to Model #787 for Accreditation Purposes

Mr. Rehagen stated that the Task Force discussed whether compliance with AG 48 should be considered “substantially similar” to Model #787 for accreditation purposes on its March 11 conference call. He stated that the Task Force exposed a memorandum (See NAIC Proceedings – Summer 2020, Reinsurance (E) Task Force, Attachment One-A2) on Feb. 5 for a 21-day public comment period. He noted that the Financial Regulation Standards and Accreditation (F) Committee has adopted Model #787 as an accreditation standard, recommended to be effective Sept. 1, 2022, with enforcement beginning Jan. 1, 2023. He stated that his preference was to not provide a formal recommendation to the Committee, leave the current recommendation in place for adoption by the Executive (EX) Committee and Plenary, and allow the Financial Regulation Standards and Accreditation (F) Committee to review and address potential accreditation issues on a case-by-case basis.

Dan Schelp (NAIC) stated that the Accreditation Program Manual provides a definition of “substantially similar” that does not require a state to adopt every significant element of a model, but the state may also rely on an administrative practice that results in solvency regulation that is similar in force and no less effective than the NAIC model law or regulation for that standard. He stated that on an annual basis, the NAIC Legal Division will perform a Part A review of the state’s laws and regulations and will then provide an opinion to the Financial Regulation Standards and Accreditation (F) Committee as to whether a state’s administrative practices or other laws or regulations are similar in force and no less effective than the model.
He noted that this is normally an outcomes-based approach, and if the state is achieving “substantially similar” financial solvency results as under the model, the practice would be considered “substantially similar.”

Mr. Schelp noted that there is a caveat that the department of insurance (DOI) must not have encountered a successful challenge to the required administrative practice by an insurer, and the DOI must generally support compliance with the practice by the insurers. He stated that it is the opinion of NAIC staff that AG 48 is an administrative practice that if enforced by a state would result in financial solvency regulation that is “substantially similar” to Model #787. He noted that the Financial Regulation Standards and Accreditation (F) Committee generally accepts the opinion of the NAIC Legal Division, but this issue remains at the discretion of the Committee.

Becky Meyer (NAIC) stated that all companies are currently complying with AG 48 without a need to take the penalty. She noted that concerns have been expressed that the reason for compliance is the strong emphasis on making Model #787 an accreditation standard and the penalty that comes with non-compliance with Model #787. She noted that having Model #787 as the accreditation standard, along with an outcomes-based approach that allows AG 48 as an administrative practice rather than a strict recommendation that states must adopt Model #787, provides flexibility to ensure that the goals of the standard are met by all states.

Ms. Belfi stated that based on the comments provided by Mr. Schelp and Ms. Meyer, Connecticut agrees with the approach of not providing any further recommendation from the Task Force to the Financial Regulation Standards and Accreditation (F) Committee.

Mr. Rehagen stated that the Task Force will not make any further recommendations to the Financial Regulation Standards and Accreditation (F) Committee, and it will rely on the Committee’s judgment, based on the case-by-case analysis of whether a state is in compliance with the accreditation standard.

3. Adopted the Uniform Checklist for Reciprocal Jurisdiction Reinsurers and Updates to the Uniform Application Checklist for Certified Reinsurers

Mr. Rehagen stated that because of the 2019 revisions to Model #785 and Model #786, there are minor revisions needed for the existing Uniform Application Checklist for Certified Reinsurers (Attachment One-C), and a new Uniform Checklist for Reciprocal Jurisdiction Reinsurers (Attachment One-D) is needed. He stated that the Reinsurance Financial Analysis (E) Working Group was tasked with creating and modifying these checklists. On May 4, the Task Force exposed the checklists for a 21-day public comment period, and two comment letters (Attachment One-E) were received: 1) one from the International Underwriting Association of London (IUA); and 2) a combined letter from the Reinsurance Association of America (RAA) and Lloyd’s.

Mr. Schelp stated that in addition to the comment letters received, informal comments had been provided by the Association of Bermuda Insurers and Reinsurers (ABIR) and the European Commission. He stated that as a result of the comments received, a revised version of the Uniform Checklist for Reciprocal Jurisdiction Reinsurers was sent via email by NAIC staff on June 8 (Attachment One-F). He provided a brief description of these revisions.

Mr. Wake stated that he agrees with revisions that were made and are included in the version that was emailed by NAIC staff on June 8.

Mr. Bruggeman asked if both checklists would be required for companies that have both certified reinsurer business and reciprocal jurisdiction reinsurer business. Mr. Schelp stated that companies will be required to file both if they are doing both types of business.

Karalee C. Morell (RAA) stated that the RAA agrees with the revisions that were included in the draft sent by NAIC staff on June 8. Sabrina A. Miesowitz (Lloyd’s) stated that Lloyd’s agrees with the RAA’s statement.

Mr. Kaumann made a motion, seconded by Mr. Wake, to adopt the revised Uniform Application Checklist for Certified Reinsurers and the new Uniform Checklist for Reciprocal Jurisdiction Reinsurers with the edits that were sent out by NAIC staff via email on June 8. The motion passed unanimously.

Having no further business, the Reinsurance (E) Task Force adjourned.
The Reinsurance (E) Task Force met via conference call March 11, 2020. The following Task Force members participated:
Chlora Lindley-Myers, Chair, represented by John Rehagen (MO); Raymond G. Farmer, Vice Chair, and Daniel Morris (SC); Lori K. Wing-Heier represented by David Phifer (AK); Jim L. Ridling represented by Sheila Travis (AL); Ricardo Lara represented by Monica Macaluso and Kim Hudson (CA); Michael Conway represented by Rolf Kaumann (CO); Andrew N. Mais represented by Kathy Belfi and Jim Jakielo (CT); Trinidad Navarro represented by Dave Lonchar (DE); David Altmaier represented by Carolyn Morgan (FL); John F. King represented by Martin Sullivan (GA); Dean L. Cameron represented by Nathan Faragher (ID); Robert H. Muriel represented by Eric Moser and Susan Berry (IL); Stephen W. Robertson represented by Roy Eft (IN); Vicki Schmidt represented by Chut Tee (KS); Sharon P. Clark represented by Russell Coy (KY); James J. Donelon represented by Stewart Guerin (LA); Gary Anderson represented by Christopher Joyce (MA); Eric A. Cioppa, represented by Robert Wake (ME); Jon Godfread represented by Colton Schulz (ND); Bruce R. Ramsey represented by Lindsay Crawford (NE); Chris Nicolopoulos represented by Doug Bartlett (NH); Marlene Caride represented by John Tirado (NJ); Barbara D. Richardson represented by Joel Bengo (NV); Linda A. Lacewell represented by Michael Campanelli (NY); Jillian Froment represented by Dale Bruggeman (OH); Glen Mulready represented by Diane Carter (OK); Kent Sullivan represented by Doug Splege and Mike Boerner (TX); Todd E. Kiser represented by Reed Stringham (UT); Scott A. White represented by David Smith and Doug Stolte (VA); Michael S. Pieciak represented by Sandra Bigglestone (VT); and Mark Afable represented by Randy Milquet (WI).

1. **Adopted a Recommendation to the Financial Regulation Standards and Accreditation (F) Committee that the 2019 Revisions to Model #785 and Model #786 Should be an Accreditation Standard for RRGs**

Mr. Rehagen stated that at the 2019 Fall National Meeting, the Financial Regulation Standards and Accreditation (F) Committee adopted the 2019 revisions to the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786) as an accreditation standard. The Executive (EX) Committee and Plenary are expected to consider it for final adoption at the Spring National Meeting, to be effective Sept. 1, 2022.

Dan Schelp (NAIC) stated that during the drafting process for the 2019 revisions to Model #785 and Model #786, risk retention groups (RRGs) were never specifically addressed. He stated that a memorandum (Attachment One-A1) was prepared by NAIC staff that recommended that both the 2011 revisions and 2019 revisions to Model #785 and Model #786 should be adopted as an accreditation standard. He stated that the memorandum also recommends that the 2011 revisions to the models relating to certified reinsurers and qualified jurisdictions also be made a part of the accreditation standard since the 2019 revisions are based on the earlier revisions. Finally, the Risk Retention Group (E) Task Force unanimously adopted this recommendation during its March 2, 2020, conference call.

Mr. Kaumann made a motion, seconded by Mr. Stolte, to adopt the motion to confirm the Task Force’s support for the memorandum prepared by NAIC staff, specifically that both the 2011 revisions and 2019 revisions to Model #785 and Model #786 should be adopted as an accreditation standard, with an effective date of Sept. 1, 2022. The motion passed unanimously.

2. **Discussed Whether Compliance with AG 48 Should be Considered “Substantially Similar” to Model #787 for Accreditation Purposes**

Mr. Rehagen stated that at the 2019 Fall National Meeting, the Financial Regulation Standards and Accreditation (F) Committee adopted the Term and Universal Life Insurance Reserve Financing Model Regulation (#787) as an accreditation standard with an effective date of Sept. 1, 2022. Model #787 is a codification of Actuarial Guideline XLVIII—Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation (Model 830) (AG 48), with the primary exception that AG 48 and Model #787 contain different penalty provisions.

Mr. Rehagen stated that during the Jan. 29, 2020, call of the Task Force, there was a discussion about whether compliance with AG 48 should be considered to be “substantially similar” to Model #787 for accreditation purposes. As a result of this discussion, the Task Force exposed a memorandum (Attachment One-A2) on Feb. 5, 2020, for a 21-day public comment period.
Mr. Rehagen stated that three comment letters were received, one from the American Academy of Actuaries (Academy), one from the Connecticut Insurance Department, and a combined letter from New York Life and Northwestern Mutual (Attachment One-A3). He stated that the three comment letters supported the adoption of Model #787, rather than reliance on AG 48 for the Reinsurance Ceded accreditation standard.

Mr. Schelp provided background information on this issue. He noted that the recommendation from the Task Force to the Financial Regulation Standards and Accreditation (F) Committee in 2017 was to make Model #787 an accreditation standard effective Jan. 1, 2020, which coincided with the effective date of the accreditation standard for principle-based reserving (PBR). He noted that it was recognized that some states might have problems meeting this expedited schedule, so the Task Force also recommended that in such cases, a state’s compliance with AG 48 should be considered as satisfactory to the Committee as substantial compliance with Model #787. The adoption of Model #787 as an accreditation standard was delayed by the Committee due to the issuance of the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (Covered Agreement), which was signed on Sept. 22, 2017.

Mr. Schelp stated that the issue is whether AG 48 should be considered to be substantially similar to Model #787 for accreditation purposes. He noted that the requirements under both AG 48 and Model #787 are virtually identical, except for the penalty provision if the requirements are not met. Under AG 48, the penalty is a qualified actuarial opinion and an increase in the Authorized Control Level Risk-Based Capital (RBC) equal to the primary security shortfall. The penalty under Model #787 is that the ceding insurer is required to establish a liability equal to the excess of the credit for reinsurance taken over the amount of primary security.

Mr. Schelp stated that the Accreditation Program Manual has a definition of “substantially similar” that declares that a state is required to demonstrate that its law, regulation or administrative practice is similar in force and no less effective than the NAIC model. Since 2016, NAIC staff have been assessing compliance with AG 48, and it has ascertained that there were no transactions that had either a primary security shortfall or another security shortfall in any of the years reviewed.

Mr. Hudson stated that he understood AG 48 to be temporary and that it was to be replaced by Model #787. Mr. Schelp stated that at the time that Model #787 was being contemplated, the intention was for it to replace AG 48 for accreditation purposes. He stated that the accreditation standards are usually based on NAIC model laws, which are required to be adopted by the states. He noted that Model #787 was the codification of AG 48. He stated that after Model #787 was adopted, AG 48 was updated and revised to make it consistent with Model #787. He noted that AG 48 has a sunset provision that it will sunset when a state adopts a regulation substantially similar to Model #787, but it will continue to apply only with respect to the limited number of states in which their version of Model #787 applies prospectively only. Mr. Stolte stated that the intention was for AG 48 to be a temporary transition guidance until Model #787 was adopted by the states.

Ms. Belfi referred to the comment letter from the Connecticut Insurance Department, and she stated that there are substantial differences between Model #787 and AG 48. She noted that the impact of a qualified actuarial opinion results in a modified RBC for AG 48 instead of the direct balance sheet effect as prescribed by Model #787, which is a significant difference. Ms. Berry asked if Ms. Belfi’s only objection was with the difference in the penalty and whether modifying the penalty in AG 48 would be satisfactory. Mr. Rehagen noted that evaluation of credit for reinsurance is part of the state insurance regulator’s role and not that of actuaries, so it is his opinion that the penalty provision of AG 48 cannot be changed to match that of Model #787.

Ms. Belfi proposed modifying AG 48 to include provisions from Model #787 and allowing more time for the states to adopt Model #787. Mr. Schelp stated that actuarial guidelines generally only affect reserves, while Model #787 directly affects credit for reinsurance. Mr. Boerner noted that a stronger penalty could be added to AG 48, but Texas prefers that AG 48 be considered substantially similar to Model #787 for accreditation purposes. He stated that while AG 48 and Model #787 have different penalties, they have had the same outcome of preventing these transactions.

Richard Daillak (American Academy of Actuaries—Academy) stated that the Academy’s concern is with the difference in penalty between AG 48 and Model #787. He stated that the Academy has concerns with having a forced qualified actuarial opinion as the penalty mechanism, and he stated that AG 48 was intended to sunset after a state adopts Model #787.

Mr. Boerner asked if the Academy agrees that AG 48 should remain effective for contracts that were already in force prior to adoption of Model #787. Mr. Daillak stated that in that case, it would be appropriate to use AG 48 for those contracts, but he recommended the elimination of the use of AG 48 for everything else. Mr. Bruggeman stated that with AG 48, a company can...
correct the problem with reserves prior to the qualified actuarial opinion being issued, and the company will then receive an unqualified actuarial opinion.

Mr. Slape stated that if a company is in compliance with either AG 48 or Model #787, it will receive an unqualified actuarial opinion, and if it is out of compliance with either AG 48 or Model #787, it will receive a qualified actuarial opinion. Mr. Wake stated that the difference is legal compliance versus compliance with actuarial guidelines. He stated that there is an actuarial penalty for violating either AG 48 or Model #787, but only Model #787 has the regulatory penalty of a denial of credit for reinsurance, which has a direct balance sheet impact, in addition to the indirect impact on the reserves. Mr. Jakielo noted that Model #787 does not have a requirement of a qualified actuarial opinion.

Doug Wheeler (New York Life) made reference to his letter, and he stated that the process to create Model #787 was a multi-year process and was heavily negotiated. He noted that there are fundamental differences between the penalties in Model #787 and AG 48. He stated that he agrees with giving the states more time to adopt Model #787 and moving the effective date of the accreditation standard further into the future. Andrew T. Vedder (Northwest Mutual) agreed with the points made by Mr. Wheeler, and he agreed that Model #787 should be the accreditation standard.

Mr. Rehagen asked the Task Force members if the recommendation to the Financial Regulation Standards and Accreditation (F) Committee should be that the effective date should be moved into the future and they should discuss allowing AG 48 with added penalty provisions as a substitute for Model #787. Mr. Hudson stated that California believes that Model #787 should be the standard, and it does not support AG 48 as a permanent substitute. Mr. Bruggeman stated that Ohio intends to adopt Model #787, but the effective date of Sept. 1, 2022, will be too soon to get the legislative work completed. He stated that extending that date may be a solution.

Ms. Belfi asked if there is a way to allow a reprieve to allow the states more time to adopt Model #787 and increase the RBC penalty for violating AG 48. Mr. Slape stated that the effective date is not the issue for Texas, and they believe that AG 48 and Model #787 are substantially similar. Mr. Bruggeman stated that extending the date would be helpful for Ohio. Mr. Jakielo suggested working through the RBC instructions to make the penalty equivalent for AG 48 and Model #787.

Mr. Rehagen directed NAIC staff to create a document that outlines today’s discussion and includes arguments for and against having AG 48 be considered substantially similar to Model #787, which can be voted on by the Task Force during its April 2020 conference call.

Having no further business, the Reinsurance (E) Task Force adjourned.
MEMORANDUM

To: Financial Regulation Standards and Accreditation (F) Committee
From: NAIC Staff
Date: February 12, 2020
Re: 2011 & 2019 Revisions to Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786)—Applicability to Risk Retention Groups (RRGs)

Executive Summary

On June 25, 2019, the NAIC Executive (EX) Committee and Plenary unanimously adopted revisions to the NAIC Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786). These revisions were intended to incorporate the relevant provisions of the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (Covered Agreement), which was signed on Sept. 22, 2017. At the 2019 Fall National Meeting, the Financial Regulation Standards and Accreditation (F) Committee adopted these revisions to the Reinsurance Ceded accreditation standard effective Sept. 1, 2022, for consideration by the Executive (EX) Committee and Plenary for final adoption at the Spring National Meeting.

The purpose of this memorandum is to clarify the applicability of these revisions to risk retention groups (RRGs) organized as captives. The recommendation to this Committee is that the 2019 revisions to Model #785 and Model #786, as well as the 2011 revisions establishing certified reinsurers and qualified jurisdictions (which became applicable as an accreditation standard Jan. 1, 2019), also should be made applicable to RRGs.

Risk Retention Groups Organized as Captives

Article 3 (Reinsurance) of the Covered Agreement is applicable to ceding insurers, which Article 2(j) defines as “an undertaking which is authorized or licensed to take up or engage in the business of direct or primary insurance.” This would arguably include RRGs that are organized or incorporated by states as captive insurers. Reinsurance Ceded is part of the Part A accreditation requirements for RRGs, and requires that state law should contain Model #785 and Model #786, or substantially similar laws. The primary difference between the current reinsurance accreditation standard for RRGs is that “a state’s laws and regulations may allow RRGs to take credit for reinsurance without posting collateral in circumstances not contemplated by the Credit for Reinsurance Model Law and Regulation. For such cases, the Accreditation Interlineations include ‘Reinsurance Guidelines for Risk Retention Groups Licensed as Captive Insurers’ and a state’s laws and regulations must comply with the guidelines in order to be considered substantially similar with this standard.”

NAIC staff has reviewed the laws and regulations with respect to the fifteen (15) NAIC jurisdictions which currently license multi-state RRGs as captive insurers (AL, AZ, CO, DE, DC, HI, KY, ME, MT, NV, NC, OK, SC, TN and VT), and each meets the current Reinsurance Ceded accreditation standard in a very similar manner. First, each
states’ laws require that an RRG must be licensed as a captive insurer (and in some instances, a specific type of captive insurer) subject to its captive insurance laws. Second, the captive insurance laws generally exempt captive insurers from the general laws with respect to traditional insurers, except as is otherwise specified in statute. Finally, the statutes make RRGs that are licensed as captive insurers subject to the state’s credit for reinsurance laws, either generally (e.g., an RRG licensed as a captive insurer must comply with all of the laws, rules, regulations and requirements applicable to insurers chartered and licensed in the state) or specifically (e.g., an RRG licensed as a captive insurer must comply with the laws specified in this chapter, including specifically the credit for reinsurance laws). We also reviewed the proposed legislation of the five states currently considering adoption of the 2019 revisions to the models (ME, OK, SC, TN & VT), and the proposed legislation would not change this outcome.

**Recommendation**

NAIC staff recommends that the Committee consider making the 2019 revisions to Model #785 and Model #786 an accreditation standard for RRGs effective Sept. 1, 2022, with enforcement of the standard to commence Jan. 1, 2023. Staff further recommends that the 2011 revisions to the models relating to certified reinsurers and qualified jurisdictions also be made a part of the accreditation standard, because the 2019 revisions are in large part based on these earlier revisions. Finally, we recommend that the changes in the attached redlined accreditation standard be adopted as the new accreditation standard for reinsurance ceded to RRGs. [The Risk Retention Group (E) Task Force met on March 2, and approved these recommendations.]
State law should contain the NAIC *Credit for Reinsurance Model Law* (#785), the NAIC’s *Credit for Reinsurance Model Regulation* (#786) or substantially similar laws.

Complete the following question only if this is an interim annual review:

Have there been any changes to the department’s ceded reinsurance requirements since last year’s review?  

If the response is **NO**, there is no further information needed regarding this standard, please proceed to the next standard.

If the response is **YES**, in the reference column please provide the applicable citation for each of the questions in this particular standard. Additionally, please attach a copy of the statutes or regulations that had a change and ensure that they are clearly marked for the changes that have been made (i.e., highlight the changes, redlined version, etc.) Please place an asterisk (*) in the reference column on the right-hand side of the page by each citation that has been changed. Also, please include below a brief description of the nature or reason for the change.

If the department is completing the self-evaluation guide due to an upcoming full review, please provide the applicable citation for each of the questions in this particular standard. Additionally, please attach a copy of the statutes or regulations that are listed in the reference column.

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**Credit for Reinsurance Model Law** (#785)

<table>
<thead>
<tr>
<th>Reference</th>
<th>Citation</th>
</tr>
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<tbody>
<tr>
<td>a.</td>
<td>Credit allowed for reinsurance ceded to a licensed insurer? If the reinsurer is licensed as a RRG, then the ceding RRG or its members must qualify for membership with the reinsurer.</td>
</tr>
<tr>
<td>b.</td>
<td>Credit allowed for reinsurance ceded to an accredited insurer who meets requirements similar to those in Section 2B of the model law?</td>
</tr>
<tr>
<td>c.</td>
<td>Credit allowed for reinsurance ceded to an insurer domiciled and licensed in a state which employs substantially similar standards regarding credit for reinsurance and who maintains capital and surplus of at least $20,000,000 and submits to this state’s authority to examine its books and records?</td>
</tr>
<tr>
<td>d.</td>
<td>Credit allowed for reinsurance ceded to an insurer who maintains a trust fund, established in a form approved by the Commissioner, in a qualified U.S. financial institution for the payment of the valid claims of its U.S. policyholders and ceding insurers, their assigns and successors in interest and who reports financial information annually to the Commissioner to determine the sufficiency of the trust fund?</td>
</tr>
<tr>
<td>e.</td>
<td>In instances where reinsurance is ceded to insurers maintaining a trust fund, trustees of the trust required to report to the department annually, on or before February 28, the balance of the trust and a listing of the trust’s assets as of the end of the year and a certification of the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31?</td>
</tr>
</tbody>
</table>
f. Credit for reinsurance allowed under c. or d. above only permitted where assuming insurer agrees in the reinsurance agreements: 1) that in the event of a failure of the assuming insurer to perform its obligations, the assuming insurer shall submit to the jurisdiction of any court of competent jurisdiction in any state of the U.S.; and 2) to designate the Commissioner or a designated attorney as its true and lawful attorney upon whom may be served any lawful process instituted by or on behalf of the ceding company?

g. Credit allowed for reinsurance ceded to an insurer meeting requirements similar to those in Section 2E (Certified Reinsurers) of the model law?

h. Credit allowed for reinsurance ceded to an insurer meeting requirements similar to those in Section 2F (Reciprocal Jurisdictions) of the model law?

i. Although not required for accreditation, a state’s laws and regulations may allow RRGs to take credit for reinsurance without posting collateral in circumstances not contemplated by the Credit for Reinsurance Model Law and Regulation. For such cases, the Accreditation Interlineations include “Reinsurance Guidelines for Risk Retention Groups Licensed as Captive Insurers” and a state’s laws and regulations must comply with the guidelines in order to be considered substantially similar with this standard. If your state’s laws and regulations do allow credit for reinsurance without collateral as discussed in the Accreditation Interlineations, please include the citation.

Note: An RRG’s reinsurers as of Jan. 1, 2011, are grandfathered in as acceptable without meeting the requirements in the Reinsurance Guidelines. The requirements in the Reinsurance Guidelines should be used for new reinsurers with which business is placed after Jan. 1, 2011.

j. Credit allowed for reinsurance ceded to an insurer not meeting the requirements of a., b., c., d., g., h., or i. above in an amount not exceeding the liabilities carried by the ceding insurer and only in the amount of funds held by or on behalf of the ceding insurer in the form of cash, securities listed by the Securities Valuation Office of the NAIC and qualifying as admitted assets, clean, irrevocable, unconditional letters of credit, and other forms of security acceptable to the Commissioner?

k. Credit for reinsurance allowed for reinsurance ceded by domestic reinsurers to assuming insurers that were licensed in the state as of the last date of the ceding insurers’ statutory financial statement? If the reinsurer is licensed as a RRG, then the ceding RRG or its members must qualify for membership with the reinsurer.

l. Credit for reinsurance provisions for accredited reinsurer similar to Section 5?

m. Credit for reinsurance provisions for reinsurers licensed and domiciled in other states similar to Section 6?
n. Credit for reinsurance provisions for reinsurers maintaining trust funds similar to Section 7?

o. Credit for reinsurance required by law similar to Section 9, to the extent permitted by 15 USC 3902(a)?

p. Reduction from liability for reinsurance ceded to an unauthorized assuming insurer similar to Section 10? Note: See significant element g. above regarding allowance of credit for reinsurance in certain situations not contemplated by the Model Law.

q. Provisions for trust agreements similar to Section 11?

r. Provisions for letters of credit similar to Section 12?

s. Provisions for unencumbered funds similar to Section 13?

t. Provisions for reinsurance contracts similar to Section 14? Note: For those reinsurance contracts for which credit is allowed under significant element g. above, the reinsurance contract should contain language similar to Section II of the “Reinsurance Guidelines for Risk Retention Groups Licensed as Captive Insurers.”

u. The adoption of Form AR-1—Certificate of Assuming Insurer. Note: For situations in which credit for reinsurance is taken under significant element g. above, the reinsurance contract should contain language similar to Section II of the “Reinsurance Guidelines for Risk Retention Groups Licensed as Captive Insurers.”

v. Credit for reinsurance provisions for certified reinsurers similar to Section 8?

w. Credit for reinsurance provisions for reciprocal jurisdictions similar to Section 9?
TO: Reinsurance (E) Task Force

FROM: NAIC Staff

RE: Comparison of Term and Universal Life Insurance Reserve Financing Model Regulation (#787) and Actuarial Guideline XLVIII

DATE: February 5, 2020

Executive Summary

At the 2019 Fall National Meeting, the Financial Regulation Standards and Accreditation (F) Committee adopted the Term and Universal Life Insurance Reserve Financing Model Regulation (#787) as an accreditation standard. The NAIC Executive (EX) Committee and Plenary are expected to consider it for final adoption at the Spring National Meeting, to be effective Sept. 1, 2022. On its conference call on Jan. 29, the Reinsurance (E) Task Force discussed whether compliance with Actuarial Guideline XLVIII (AG 48) should be considered “substantially similar” to Model #787 for accreditation purposes. Acting Chair John Rehagen (MO) directed NAIC staff to distribute a memorandum comparing the significant differences between AG 48 and Model #787 for a 21-day public comment period requesting comments on whether compliance with AG 48 should be considered substantially similar to Model #787.

2017 Recommendation on Accreditation

In its memorandum dated August 24, 2017, the Reinsurance Task Force recommended that “a state’s adoption of AG 48 will serve to satisfy this accreditation standard until such time that the state adopts the significant elements of Model #787.” (Attachment A). This recommendation was based on an expedited effective date for the accreditation standard of January 1, 2020. The Task Force recognized that “meeting the expedited date may not be feasible for some states in instances due, in whole or part, to other legislative priorities of the states. It is the recommendation of the Task Force that, in such cases, a state’s compliance with AG 48 should be considered as satisfactory to the Financial Regulation Standards and Accreditation (F) Committee as substantial compliance with Model #787.”

At that time the Committee deferred its consideration of Model #787 as an accreditation standard due to concerns expressed with respect to the impending Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance (Covered Agreement), which was signed on September 22, 2017. In 2017 AG 48 was amended “to redraft AG 48 to make it as consistent as possible with the provisions of Model #787.”

Comparison of Model #787 and AG 48

The primary difference between AG 48 and Model #787 are the consequences to an insurer if the requirements of either are not met. Paragraph 6B(1) of AG 48 (Attachment B) provides, as follows:
B. Qualified Actuarial Opinion; Remediation

(1) The appointed actuary of the ceding insurer performing the analysis required by Section 6A above must issue a qualified actuarial opinion as described in Section 6.D. of the AOMR or Section 3A(10) of VM-30 of the Valuation Manual, as applicable, unless:

(a) The requirements of Section 6A(1) and 6A(2) were fully satisfied as of the valuation date as to such reinsurance treaty; or

(b) Any deficiency has been eliminated before the due date of the Annual Statement to which the valuation date relates through the addition of Primary Security and/or Other Security, as the case may be, in such amount and in such form as would have caused the requirements of Section 6A(1) and 6A(2) to be fully satisfied as of the valuation date; or

(c) The ceding insurer has established a liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held pursuant to Section 6A(1).

[Emphasis Added]. A Drafting Note to this paragraph provides that the “remediation option set forth in Section 6B(1)(c) mirrors that set forth in Model #787.” In addition, the following proposals related to the XXX/AXXX Reinsurance Framework were adopted by the Capital Adequacy (E) Task Force on its June 30, 2015, conference call:

1. 2014-33-L-Mod Qualified Actuarial Opinion – This proposal modifies the interrogatory on LR027 Interest Rate Risk and Market Risk. This interrogatory allows companies submitting an unqualified opinion to receive a one-third reduction in the factors. It was modified to prevent an opinion qualified solely due to the direction in AG 48, which is line of business specific, from impacting all lines of business.

2. 2014-35b-L-Mod Primary Securities Shortfall – This proposal adds a new schedule showing the primary security shortfall by individual cession. The cumulative amount of primary security shortfall, with no offset for any surpluses, is then taken as a dollar-for-dollar addition to the reporting company’s Authorized Control Level.

3. 2014-42-L-Mod RBC Shortfall – This proposal adds a new schedule which shows the RBC calculation by individual captive. The cumulative amount of RBC shortfalls, with no offset for any surpluses, is then taken as a dollar-for-dollar reduction to the reporting company’s Total Adjusted Capital.

In summary, the Qualified Actuarial Opinion under paragraph 1 above does not constitute an RBC penalty in and of itself, but is a required element to trigger the RBC penalty under paragraph 2 and is applicable only with respect to AG 48. The RBC penalty under paragraph 3 is applicable to both noncompliance with AG 48 and Model #787. Section 7B of Model #787 then provides the following additional consequences for failure to follow its requirements:
B. Requirements at Inception Date and on an On-going Basis; Remediation

(1) The requirements of Section 7A must be satisfied as of the date that risks under Covered Policies are ceded (if such date is on or after the effective date of this regulation) and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under Section 7A(3) or 7A(4) with respect to any reinsurance treaty under which Covered Policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

(2) Prior to the due date of each Quarterly or Annual Statement, each life insurance company that has ceded reinsurance within the scope of Section 3 shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which Covered Policies have been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date) the requirements of Sections 7A(3) and 7A(4) were satisfied. The ceding insurer shall establish a **liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held pursuant to Section 7A(3)**, unless either:

(a) The requirements of Section 7A(3) and 7A(4) were fully satisfied as of the valuation date as to such reinsurance treaty; or

(b) Any deficiency has been eliminated before the due date of the Quarterly or Annual Statement to which the valuation date relates through the addition of Primary Security and/or Other Security, as the case may be, in such amount and in such form as would have caused the requirements of Section 7A(3) and 7A(4) to be fully satisfied as of the valuation date.

[Emphasis added]. Finally, Paragraph 8 of AG 48 provides that it will sunset when a state adopts a regulation substantially similar to Model #787, but will continue to apply only with respect to the limited number of states in which their version of Model #787 applies prospectively only.

**Substantially Similar**

The NAIC Financial Standards and Accreditation Program provides the following definition of “substantially similar”:

For those standards included in the Part A: Laws and Regulations Standards where the term “substantially similar” is included, a state must have a law, regulation, administrative practice or a combination of the above which addresses the significant elements included in the NAIC model laws or regulations… It is NOT required that states adopt every “significant” element in the interim annual review form by law or regulation. Instead, it is required that the state demonstrate that the law, regulation, administrative practice or a combination of the above enforced by a state insurance department results in solvency regulation that is similar in force and no less effective than the NAIC model law or regulation for that standard.
MEMORANDUM

TO: Financial Regulation Standards and Accreditation (F) Committee

FROM: Reinsurance (E) Task Force

DATE: August 24, 2017

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

Executive Summary

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

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

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

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

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

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

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

State Adoption of AG 48

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

2016 Revisions to Model #785

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

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

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

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

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

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

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

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

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

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

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

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

i. Includes a prohibition against avoidance provision similar to Section 9 of Model #787?
ACTUARIAL OPINION AND MEMORANDUM REQUIREMENTS FOR THE REINSURANCE OF POLICIES REQUIRED TO BE VALUED UNDER SECTIONS 6 AND 7 OF THE NAIC VALUATION OF LIFE INSURANCE POLICIES MODEL REGULATION (MODEL #830)

Background

The NAIC Principle-Based Reserving Implementation (EX) Task Force (“PBRI Task Force”) serves as the coordinating body for all NAIC technical groups involved with projects related to the Principle-Based Reserves (PBR) initiative for life and health policies. The PBRI Task Force was also charged with further assessing, and making recommendations regarding, the solvency implications of life insurance reserve financing mechanisms addressed in the June 6, 2013 NAIC White Paper of the Captives and Special Purpose Vehicle Use (E) Subgroup of the Financial Condition (E) Committee. Some of these reinsurance arrangements have been referred to as “XXX/AXXX Captive arrangements,” although not all such arrangements actually involve reinsurers organized as captives. In this connotation, XXX denotes the reserves prescribed by Section 6 of the NAIC Valuation of Life Insurance Policies Model Regulation (Model #830) while AXXX denotes the reserves prescribed by Section 7 of Model #830, and by Actuarial Guideline XXXVIII—The Application of the Valuation of Life Insurance Policies Model Regulation (AG 38). On June 30, 2014, the PBRI Task Force adopted a framework as found in Exhibits 1 and 2 of the June 4, 2014 report from Rector & Associates, Inc. (the “June 2014 Rector Report”). Exhibit 2 of the report included a charge to the Life Actuarial (A) Task Force (LATF) to develop a level of reserves (the “Required Level of Primary Security”) that must be supported by certain defined assets (“Primary Security”). The level of reserves is to be calculated by a method referred to as the “Actuarial Method.” Another charge to LATF was to promulgate an actuarial guideline specifying that, in order to comply with the NAIC Actuarial Opinion and Memorandum Regulation (AOMR) as it relates to XXX/AXXX reinsurance arrangements, the opining actuary must issue a qualified opinion as to the ceding insurer’s reserves if the ceding insurer or any insurer in its holding company system has engaged in a XXX/AXXX reserve financing arrangement that does not adhere to the Actuarial Method and Primary Security forms adopted by the NAIC. The initial version of Actuarial Guideline XLVIII—Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation (AG 48) was developed in response to that charge, with an effective date of January 1, 2015.

Coordination between this Actuarial Guideline and the NAIC Term and Universal Life Insurance Reserve Financing Model Regulation (Model #787)

Subsequently, on January 8, 2016, the NAIC adopted revisions to the Credit for Reinsurance Model Law (Model #785). Among other things, the revisions to Model #785 provide commissioners with the authority to enact, by regulation, additional requirements for ceding insurers to claim credit for reinsurance with respect to certain XXX/AXXX financing arrangements. On December 13, 2016, the NAIC adopted the Term and Universal Life Insurance Reserve Financing Model Regulation (Model #787) as the regulation permitted by Model #785. LATF subsequently received a charge to redraft AG 48 to make it as consistent as possible with the provisions of Model #787. The current version of this actuarial guideline is the result.

The following is an overview of the interrelationship between this actuarial guideline and Model #787, and the regulatory strategy that led to the adoption of each:

1. The initial version of this actuarial guideline immediately established national standards for the use of XXX/AXXX financing arrangements in an attempt to quickly set minimum standards based on the framework adopted by the PBRI Task Force on June 30, 2014. This initial version applied to such reinsurance arrangements entered into on or after 1/1/2015.
2. The revised statute (the NAIC Credit for Reinsurance Model Law (Model #785)) and a new regulation (the NAIC Term and Universal Life Insurance Reserve Financing Model Regulation (Model #787)) were then developed and adopted by the NAIC.

3. Except as noted in #4 below, this actuarial guideline will cease to be effective, on a state by state basis, as individual states enact Model #785 and adopt Model #787 to replace it.

4. Notwithstanding, it is anticipated that in a small number of states, Model #787 will need to be adopted on a “prospective” basis only (that is, it will only apply to ceded policies issued on or after the effective date thereof). In those cases, this actuarial guideline will remain as the authority for ceded policies subject to this actuarial guideline but to which Model #787, as adopted in a given state, does not apply. So although its role might diminish, this actuarial guideline will remain an essential part of the regulatory framework for a small number of states for many years to come.

5. To ensure uniformity of treatment between states, companies, and ceded policies (whether governed by this actuarial guideline or by Model #787) and to avoid confusion, this actuarial guideline is being updated, effective as of January 1, 2017, to make it as substantively identical to Model #787 as possible.

Authority, Avoidance, and Purpose

The requirements in this actuarial guideline derive authority from Section 3 of the AOMR, or, after the Operative Date of the Valuation Manual, from Section 1 of VM-30 of the Valuation Manual. Both Section 3 of the AOMR and Section 1 of VM-30 provide that the commissioner has the authority to specify specific methods of actuarial analysis and actuarial assumptions when, in the commissioner's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items. As contained in the framework adopted by the PBRI Task Force on June 30, 2014, this actuarial guideline defines new terms, such as Primary Security and Required Level of Primary Security, specifies the Actuarial Method used to calculate the Required Level of Primary Security, and specifies other requirements that must be followed when reinsurance is involved in order for the appointed actuary to render an actuarial opinion that is not qualified.

No statute, regulation or guideline can anticipate every potential XXX/AXXX captive arrangement. Common sense and professional responsibility are needed to assure not only that the text of this actuarial guideline is strictly observed, but also that its purpose and intent are honored scrupulously. To that end, and to provide documentation to the appointed actuary as to the arrangements that are subject to review under this actuarial guideline, the appointed actuary may request from each ceding insurer, and may rely upon, the certification by the Chief Financial Officer or other responsible officer of each ceding insurer filed with the insurer’s domiciliary regulator that the insurer has not engaged in any arrangement or series of arrangements involving XXX or AXXX reserves that are designed to exploit a perceived ambiguity in, or to violate the purpose and intent of, this actuarial guideline.

The purpose and intent of this actuarial guideline is to establish uniform, national standards governing XXX or AXXX reserve financing arrangements in conformity with the PBRI Task Force framework and, in connection with such arrangements, to ensure that Primary Security, in an amount at least equal to the Required Level of Primary Security, is held by or on behalf of the ceding insurer. As described further in

In general, reserve financing arrangements are those where the security/assets backing part or all of the reserves have one or more of the following characteristics: such security/assets (1) are issued by the ceding insurer or its affiliates; and/or (2) are not unconditionally available to satisfy the general account obligations of the ceding insurer; and/or (3) create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any of its affiliates (other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance arrangement).
Appendix C  AG XLVIII

Section 4.B., the provisions of this actuarial guideline are not intended to apply to policies that were issued prior to 1/1/2015 if those policies were included in a captive reserve financing arrangement as of 12/31/2014. Further, the requirements of this actuarial guideline should be viewed as minimum standards and are not a substitute for the diligent analysis of reserve financing arrangements by regulators. A regulator should impose requirements in addition to those set out in this actuarial guideline if the facts and circumstances warrant such action.

Text

1. Authority

Pursuant to Section 3 of the AOMR or, after the Operative Date of the Valuation Manual, to Section 1 of VM-30 of the Valuation Manual, the commissioner shall have the authority to specify specific methods of actuarial analysis and actuarial assumptions when, in the commissioner’s judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

2. Scope

This actuarial guideline applies to reinsurance contracts that cede liabilities pertaining to Covered Policies as that term is defined in Section 4.

3. Exemptions

This actuarial guideline does not apply to the situations described in Subsections A through F.

A. Reinsurance of:

(1) Policies that satisfy the criteria for exemption set forth in Section 6F or Section 6G of Model #830; and which are issued before the later of:

(a) The effective date of Model #787 in the state of domicile of the ceding insurer, and

(b) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies’ statutory reserves, but in no event later than January 1, 2020;

(2) Portions of policies that satisfy the criteria for exemption set forth in Section 6E of Model #830 and which are issued before the later of:

(a) The effective date of Model #787 in the state of domicile of the ceding insurer, and

(b) The date on which the ceding insurer begins to apply the provisions of VM-20 to establish the ceded policies’ statutory reserves, but in no event later than January 1, 2020;

(3) Any universal life policy that meets all of the following requirements:

(a) Secondary guarantee period, if any, is five (5) years or less;
(b) Specified premium for the secondary guarantee period is not less than the net level reserve premium for the secondary guarantee period based on the CSO valuation tables and valuation interest rate applicable to the issue year of the policy; and

(c) The initial surrender charge is not less than one hundred percent (100%) of the first year annualized specified premium for the secondary guarantee period;

(4) Credit life insurance;

(5) Any variable life insurance policy that provides for life insurance, the amount or duration of which varies according to the investment experience of any separate account or accounts; or

(6) Any group life insurance certificate unless the certificate provides for a stated or implied schedule of maximum gross premiums required in order to continue coverage in force for a period in excess of one year; or

B. Reinsurance ceded to an assuming insurer that meets the applicable requirements of Section 2D of Model #785; or

C. Reinsurance ceded to an assuming insurer that meets the applicable requirements of Sections 2A, 2B or 2C, of Model #785, and that, in addition:

(1) Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual, without any departures from NAIC statutory accounting practices and procedures pertaining to the admissibility or valuation of assets or liabilities that increase the assuming insurer’s reported surplus and are material enough that they need to be disclosed in the financial statement of the assuming insurer pursuant to Statement of Statutory Accounting Principles No. 1—Accounting Policies, Risks & Uncertainties and Other Disclosures (“SSAP No. 1”); and

(2) Is not in a Company Action Level Event, Regulatory Action Level Event, Authorized Control Level Event, or Mandatory Control Level Event as those terms are defined in the NAIC Risk-Based Capital (RBC) for Insurers Model Act (Model #312) when its RBC is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation; or

D. Reinsurance ceded to an assuming insurer that meets the applicable requirements of Sections 2A, 2B or 2C, of Model #785, and that, in addition:

(1) Is not an affiliate, as that term is defined in Section 1A of the NAIC Insurance Holding Company System Regulatory Model Act (Model #440), of:

(a) The insurer ceding the business to the assuming insurer; or

(b) Any insurer that directly or indirectly ceded the business to that ceding insurer;

(2) Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual;
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(3) Is both:

(a) Licensed or accredited in at least 10 states (including its state of domicile), and

(b) Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and

(4) Is not, or would not be, below 500% of the Authorized Control Level RBC as that term is defined in Model #312 when its risk-based capital (RBC) is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer’s reported surplus; or

E. Reinsurance ceded to an assuming insurer that meets the requirements of either Section 5B(4)(a) of Model #785, pertaining to certain certified reinsurers or Section 5B(4)(b) of Model #785, pertaining to reinsurers meeting certain threshold size and licensing requirements; or

F. Reinsurance not otherwise exempt under Subsections A through E if the commissioner, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:

(1) The risks are clearly outside of the intent and purpose of this actuarial guideline (as described in the Authority, Avoidance and Purpose section above);

(2) The risks are included within the scope of this actuarial guideline only as a technicality; and

(3) The application of this actuarial guideline to those risks is not necessary to provide appropriate protection to policyholders. The commissioner shall publicly disclose any decision made pursuant to this Section 3F to exempt a reinsurance treaty from this actuarial guideline, as well as the general basis therefor (including a summary description of the treaty).

Drafting Note: The exemption set forth in Section 3F was added to address the possibility of unforeseen or unique transactions. This exemption exists because the NAIC recognizes that foreseeing every conceivable type of reinsurance transaction is impossible; that in rare instances unanticipated transactions might get caught up in this actuarial guideline purely as a technicality; and that regulatory relief in those instances may be appropriate. The example that was given at the time this exemption was developed pertained to bulk reinsurance treaties where the ceding insurer was exiting the type of business ceded. The exemption should not be used with respect to so-called “normal course” reinsurance transactions; rather, such transactions should either fit within one of the standard exemptions set forth in Sections 3A, B, C, D, or E or meet the substantive requirements of this actuarial guideline.

4. Definitions
A. “Actuarial Method” means the methodology used to determine the Required Level of Primary Security, as described in Section 5.

B. “Covered Policies” means the following: Subject to the exemptions described in Section 3, Covered Policies are those policies, other than Grandfathered Policies, of the following policy types:

   (1) Life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or,

   (2) Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

   Note: Although “Covered Policies” is defined to include all the policies described in Subsections B1 and B2 above, it is noted that whether a given “Covered Policy” is subject to this actuarial guideline or, instead, to Model #787 should be determined under Section 8 (Sunset).

C. “Grandfathered Policies” means policies of the types described in Subsections B1 and B2 above that were:

   (1) Issued prior to January 1, 2015; and

   (2) Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in Section 3 had that section then been in effect.

D. “Non-Covered Policies” means any policy that does not meet the definition of Covered Policies, including Grandfathered Policies.

E. “Required Level of Primary Security” means the dollar amount determined by applying the Actuarial Method to the risks ceded with respect to Covered Policies, but not more than the total reserve ceded.

F. “Primary Security” means the following forms of security:

   (1) Cash meeting the requirements of Section 3A of Model #785;

   (2) Securities listed by the Securities Valuation Office meeting the requirements of Section 3B of Model #785, but excluding any synthetic letter of credit, contingent note, credit-linked note or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates; and

   (3) For security held in connection with funds withheld and modified coinsurance reinsurance treaties:

      (a) Commercial loans in good standing of CM3 quality and higher;

      (b) Policy Loans; and
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(c) Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

G. “Other Security” means any security acceptable to the commissioner other than security meeting the definition of Primary Security.

H. “Valuation Manual” means the valuation manual adopted by the NAIC as described in Section 11B(1) of the Standard Valuation Law, with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.


5. The Actuarial Method

A. Description of Actuarial Method

The Actuarial Method to establish the Required Level of Primary Security for each reinsurance treaty subject to this actuarial guideline shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the Valuation Manual as then in effect, applied as follows:

(1) For Covered Policies described in Section 4B(1) above, the Actuarial Method is the greater of the Deterministic Reserve or the Net Premium Reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the Covered Policies do not meet the requirements of the Stochastic Reserve exclusion test in the Valuation Manual, then the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR. In addition, if such Covered Policies are reinsured in a reinsurance treaty that also contains Covered Policies described in Section 4B(2) above, the ceding insurer may elect to instead use paragraph 2 below as the Actuarial Method for the entire reinsurance agreement. Whether Paragraph 1 or 2 are used, the Actuarial Method must comply with any requirements or restrictions that the Valuation Manual imposes when aggregating these policy types for purposes of principle-based reserve calculations. The mortality basis for the NPR shall be the 2017 CSO Mortality Table.

(2) For Covered Policies described in Section 4B(2) above, the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR regardless of whether the criteria for exemption testing can be met. The mortality basis for the NPR shall be the 2017 CSO Mortality Table.

(3) Except as provided in Paragraph (4) below, the Actuarial Method is to be applied on a gross basis to all risks with respect to the Covered Policies as originally issued or assumed by the ceding insurer.

(4) If the reinsurance treaty cedes less than one hundred percent (100%) of the risk with respect to the Covered Policies then the Required Level of Primary Security may be reduced as follows:

(a) If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the Covered Policies, the Required Level of Primary Security, as well as any adjustment under Subparagraph (c) below, may be
reduced to a pro rata portion in accordance with the percentage of the risk ceded;

(b) If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, the Required Level of Primary Security may be reduced by an amount determined by applying the Actuarial Method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the Covered Policies, except that for Covered Policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the Required Level of Primary Security may be reduced by the statutory reserve retained by the ceding insurer on those Covered Policies, where the retained reserve of those Covered Policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

(c) If a portion of the Covered Policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the Required Level of Primary Security may be reduced by the amount resulting by applying the Actuarial Method including the reinsurance section of VM-20 to the portion of the Covered Policy risks ceded in the exempt arrangement, except that for Covered Policies issued prior to Jan 1, 2017, this adjustment is not to exceed \( \frac{c_x}{(2 \times \text{number of reinsurance premiums per year})} \) where \( c_x \) is calculated using the same mortality table used in calculating the Net Premium Reserve; and

(d) For any other treaty ceding a portion of risk to a different reinsurer, including but not limited to stop loss, excess of loss and other non-proportional reinsurance treaties, there will be no reduction in the Required Level of Primary Security.

It is possible for any combination of Subparagraphs (a), (b), (c), and (d) above to apply. Such adjustments to the Required Level of Primary Security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the Required Level of Primary Security due to the cession of less than one hundred percent (100%) of the risk.

The Adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

(5) In no event will the Required Level of Primary Security resulting from application of the Actuarial Method exceed the amount of statutory reserves ceded.

(6) If the ceding insurer cedes risks with respect to Covered Policies, including any riders, in more than one reinsurance treaty subject to this actuarial guideline, in no event will the aggregate Required Level of Primary Security for those reinsurance treaties be less than the Required Level of Primary Security calculated using the Actuarial Method as if all risks ceded in those treaties were ceded in a single treaty subject to this actuarial guideline.
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(7) If a reinsurance treaty subject to this actuarial guideline cedes risk on both Covered and Non-Covered Policies:

(a) The Actuarial Method shall be used to determine the Required Level of Primary Security for the Covered Policies; and

(b) Any Primary Security and/or Other Security used to meet any requirements pertaining to the Non-Covered Policies may not be used to satisfy any requirements related to the Required Level of Primary Security and/or Other Security for the Covered Policies.

B. Valuation Used for Purposes of Calculations

For the purposes of both calculating the Required Level of Primary Security pursuant to the Actuarial Method and determining the amount of Primary Security and Other Security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

(1) For assets, including any such assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer’s general account and without taking into consideration the effect of any prescribed or permitted practices; and

(2) For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the Actuarial Method if adopted by the NAIC’s Life Actuarial (A) Task Force no later than the December 31 on or immediately preceding the valuation date for which the Required Level of Primary Security is being calculated. The tables of asset spreads and asset default costs shall be incorporated into the Actuarial Method in the manner specified in VM-20.

6. Required Actuarial Analysis and Actuarial Opinion and Memorandum Requirements

A. Required Actuarial Analysis

Before the due date of each actuarial opinion, as to each reinsurance treaty in which Covered Policies have been ceded, the appointed actuary of each ceding insurer must perform an analysis on a treaty by treaty basis, of such Covered Policies to determine whether, as of the immediately preceding December 31 (the valuation date):

(1) Funds consisting of Primary Security, in an amount at least equal to the Required Level of Primary Security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of Section 3 of Model #785, on a funds withheld, trust, or modified coinsurance basis; and

(2) Funds consisting of Other Security, in an amount at least equal to any portion of the statutory reserves as to which Primary Security is not held pursuant to Paragraph (1) above, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of Section 3 of Model #785; and
Note: For the sake of clarity, funds consisting of Primary Security pursuant to Paragraphs (1) may exceed the Required Level of Primary Security, and Other Security is only required under Paragraph (2) to the extent that there is any portion of the statutory reserves as to which Primary Security is not so held. For example, if a ceding insurer’s statutory reserves equal $1 Billion, its Required Level of Primary Security is $600 Million, and it holds $1 Billion in Primary Security pursuant to Paragraph (1), no Other Security is required under Paragraph (2).

(3) Any trust used to satisfy the requirements of this Section 6 complies with all of the conditions and qualifications of Section 11 of the NAIC Credit for Reinsurance Model Regulation (Model #786), except that:

(a) Funds consisting of Primary Security or Other Security held in trust, shall for the purposes identified in Section 5B, be valued according to the valuation rules set forth in Section 5B, as applicable; and

(b) There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of Section 6A(1); and

(c) The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the Primary Security within the trust (when aggregated with Primary Security outside the trust that is held by or on behalf of the ceding insurer in the manner required by Section 6A(1)) below 102% of the level required by Section 6A(1) at the time of the withdrawal or substitution.

B. Qualified Actuarial Opinion; Remediation

(1) The appointed actuary of the ceding insurer performing the analysis required by Section 6A above must issue a qualified actuarial opinion as described in Section 6.D. of the AOMR or Section 3A(10) of VM-30 of the Valuation Manual, as applicable, unless:

(a) The requirements of Section 6A(1) and 6A(2) were fully satisfied as of the valuation date as to such reinsurance treaty; or

(b) Any deficiency has been eliminated before the due date of the Annual Statement to which the valuation date relates through the addition of Primary Security and/or Other Security, as the case may be, in such amount and in such form as would have caused the requirements of Section 6A(1) and 6A(2) to be fully satisfied as of the valuation date; or

(c) The ceding insurer has established a liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held pursuant to Section 6A(1).

(2) In addition to the requirement set forth in Section 6B(1) above, the appointed actuary of the ceding insurer performing the analysis required by Section 6A above must issue a qualified actuarial opinion as described in Section 6.D. of the AOMR or Section 3A(10) of VM-30 of the Valuation Manual, as applicable, if the appointed actuary for any affiliated reinsurer of the ceding insurer issues a qualified actuarial opinion with respect to such affiliated reinsurer where (a) the affiliate reinsures Covered Policies of the ceding insurer and (b) the qualified
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actuarial opinion pertaining to the affiliated reinsurer results, in whole or in part, from the analysis required by this actuarial guideline.

Note: The remediation option set forth in Section 6B(1)(c) mirrors that set forth in Model #787. Under this option, a ceding company may choose to avoid the consequence (a qualified opinion under this actuarial guideline) by establishing a liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held. For example, suppose a ceding insurer has established statutory reserves of $1 Billion and has Primary Security of $550 Million and Other Security of $450 Million. Suppose further that the actuary determines that the insurer’s Required Level of Primary Security is $600 Million. Under Section 6B(1)(c), the insurer may avoid a qualified opinion by establishing a liability equal to $450 Million (the difference between the statutory reserve of $1 Billion and the $550 Million amount of Primary Security actually held).

C. Additional Requirements for the Actuarial Opinion and Memorandum for Companies that have Covered Policies Requiring the Analysis Pursuant to this actuarial guideline

(1) In the statement of actuarial opinion, the appointed actuary of the ceding insurer must state whether (i) he has performed an analysis, as to each reinsurance arrangement under which Covered Policies have been ceded, of the security supporting the Covered Policies and whether funds consisting of Primary Security in an amount at least equal to the Required Level of Primary Security are held by or on behalf of the ceding insurer, as security under the reinsurance contract, on a funds withheld, trust, or modified coinsurance basis and (ii) funds consisting of Primary Security or Other Security in an amount equal to the statutory reserves are held by or on behalf of the ceding insurer as security under the reinsurance arrangement.

(2) In the actuarial memorandum as described by Section 7 of the AOMR or Section 3B of VM-30 of the Valuation Manual, as applicable, the appointed actuary of the ceding insurer must document the analysis and requirements applied by this actuarial guideline as to each reinsurance arrangement under which Covered Policies are ceded.

(3) In the event that a reinsurance treaty contains both (1) Covered Policies subject to this actuarial guideline rather than to Model #787, and (2) Covered Policies subject to Model #787 rather than to this actuarial guideline, the treaty shall be tested as a whole for purposes of a ceding insurer’s compliance with both (a) the requirements of Section 6A(1) and Section 6A(2) of this actuarial guideline and (b) the requirements of Section 7A(3) and Section 7A(4) of Model #787; provided further, that:

(a) If funds consisting of Primary Security are held in amounts less than the Required Level of Primary Security, such funds consisting of Primary Security shall be allocated first to fulfill the Required Level of Primary Security for the Covered Policies subject to this actuarial guideline, with any remainder allocated to those Covered Policies subject to Model #787; and

(b) If funds consisting of Other Security are held in amounts less than the requirements of Section 6A(2), such funds consisting of Other Security shall be allocated first to fulfill the Other Security requirements for the Covered Policies subject to this actuarial guideline, and any remainder shall be allocated to those Covered Policies subject to Model #787.
7. Effective Date

This actuarial guideline shall become effective as of January 1, 2017 with respect to all Covered Policies. This actuarial guideline supersedes and replaces all previous versions thereof with respect to actuarial opinions rendered as to valuation periods ending on or after January 1, 2017.

Note: For the avoidance of doubt, actuarial opinions issued with respect to the year ended December 31, 2016, shall be governed by the version of AG 48 in effect on December 31, 2016, as included in the Accounting Practices and Procedures Manual.

8. Sunset Provision

This actuarial guideline shall cease to apply as to Covered Policies that are both (a) issued by ceding insurers domiciled in a jurisdiction that has in effect, as of December 31st of the calendar year immediately preceding the year in which the actuarial opinion is to be filed, a regulation substantially similar to Model #787 adopted by the NAIC on December 13, 2016; and (b) subject to Model #787 as so adopted by the ceding insurer’s jurisdiction of domicile. This Actuarial Guideline shall continue to apply, without interruption, to any and all Covered Policies not included in both (a) and (b) of the immediate preceding sentence.

Note: It is anticipated that, for most states, this actuarial guideline will sunset pursuant to (a) and (b) of Section 8 and will continue only with respect to the limited number of states in which their version of Model #787 applies prospectively only, i.e., applies only to Covered Policies issued on or after the effective date of their version of Model #787. It is anticipated, however, that most states will be able to adopt a version of Model #787 that, like the Model itself, applies to all Covered Policies (subject to the applicable exemptions and grandfathering provisions) that are “in force” on or after the effective date, even if the policies were originally issued prior to that effective date. The goal of Section 8 is to ensure that all Covered Policies ceded in reinsurance transactions within the scope of this actuarial guideline continue to be subject to this actuarial guideline unless and until they become subject to Model #787.
February 26, 2020

Director Chlora Lindley-Myers
Chair, Reinsurance (E) Task Force
Attn: John Rehagen
National Association of Insurance Commissioners (NAIC)

Dear Director Lindley-Myers,

The Life Reinsurance Work Group (“the Work Group”) of the American Academy of Actuaries appreciates the opportunity to comment on the NAIC’s Model #787 Exposure Memorandum, requesting comments on whether compliance with Actuarial Guideline XLVIII (AG 48) should be considered to be “substantially similar” to Model #787 under the NAIC Financial Standards and Accreditation Program.

In the Work Group’s view, Model #787 and AG 48 differ in significant ways, and a sunset of AG 48 and its replacement by Model #787, wherever possible, is important to achieve, for reasons described below.

Model #787 and AG 48 differ principally in the means by which they require or incentivize companies to conform their captive reinsurer arrangements (if they have them) to certain standards. For business within its scope, Model #787 defines the standards in order for the cedent to receive full reserve credit for reinsurance. Further, Model #787 directly requires the ceding insurer to establish an additional liability if there is an uncorrected shortfall in amounts of Primary Security or Other Security, as defined in the model. AG 48 sets out similar standards and definitions of required amounts of Primary Security and Other Security for a captive arrangement and requires the cedent’s Appointed Actuary to issue a “Qualified Actuarial Opinion” on the cedent reserves in cases where the AG 48 standards are not met. The Qualified Actuarial Opinion, along with adverse risk-based capital (RBC) consequences for any shortfall in amount of Primary Security, together constitute the enforcement means for AG 48.

Throughout the development of AG 48 in 2014, the Academy’s Life Practice Council expressed concerns several times with the NAIC’s proposed forced use of a Qualified Actuarial Opinion to achieve the goals of the new captive regulatory framework. We stated these concerns in our June 25, 2014, letter to the PBR Implementation (EX) Task Force; our Sept. 17, 2014, letter to the Life Actuarial Task Force (LATF); and our Oct. 30, 2014, letter to the PBR Implementation (EX) Task Force.

In the Work Group’s view, a forced Qualified Actuarial Opinion is inconsistent with the purpose and intent of the Actuarial Opinion and Memorandum Requirements (AOMR) in VM-30, which places responsibility on the appointed actuary to issue an opinion as to the overall adequacy of reserves.

1 The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.
Codifying circumstances when an appointed actuary must qualify his/her opinion reduces the independence given to the appointed actuary in the AOMR in forming his/her opinion.

The AOMR is designed to ensure the overall adequacy of an insurer’s reserves based on asset adequacy analysis and is not designed or intended to implement new transaction-specific calculation requirements. Section 1(A)(3) of the VM-30 provides (emphasis added):

The AOM requirements shall be applied in a manner that allows the appointed actuary to use his or her professional judgment in performing the actuarial analysis and developing the actuarial opinion and supporting actuarial memoranda, conforming to relevant ASOPs. However, a state commissioner has the authority to specify methods of analysis and assumptions when, in the commissioner’s judgment, these specifications are necessary for the actuary to render an acceptable opinion relative to the adequacy of reserves and related actuarial items. For purposes of VM-30, the requirements of Actuarial Guideline XLVIII—Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued Under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation (AG 48), of the AP&P Manual, shall be applicable.

The reference to actuarial methods and assumptions in Section 1(A)(3) supports our view that the AOMR is focused on reserve adequacy with an independent, professional actuarial opinion as its cornerstone.

Although the Work Group acknowledges that the NAIC took steps in 2015 to distinguish the RBC consequences of an actuarial opinion deemed as qualified solely on account of AG 48, we still have strong concerns with the approach taken in AG 48 requiring that the Appointed Actuary issue a qualified opinion in a specific circumstance. We continue to believe it is anomalous for regulators to mandate a Qualified Actuarial Opinion via AG 48, the AOMR, or otherwise. In our view, the Appointed Actuary’s Opinion should be preserved as just that—a professional opinion rendered by the Appointed Actuary.

In 2014, the NAIC implemented its new captive regulatory framework via actuarial guideline (namely, AG 48) principally to expedite implementation of the new framework, recognizing that implementation through model law, model regulation, and NAIC adoption as an accreditation standard would take years. The expressed plan, explicit in AG 48 itself, was to sunset AG 48 once the equivalent model law and regulation was adopted at NAIC and by the states. The Work Group believes that if AG 48 is deemed substantially similar to Model #787, then its replacement by Model #787 could be deferred indefinitely by some states, and deferral would maintain the use of a forced Qualified Actuarial Opinion, which we believe is undesirable.

Should you have questions regarding these suggestions, please contact Ian Trepanier, the Academy’s life policy analyst, at trepanier@actuary.org.

Sincerely,

Richard Daillak, MAAA, FSA
Chairperson, Life Reinsurance Work Group
American Academy of Actuaries
STATE OF CONNECTICUT
INSURANCE DEPARTMENT

February 24, 2020

Mr. John Rehagen
Acting Chair, Reinsurance (E) Task Force
National Association of Insurance Commissioners
Via email: Dan Schelp (dorschelp@naic.org)

Dear John:

Connecticut appreciates the opportunity to comment on the February 5, 2020 staff memo to the Reinsurance Task Force comparing the significant differences between AG48 and NAIC Model Regulation #787. We would also like to acknowledge the thoroughness of the staff review of the subject matter.

We concur that the primary difference between AG48 and Model #787 is the consequences to an insurer if the requirements of either are not met. AG48 merely calls for the filing of a qualified actuarial opinion, whereas Model #787 calls for the ceding insurer to establish a liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held.

Normally a qualified actuarial opinion generates a substantial (50%) increase in the Interest Rate Risk and Market Rate Risk factors used in determining minimum RBC requirements. However, the normal RBC penalty normally associated with a qualified actuarial opinion is not being applied in this instance. Instead, a dollar-for-dollar addition to the reporting company’s ACL RBC amount equal to the shortfall in Primary Security is mandated.

The staff memo notes the existence of a second potential RBC “penalty” related to cessions to captives. Since any such penalty is applicable to noncompliance with both AG48 and Model #787, we do not feel that penalty is germane to the discussion at hand.

The staff memo also notes that the Financial Regulation Standards and Accreditation (F) Committee chose to defer consideration of Model #787 as an accreditation standard in recognition of the impending adoption of the Covered Agreement. We would like to point out that the functional word is “defer”, as the Committee’s main consideration was to avoid asking states to revise their regulations and statutes multiple times in a short time span. Hence the wording of the August 24, 2017 recommendation of the Reinsurance Task Force that “a state’s adoption of AG48 will serve to satisfy this accreditation standard until such time that the state adopts the significant elements of Model #787”.

Connecticut does not consider the consequences of a modest change to the cedant’s RBC ratio to be substantially similar to reducing surplus by the entire excess of the credit for reinsurance taken over the amount of Primary Security actually held. Simply put, AG48 does not
contemplate or effect a balance sheet adjustment. Further, we are aware that the drafters of Model #787 considered and ultimately rejected incorporating a more modest consequence of non-compliance that would have limited the balance sheet adjustment to the shortfall from full coverage of the Required Level of Primary Security.

Regards,

Kathy Belfi, CPA
Director, Financial Regulation
February 26, 2019

Via Electronic Delivery

Director Chlora Lindley-Myers
Missouri Department of Commerce & Insurance
P.O. Box 690
Jefferson City, MO 65102

Attention: John Rehagen, Jake Stultz and Dan Schelp

Re: Reinsurance (E) Task Force Exposure Comparing Model # 787 and AG 48

Director Lindley-Myers:

New York Life Insurance Company and The Northwestern Mutual Insurance Company offer the following comments on the February 5, 2020 memorandum (the “Memo”) from NAIC Staff to the Reinsurance Task Force (the “Task Force”) entitled “Comparison of Term and Universal Life Insurance Reserve Financing Model Regulation (#787) and Actuarial Guideline XLVIII”. Our companies have engaged extensively with the NAIC and the Task Force over the years as it considered the recommendations made in the Rector Report and subsequently developed both AG 48 and Model 787.

Background of Accreditation Discussions

In 2017, we submitted several joint comment letters supporting the NAIC’s efforts to make Model 787 an accreditation standard. We continue to believe that taking this step will strengthen the state-based system of insurance regulation, ensuring the consistent adoption of the NAIC’s framework for regulating the solvency of XXX and AXXX life insurer captives.

At that time, the NAIC was contemplating making Model 787 an accreditation standard on an expedited basis so that it would become effective concurrently with the nation-wide transition to principles-based reserving. However, at the 2017 Fall National Meeting, the Financial Regulation Standards and Accreditation (F) Committee (“F Committee”), while strongly supporting moving forward, agreed to defer this recommendation in light of the then-pending changes to the Credit for Reinsurance Model Law and Regulation (respectively, “Models 785 and 786”) to reflect the US-EU Covered Agreement. This step as articulated by F Committee members was intended to prevent state legislatures from needing to reopen the reinsurance-related provisions of the insurance code multiple times in a short period. It was the F Committee’s clear intention that accreditation standards for Models 785, 786 and 787 would ultimately proceed alongside one another.

In the years since this decision, the NAIC has completed its revisions to Models 785 and 786 and a few states have moved forward with adopting Model 787, notwithstanding the absence of an accreditation standard. At the 2019 Fall National Meeting, the F Committee adopted a recommendation to make Model 787 an accreditation standard on an expedited basis, which would move in parallel with the accreditation standards for Models 785 and 786. This adoption
was consistent with the discussions in 2017, which focused not on whether Model 787 should be an accreditation standard, but rather the timing for the standard’s effective date.

Reliance on AG 48 for Accreditation Purposes

The Memo explores whether states could, for accreditation purposes, rely on ongoing enforcement of AG 48 as a “substantially similar” provision to Model 787. While the definition of “substantially similar” is seemingly broad enough to encompass this position, there are meaningful differences between Model 787 and AG 48, including both the penalty provisions and the reliance upon the actuarial opinion.

The Penalty Provisions in AG 48 and Model 787 Differ Significantly

As noted in the Memo, the primary difference between Model 787 and AG 48 is the consequences to an insurer if an insurer fails to hold a sufficient level of Primary Security. Model 787 contains a penalty provision specifically aimed at deterring behavior that contravenes its positions: the loss of reinsurance credit for improperly reserved transactions.

AG 48’s penalty provision, in contrast, is indirect. In the event of a deficiency in Primary Security, insurers are subject to an RBC penalty commensurate with the amount of the shortfall. As you know, RBC was designed as an early warning system for the identification of weakly capitalized companies. It was never intended to evaluate well-capitalized companies. Ultimately, while AG 48’s penalty could have a meaningful effect on RBC ratios, reliance on such ratios to bring regulatory attention to Primary Security shortfalls or otherwise deter non-compliance with AG 48’s requirements is inconsistent with the purposes for which RBC was developed.

The inclusion of an RBC penalty in AG 48 reflects several factors arising from the intensive negotiations regarding the implementation of the Rector Framework, including an acknowledgment that additional penalties could not be included in an Actuarial Guideline, and that AG 48 itself would ultimately sunset once Model 787 was adopted. A similar logic undergirds AG 48’s reliance on the issuance of a qualified actuarial opinion as a trigger for these penalty provisions. Generally speaking, an actuarial opinion is designed to be an independent actuarial assessment of overall reserve adequacy, and is not intended as a compliance mechanism for a particular regulatory requirement. Indeed, the Academy of Actuaries, among others, expressed serious concerns with AG 48 being the permanent, or even the temporary, solution. However, all parties agreed to stand down on the issue when it became clear that AG 48 would be used in limited, short-term circumstances.

Regulators Intended AG 48 to be Temporary Solution

At the time that the NAIC first considered making Model 787 an accreditation standard, it was acknowledged that the expedited time frame could present challenges for some states. The solution to this was not to keep AG 48 in place forever and for all XXX and AXXX business, but rather to develop some exceptions for specific circumstances.
In states that were unable to comply with the expedited time frame, the Task Force acknowledged that compliance with AG 48 would be satisfactory for accreditation purposes. The Task Force’s acknowledgment did not envision, however, that AG 48 would remain in place in those states indefinitely.

This is consistent with the introductory language of AG 48 itself, which notes that AG 48 was adopted to “quickly set minimum standards” for XXX/AXXX reinsurance transactions. The introductory language also contemplates that AG 48 would eventually sunset in most states as Model 787 was adopted to replace it. The only caveat to that expectation is a recognition that “in a small number of states,” Model 787 would be adopted on a prospective basis (meaning it would only apply to policies issued after the date that the state adopted the model). In that minority of cases, AG 48 would remain in effect (along with Model 787) for the subset of policies issued after January 1, 2015 but before a state adopted the Model.

Conclusion

Finally, we would note that when the F Committee agreed in 2017 to delay the adoption of an accreditation standard for Model 787, they were responding to regulators’ legitimate concerns that they would need to approach their legislatures several times in quick succession regarding revisions to Model 785. There was no discussion at that time about never approaching legislatures to obtain the requisite authority to issue Model 787. If regulators remain concerned with making repeated requests on similar topics then we would urge them to include both the changes responsive to the US-EU Covered Agreement and the authorizing language in their legislative packages. If regulators remain concerned with completing the revisions to Model 785, 786 and 787 on an expedited basis then we would suggest that a preferable solution is to extend the time frame for making Model 787 an accreditation standard rather than to allow states to rely on AG 48 in perpetuity for all XXX/AXXX business.

*   *   *

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We are grateful for your time and attention to our comments. If you would like to discuss this letter with us, please let us know.

Sincerely,

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

Andrew T. Vedder  
Vice President – Solvency Policy & Risk Management  
The Northwestern Mutual Life Insurance Company
The Reinsurance (E) Task Force met via conference call Jan. 29, 2020. The following Task Force members participated: Chlora Lindley-Myers, Chair, represented by John Rehagen (MO); Raymond G. Farmer, Vice Chair, represented by Lee Hill (SC); Jim L. Ridling represented by Richard Ford (AL); Allen W. Kerr represented by Mel Anderson (AR); Ricardo Lara represented by Monica Macaluso and Kim Hudson (CA); Michael Conway represented by Rolf Kaumann (CO); Andrew N. Mais represented by Kathy Belfi (CT); Trinidad Navarro represented by Charles Santana (DE); David Altmairer represented by Robert Ridenour (FL); John F. King represented by Martin Sullivan (GA); Doug Ommen represented by Carrie Mears (IA); Dean L. Cameron represented by Eric Fletcher (ID); Robert H. Muriel represented by Eric Moser (IL); Stephen W. Robertson represented by Roy Eft and Amy Beard (IN); Vicki Schmidt represented by Tish Becker (KS); Sharon P. Clark represented by Rodney Hugle (KY); James J. Donelon represented by Stewart Guerin (LA); Gary Anderson represented by Christopher Joyce (MA); Jon Godfried represented by Matt Fischer (ND); Bruce R. Ramge represented by Lindsay Crawford (NE); Alexander K. Feldvebel represented by Doug Bartlett and Patricia Gosselin (NH); Marlene Caride represented by John Tirado (NJ); Barbara D. Richardson represented by Joel Bengo (NV); Linda A. Lacewell represented by Michael Campanelli (NY); Jillian Froment represented by Dale Bruggeman (OH); Glen Mulready represented by Eli Snowbarger (OK); Elizabeth Kelleher Dwyer represented by Jack Broccoli (RI); Kent Sullivan represented by Doug Slape and Mike Boerner (TX); Todd E. Kiser represented by Jake Garn (UT); Scott A. White represented by Doug Stolte (VA); Michael S. Pieciak represented by Stacey Alden (VT); and Mark Afable represented by Randy Milquet (WI).

1. **Adopted Technical Edits to Model #787**

Mr. Rehagen stated that at the 2019 Fall National Meeting, the Financial Regulation Standards and Accreditation (F) Committee adopted the *Term and Universal Life Insurance Reserve Financing Model Regulation (#787)* as an accreditation standard. The NAIC Executive (EX) Committee and Plenary are expected to consider it for final adoption at the Spring National Meeting, to be effective Sept. 1, 2022. He noted that several technical edits are required to Model #787 prior to becoming an accreditation standard. Mr. Rehagen stated that the *Credit for Reinsurance Model Law (#785)* and the *Credit for Reinsurance Model Regulation (#786)* were also adopted as accreditation standards at the 2019 Fall National Meeting, but that there are no revisions to Model #785 and Model #786 currently being considered.

Dan Schelp (NAIC) stated that the NAIC adopted Model #787 in 2016 to address captive reinsurance transactions involving term life and universal life with secondary guarantees (ULSG), which are often referred to as XXX/AXXX policies. This was part of a long process that included adoption of the XXX/AXXX Captive Reinsurance Framework in 2013, as well as *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)* in 2014. In 2015, the NAIC amended the Preamble of the *Accreditation Program Manual* to provide that XXX/AXXX Captive Reinsurers that reinsure business covering risks residing in at least two states are multistate insurers and are subject to the accreditation standards. However, they can satisfy these standards by complying with the XXX/AXXX Captive Reinsurance Framework. NAIC staff confirm each year that captive reinsurers are complying with this requirement. Model #787 was then intended to codify AG 48 and be adopted as its own accreditation standard.

Mr. Schelp stated that the NAIC adopted revisions to Model #785 in 2016, which included a new Section 5B. He stated that Section 5B(1)-(3) provide enabling legislation permitting a commissioner to adopt Model #787 and other related regulations, and that Section 5B(4) provides an exemption for “professional reinsurers” from Model #787. Mr. Schelp stated that at the 2017 Summer National Meeting, the Task Force presented a new recommended accreditation standard but did not include Model #785 as part of that accreditation standard. He noted that it does include reinsurance exempted under Section 4 of Model #787, which covers an assuming insurer meeting the requirements of either Section 5B(4)(a) or Section 5B(4)(b) of Model #785. Mr. Schelp stated that these requirements were only referenced in Model #787, but the actual technical exemptions themselves are only included in Model #785. The Financial Regulation Standards and Accreditation (F) Committee deferred action on Model #787 at that time due to uncertainties surrounding the Covered Agreement.

Mr. Schelp stated that the proposed revisions to Model #787 are technical in nature and may be adopted by the Task Force. They would still need to be reported to the Financial Condition (E) Committee and NAIC Executive (EX) Committee and Plenary.
Mr. Slape stated that the memorandum from the Task Force to the Financial Regulation Standards and Accreditation (F) Committee in 2017 noted that adoption of AG 48 was substantially similar to adoption of Model #787, and he asked if this is still the case.

Mr. Schelp stated that AG 48 was not included in the motion related to making Model #787 an accreditation standard at the 2019 Fall National Meeting. He noted that the main differences between AG 48 and Model #787 are the penalty provisions. He stated that if a company does not meet the standards of AG 48, it must file a qualified actuarial opinion, and if a company does not meet the standards of Model #787, it will not receive credit for reinsurance with respect to the securities that do not meet the standard of Model #787. Mr. Schelp added that AG 48 sunsets in a state once that state has enacted Model #787.

Becky Meyer (NAIC) stated that the Financial Regulation Standards and Accreditation (F) Committee will make the ultimate determination of whether AG 48 and Model #787 are substantially similar and that the Committee will welcome recommendations from the Task Force.

Mr. Slape stated that he believes that AG 48 and Model #787 are substantially similar. He noted that in addition to the penalties described by Mr. Schelp, there is a risk-based capital (RBC) impact for companies that file a qualified actuarial opinion under AG 48. He stated that Texas supports the Task Force considering AG 48 and Model #787 as substantially similar. Mr. Boerner provided some additional information on the RBC impact of a violation of AG 48.

Ms. Belfi stated that she disagrees with the position that AG 48 and Model #787 are substantially similar and that she would provide her comments in writing to the Task Force. She also recommended that the American Academy of Actuaries (Academy) be contacted for comment.

Mr. Rehagen directed NAIC staff to create a memorandum that shows the differences between AG 48 and Model #787 and expose that memorandum for a 21-day public comment period to solicit comments on whether they should be considered substantially similar for the accreditation standard.

Ms. Beard stated that Indiana is working on an expedited process to implement Model #787 and that this process must be done in the next few weeks to work within the legislative session. She said she will need the feedback as soon as possible to ensure that it is enacted correctly.

Ms. Belfi made a motion, seconded by Mr. Hill, to adopt the technical revisions to Section 1, Section 4E and Section 7 of Model #787 (Attachment One-B1). The motion passed, with Ohio and Texas abstaining.

Having no further business, the Reinsurance (E) Task Force adjourned.
TERM AND UNIVERSAL LIFE INSURANCE RESERVE FINANCING MODEL REGULATION

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Section 1. Authority

This regulation is adopted and promulgated by [title of supervisory authority] pursuant to [insert provision of state law equivalent to section 5B of the Credit for Reinsurance Model Law] of the [name of state] Insurance Code.

Section 2. Purpose and Intent

The purpose and intent of this regulation is to establish uniform, national standards governing reserve financing arrangements pertaining to life insurance policies containing guaranteed nonlevel gross premiums, guaranteed nonlevel benefits and universal life insurance policies with secondary guarantees; and to ensure that, with respect to each such financing arrangement, funds consisting of Primary Security and Other Security, as defined in Section 5, are held by or on behalf of ceding insurers in the forms and amounts required herein. In general, reinsurance ceded for reserve financing purposes has one or more of the following characteristics: some or all of the assets used to secure the reinsurance treaty or to capitalize the reinsurer (1) are issued by the ceding insurer or its affiliates; or (2) are not unconditionally available to satisfy the general account obligations of the ceding insurer; or (3) create a reimbursement, indemnification or other similar obligation on the part of the ceding insurer or any of its affiliates (other than a payment obligation under a derivative contract acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty).

Section 3. Applicability

This regulation shall apply to reinsurance treaties that cede liabilities pertaining to Covered Policies, as that term is defined in Section 5B, issued by any life insurance company domiciled in this state. This regulation and [insert provision of state law equivalent to the Credit for Reinsurance Model Regulation] shall both apply to such reinsurance treaties; provided, that in the event of a direct conflict between the provisions of this regulation and [insert provision of state law equivalent to the Credit for Reinsurance Model Regulation], the provisions of this regulation shall apply, but only to the extent of the conflict.

Section 4. Exemptions from this Regulation

This regulation does not apply to the situations described in Subsections A through F.

A. Reinsurance of:

(1) Policies that satisfy the criteria for exemption set forth in [insert provision of state law equivalent to Section 6F of the Valuation of Life Insurance Policies Model Regulation] or [insert provision of state law equivalent to Section 6G of the Valuation of Life Insurance Policies Model Regulation]; and which are issued before the later of:
(a) The effective date of this regulation, and
(b) The date on which the ceding insurer begins to apply the provisions of VM-20 to
establish the ceded policies’ statutory reserves, but in no event later than Jan 1, 2020;

(2) Portions of policies that satisfy the criteria for exemption set forth in [insert provision of state law
equivalent to Section 6E of the Valuation of Life Insurance Policies Model Regulation] and which
are issued before the later of:
(a) The effective date of this regulation, and
(b) The date on which the ceding insurer begins to apply the provisions of VM-20 to
establish the ceded policies’ statutory reserves, but in no event later than Jan. 1, 2020;

(3) Any universal life policy that meets all of the following requirements:
(a) Secondary guarantee period, if any, is five (5) years or less;
(b) Specified premium for the secondary guarantee period is not less than the net level
reserve premium for the secondary guarantee period based on the Commissioners
Standard Ordinary (CSO) valuation tables and valuation interest rate applicable to the
issue year of the policy; and
(c) The initial surrender charge is not less than one hundred percent (100%) of the first year
annualized specified premium for the secondary guarantee period;

(4) Credit life insurance;

(5) Any variable life insurance policy that provides for life insurance, the amount or duration of which
varies according to the investment experience of any separate account or accounts; nor

(6) Any group life insurance certificate unless the certificate provides for a stated or implied schedule
of maximum gross premiums required in order to continue coverage in force for a period in excess
of one year.

B. Reinsurance ceded to an assuming insurer that meets the applicable requirements of [insert provision of
state law equivalent to Section 2D of the Credit for Reinsurance Model Law]; or

C. Reinsurance ceded to an assuming insurer that meets the applicable requirements of [insert provisions of
state law equivalent to Sections 2A, 2B or 2C, of the Credit for Reinsurance Model Law], and that, in
addition:

(1) Prepares statutory financial statements in compliance with the NAIC Accounting Practices and
Procedures Manual, without any departures from NAIC statutory accounting practices and
procedures pertaining to the admissibility or valuation of assets or liabilities that increase the
assuming insurer’s reported surplus and are material enough that they need to be disclosed in the
financial statement of the assuming insurer pursuant to Statement of Statutory Accounting
Principles No. 1 (“SSAP 1”); and

(2) Is not in a Company Action Level Event, Regulatory Action Level Event, Authorized Control
Level Event, or Mandatory Control Level Event as those terms are defined in [insert provision of
state law equivalent to the Risk-Based Capital (RBC) for Insurers Model Act] when its RBC is
calculated in accordance with the life risk-based capital report including overview and instructions
for companies, as the same may be amended by the NAIC from time to time, without deviation; or

D. Reinsurance ceded to an assuming insurer that meets the applicable requirements of [insert provisions of
state law equivalent to Sections 2A, 2B or 2C, of the Credit for Reinsurance Model Law], and that, in
addition:
(1) Is not an affiliate, as that term is defined in [insert provision of state law equivalent to Section 1A of the Insurance Holding Company System Regulatory Model Act], of:
   (a) The insurer ceding the business to the assuming insurer; or
   (b) Any insurer that directly or indirectly ceded the business to that ceding insurer;

(2) Prepares statutory financial statements in compliance with the NAIC Accounting Practices and Procedures Manual;

(3) Is both:
   (a) Licensed or accredited in at least 10 states (including its state of domicile), and
   (b) Not licensed in any state as a captive, special purpose vehicle, special purpose financial captive, special purpose life reinsurance company, limited purpose subsidiary, or any other similar licensing regime; and

(4) Is not, or would not be, below 500% of the Authorized Control Level RBC as that term is defined in [insert provision of state law equivalent to the Risk-Based Capital (RBC) for Insurers Model Act] when its Risk-Based Capital (RBC) is calculated in accordance with the life risk-based capital report including overview and instructions for companies, as the same may be amended by the NAIC from time to time, without deviation, and without recognition of any departures from NAIC statutory accounting practices and procedures pertaining to the admission or valuation of assets or liabilities that increase the assuming insurer’s reported surplus; or

Reinsurance ceded to an assuming insurer that meets the requirements of either [insert provision of state law equivalent to Section 5B(4)(a) of the Credit for Reinsurance Model Law, pertaining to certain certified reinsurers] or [insert provision of state law equivalent to Section 5B(4)(b) of the Credit for Reinsurance Model Law, pertaining to reinsurers meeting certain threshold size and licensing requirements]; or

Drafting Note: A state may satisfy the requirements of Section 4E above by either adopting Section 5B(4) of the Credit for Reinsurance Model Law (#785), or it may include the specific provisions of Section 5B(4) of the Credit for Reinsurance Model Law (#785) directly into its adoption of this regulation, Term and Universal Life Insurance Reserve Financing Model Regulation (#787).

E-F. Reinsurance not otherwise exempt under Subsections A through E if the commissioner, after consulting with the NAIC Financial Analysis Working Group (FAWG) or other group of regulators designated by the NAIC, as applicable, determines under all the facts and circumstances that all of the following apply:

(1) The risks are clearly outside of the intent and purpose of this regulation (as described in Section 2 above);

(2) The risks are included within the scope of this regulation only as a technicality; and

(3) The application of this regulation to those risks is not necessary to provide appropriate protection to policyholders. The commissioner shall publicly disclose any decision made pursuant to this Section 4F to exempt a reinsurance treaty from this regulation, as well as the general basis therefor (including a summary description of the treaty).

Drafting Note: The exemption set forth in Section 4F was added to address the possibility of unforeseen or unique transactions. This exemption exists because the NAIC recognizes that foreseeing every conceivable type of reinsurance transaction is impossible; that in rare instances unanticipated transactions might get caught up in this regulation purely as a technicality; and that regulatory relief in those instances may be appropriate. The example that was given at the time this exemption was developed pertained to bulk reinsurance treaties where the ceding insurer was exiting the type of business ceded. The exemption should not be used with respect to so-called “normal course” reinsurance transactions; rather, such transactions should either fit within one of the standard exemptions set forth in Sections 4A, B, C, D, or E or meet the substantive requirements of this regulation.
Section 5. Definitions

A. “Actuarial Method” means the methodology used to determine the Required Level of Primary Security, as described in Section 6.

B. “Covered Policies” means the following: Subject to the exemptions described in Section 4, Covered Policies are those policies, other than Grandfathered Policies, of the following policy types:

(1) Life insurance policies with guaranteed nonlevel gross premiums and/or guaranteed nonlevel benefits, except for flexible premium universal life insurance policies; or,

(2) Flexible premium universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period.

C. “Grandfathered Policies” means policies of the types described in Subsections B1 and B2 above that were:

(1) Issued prior to January 1, 2015; and

(2) Ceded, as of December 31, 2014, as part of a reinsurance treaty that would not have met one of the exemptions set forth in Section 4 had that section then been in effect.

D. “Non-Covered Policies” means any policy that does not meet the definition of Covered Policies, including Grandfathered Policies.

E. “Required Level of Primary Security” means the dollar amount determined by applying the Actuarial Method to the risks ceded with respect to Covered Policies, but not more than the total reserve ceded.

F. “Primary Security” means the following forms of security:

(1) Cash meeting the requirements of [insert provision of state law equivalent to Section 3A of the Credit for Reinsurance Model Law];

(2) Securities listed by the Securities Valuation Office meeting the requirements of [insert provision of state law equivalent to Section 3B of the Credit for Reinsurance Model Law], but excluding any synthetic letter of credit, contingent note, credit-linked note or other similar security that operates in a manner similar to a letter of credit, and excluding any securities issued by the ceding insurer or any of its affiliates; and

(3) For security held in connection with funds-withheld and modified coinsurance reinsurance treaties:

(a) Commercial loans in good standing of CM3 quality and higher;

(b) Policy Loans; and

(c) Derivatives acquired in the normal course and used to support and hedge liabilities pertaining to the actual risks in the policies ceded pursuant to the reinsurance treaty.

G. “Other Security” means any security acceptable to the commissioner other than security meeting the definition of Primary Security.

H. “Valuation Manual” means the valuation manual adopted by the NAIC as described in Section 11B(1) of the Standard Valuation Law, with all amendments adopted by the NAIC that are effective for the financial statement date on which credit for reinsurance is claimed.

Drafting Note: Section 5H presumes that each state is permitted under its state laws to directly reference the Valuation Manual adopted by the NAIC. If a state is required by its state laws to reference a state law or regulation, it should modify Section 5H as appropriate to do so.

Drafting Note: Sections 5H and I presume that each state is permitted under its state laws to “adopt” the Valuation Manual in a manner similar to how the Accounting Practices and Procedures Manual becomes effective in many states, without a separate regulatory process such as adoption by regulation. It is desirable that all states adopt the Valuation Manual requirements and that such adoption be achieved without a separate state regulatory process in order to achieve uniformity of reserve standards in all states. However, to the extent that a state may need to adopt the valuation manual through a formal state regulatory process, these sections may be amended to reflect any state’s need to adopt the Valuation Manual through regulation or otherwise.

Section 6. The Actuarial Method

A. Actuarial Method

The Actuarial Method to establish the Required Level of Primary Security for each reinsurance treaty subject to this regulation shall be VM-20, applied on a treaty-by-treaty basis, including all relevant definitions, from the Valuation Manual as then in effect, applied as follows:

1. For Covered Policies described in Section 5B(1) above, the Actuarial Method is the greater of the Deterministic Reserve or the Net Premium Reserve (NPR) regardless of whether the criteria for exemption testing can be met. However, if the Covered Policies do not meet the requirements of the Stochastic Reserve exclusion test in the Valuation Manual, then the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR. In addition, if such Covered Policies are reinsured in a reinsurance treaty that also contains Covered Policies described in Section 5B(2) above, the ceding insurer may elect to instead use paragraph 2 below as the Actuarial Method for the entire reinsurance agreement. Whether Paragraph 1 or 2 are used, the Actuarial Method must comply with any requirements or restrictions that the Valuation Manual imposes when aggregating these policy types for purposes of principle-based reserve calculations.

2. For Covered Policies described in Section 5B(2) above, the Actuarial Method is the greatest of the Deterministic Reserve, the Stochastic Reserve, or the NPR regardless of whether the criteria for exemption testing can be met.

3. Except as provided in Paragraph (4) below, the Actuarial Method is to be applied on a gross basis to all risks with respect to the Covered Policies as originally issued or assumed by the ceding insurer.

4. If the reinsurance treaty cedes less than one hundred percent (100%) of the risk with respect to the Covered Policies then the Required Level of Primary Security may be reduced as follows:

   (a) If a reinsurance treaty cedes only a quota share of some or all of the risks pertaining to the Covered Policies, the Required Level of Primary Security, as well as any adjustment under Subparagraph (c) below, may be reduced to a pro rata portion in accordance with the percentage of the risk ceded;

   (b) If the reinsurance treaty in a non-exempt arrangement cedes only the risks pertaining to a secondary guarantee, the Required Level of Primary Security may be reduced by an amount determined by applying the Actuarial Method on a gross basis to all risks, other than risks related to the secondary guarantee, pertaining to the Covered Policies, except that for Covered Policies for which the ceding insurer did not elect to apply the provisions of VM-20 to establish statutory reserves, the Required Level of Primary Security may be reduced by the statutory reserve retained by the ceding insurer on those Covered Policies, where the retained reserve of those Covered Policies should be reflective of any reduction pursuant to the cession of mortality risk on a yearly renewable term basis in an exempt arrangement;

   (c) If a portion of the Covered Policy risk is ceded to another reinsurer on a yearly renewable term basis in an exempt arrangement, the Required Level of Primary Security may be
(d) For any other treaty ceding a portion of risk to a different reinsurer, including but not limited to stop loss, excess of loss and other non-proportional reinsurance treaties, there will be no reduction in the Required Level of Primary Security.

It is possible for any combination of Subparagraphs (a), (b), (c), and (d) above to apply. Such adjustments to the Required Level of Primary Security will be done in the sequence that accurately reflects the portion of the risk ceded via the treaty. The ceding insurer should document the rationale and steps taken to accomplish the adjustments to the Required Level of Primary Security due to the cession of less than one hundred percent (100%) of the risk.

The Adjustments for other reinsurance will be made only with respect to reinsurance treaties entered into directly by the ceding insurer. The ceding insurer will make no adjustment as a result of a retrocession treaty entered into by the assuming insurers.

(5) In no event will the Required Level of Primary Security resulting from application of the Actuarial Method exceed the amount of statutory reserves ceded.

(6) If the ceding insurer cedes risks with respect to Covered Policies, including any riders, in more than one reinsurance treaty subject to this Regulation, in no event will the aggregate Required Level of Primary Security for those reinsurance treaties be less than the Required Level of Primary Security calculated using the Actuarial Method as if all risks ceded in those treaties were ceded in a single treaty subject to this Regulation;

(7) If a reinsurance treaty subject to this Regulation cedes risk on both Covered and Non-Covered Policies, credit for the ceded reserves shall be determined as follows:

(a) The Actuarial Method shall be used to determine the Required Level of Primary Security for the Covered Policies, and Section 7 shall be used to determine the reinsurance credit for the Covered Policy reserves; and

(b) Credit for the Non-Covered Policy reserves shall be granted only to the extent that security, in addition to the security held to satisfy the requirements of Subparagraph (a), is held by or on behalf of the ceding insurer in accordance with [cite the state’s version of Sections 2 and 3 of the Credit for Reinsurance Model Law]. Any Primary Security used to meet the requirements of this Subparagraph may not be used to satisfy the Required Level of Primary Security for the Covered Policies.

B. Valuation used for Purposes of Calculations

For the purposes of both calculating the Required Level of Primary Security pursuant to the Actuarial Method and determining the amount of Primary Security and Other Security, as applicable, held by or on behalf of the ceding insurer, the following shall apply:

(1) For assets, including any such assets held in trust, that would be admitted under the NAIC Accounting Practices and Procedures Manual if they were held by the ceding insurer, the valuations are to be determined according to statutory accounting procedures as if such assets were held in the ceding insurer’s general account and without taking into consideration the effect of any prescribed or permitted practices; and

(2) For all other assets, the valuations are to be those that were assigned to the assets for the purpose of determining the amount of reserve credit taken. In addition, the asset spread tables and asset default cost tables required by VM-20 shall be included in the Actuarial Method if adopted by the
Section 7. Requirements Applicable to Covered Policies to Obtain Credit for Reinsurance; Opportunity for Remediation

A. Requirements

Subject to the exemptions described in Section 4 and the provisions of Section 7B, credit for reinsurance shall be allowed with respect to ceded liabilities pertaining to Covered Policies pursuant to [insert provisions of state law equivalent to Sections 2 or 3 of the Credit for Reinsurance Model Law] if, and only if, in addition to all other requirements imposed by law or regulation, the following requirements are met on a treaty-by-treaty basis:

(1) The ceding insurer’s statutory policy reserves with respect to the Covered Policies are established in full and in accordance with the applicable requirements of [insert provisions of state law equivalent to the Standard Valuation Law] and related regulations and actuarial guidelines, and credit claimed for any reinsurance treaty subject to this regulation does not exceed the proportionate share of those reserves ceded under the contract; and

(2) The ceding insurer determines the Required Level of Primary Security with respect to each reinsurance treaty subject to this regulation and provides support for its calculation as determined to be acceptable to the commissioner; and

(3) Funds consisting of Primary Security, in an amount at least equal to the Required Level of Primary Security, are held by or on behalf of the ceding insurer, as security under the reinsurance treaty within the meaning of [insert provision of state law equivalent to Section 3 of the Credit for Reinsurance Model Law], on a funds withheld, trust, or modified coinsurance basis; and

(4) Funds consisting of Other Security, in an amount at least equal to any portion of the statutory reserves as to which Primary Security is not held pursuant to Paragraph (3) above, are held by or on behalf of the ceding insurer as security under the reinsurance treaty within the meaning of [insert provision of state law equivalent to Section 3 of the Credit for Reinsurance Model Law]; and

(5) Any trust used to satisfy the requirements of this Section 7 shall comply with all of the conditions and qualifications of [insert provision of state law equivalent to Section 121 of the Credit for Reinsurance Model Regulation], except that:

(a) Funds consisting of Primary Security or Other Security held in trust, shall for the purposes identified in Section 6B, be valued according to the valuation rules set forth in Section 6B, as applicable; and

(b) There are no affiliate investment limitations with respect to any security held in such trust if such security is not needed to satisfy the requirements of Section 7A(3); and

(c) The reinsurance treaty must prohibit withdrawals or substitutions of trust assets that would leave the fair market value of the Primary Security within the trust (when aggregated with Primary Security outside the trust that is held by or on behalf of the ceding insurer in the manner required by Section 7A(3)) below 102% of the level required by Section 7A(3) at the time of the withdrawal or substitution; and

(d) The determination of reserve credit under [insert provision of state law equivalent to Section 124E of the Credit for Reinsurance Model Regulation] shall be determined according to the valuation rules set forth in Section 6B, as applicable; and
The reinsurance treaty has been approved by the commissioner.

B. Requirements at Inception Date and on an On-going Basis; Remediation

(1) The requirements of Section 7A must be satisfied as of the date that risks under Covered Policies are ceded (if such date is on or after the effective date of this regulation) and on an ongoing basis thereafter. Under no circumstances shall a ceding insurer take or consent to any action or series of actions that would result in a deficiency under Section 7A(3) or 7A(4) with respect to any reinsurance treaty under which Covered Policies have been ceded, and in the event that a ceding insurer becomes aware at any time that such a deficiency exists, it shall use its best efforts to arrange for the deficiency to be eliminated as expeditiously as possible.

(2) Prior to the due date of each Quarterly or Annual Statement, each life insurance company that has ceded reinsurance within the scope of Section 3 shall perform an analysis, on a treaty-by-treaty basis, to determine, as to each reinsurance treaty under which Covered Policies have been ceded, whether as of the end of the immediately preceding calendar quarter (the valuation date) the requirements of Sections 7A(3) and 7A(4) were satisfied. The ceding insurer shall establish a liability equal to the excess of the credit for reinsurance taken over the amount of Primary Security actually held pursuant to Section 7A(3), unless either:

(a) The requirements of Section 7A(3) and 7A(4) were fully satisfied as of the valuation date as to such reinsurance treaty; or

(b) Any deficiency has been eliminated before the due date of the Quarterly or Annual Statement to which the valuation date relates through the addition of Primary Security and/or Other Security, as the case may be, in such amount and in such form as would have caused the requirements of Section 7A(3) and 7A(4) to be fully satisfied as of the valuation date.

(3) Nothing in Section 7B(2) shall be construed to allow a ceding company to maintain any deficiency under Section 7A(3) or 7A(4) for any period of time longer than is reasonably necessary to eliminate it.

Section 8. Severability

If any provision of this regulation is held invalid, the remainder shall not be affected.

Section 9. Prohibition against Avoidance

No insurer that has Covered Policies as to which this regulation applies (as set forth in Section 3) shall take any action or series of actions, or enter into any transaction or arrangement or series of transactions or arrangements if the purpose of such action, transaction or arrangement or series thereof is to avoid the requirements of this regulation, or to circumvent its purpose and intent, as set forth in Section 2.

Section 10. Effective Date

This regulation shall become effective [insert date] and shall pertain to all Covered Policies in force as of and after that date.
Uniform Checklist for Reciprocal Jurisdiction Reinsurers

Reciprocal Jurisdiction Reinsurer Information:
Company Name:
Address:
Primary Contact:
Domiciliary Jurisdiction / Supervisory Authority:
Applicable Lines of Business:

1. Filing Requirements for “Lead State” of Reciprocal Jurisdiction Reinsurer

Check appropriate box:
☐ Initial Filing
☐ Annual Filing

The “Lead State” will uniformly require assuming insurers to provide the following documentation so that other states may rely upon the Lead State’s determination:

<table>
<thead>
<tr>
<th>Citation to State Law / Regulation</th>
<th>Requirements</th>
<th>Y or N</th>
<th>Reference and Supporting Documents</th>
</tr>
</thead>
</table>
| Model #786 § 9A & B                | Status of Reciprocal Jurisdiction: The assuming insurer must be licensed to write reinsurance by, and has its head office or is domiciled in, a Reciprocal Jurisdiction that is listed on the NAIC List of Reciprocal Jurisdictions:  
• A non-U.S. jurisdiction that is subject to an in-force Covered Agreement with the United States;  
• A U.S. jurisdiction that meets the requirements for accreditation under the NAIC Financial Standards and Accreditation Program;  
• A Qualified Jurisdiction that has been determined by the commissioner to meet all applicable requirements to be a Reciprocal Jurisdiction. | | |
<p>| Model #785 §2F(1)(a)               | | | |</p>
<table>
<thead>
<tr>
<th>Citation to State Law / Regulation</th>
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</thead>
</table>
| Model #786 § 9C(2)                | **Minimum Capital and Surplus:** The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the Reciprocal Jurisdiction:  
  - No less than $250,000,000 (USD); or  
  - If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:  
    - Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least $250,000,000 (USD); and  
    - A central fund containing a balance of the equivalent of at least $250,000,000 (USD).|       |                                     |
| Model #785 §2F(1)(b)              |                                                                                                                                                                                                             |       |                                     |
| Model #786 § 9C(7)                | **Minimum Solvency or Capital Ratio:** The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio.  
  - The ratio specified in the applicable in-force Covered Agreement where the assuming insurer has its head office or is domiciled; or  
  - If the assuming insurer is domiciled in an accredited state, a risk-based capital (RBC) ratio of three hundred percent (300%) of the authorized |       |                                     |
| Model #785 §2F(1)(g)              |                                                                                                                                                                                                             |       |                                     |

*The assuming insurer’s supervisory authority must confirm to the commissioner on an annual basis according to the methodology of its domiciliary jurisdiction that the assuming insurer complies with this requirement.*
<table>
<thead>
<tr>
<th>Citation to State Law / Regulation</th>
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</table>
| Model #786 § 9C(7)                 | control level, calculated in accordance with the formula developed by the NAIC; or • If the assuming insurer is domiciled in a Reciprocal Jurisdiction that is a Qualified Jurisdiction, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency.  
The assuming insurer’s supervisory authority must confirm to the commissioner on an annual basis that the assuming insurer complies with this requirement. | | |
<p>| Model #785 §2F(1)(g)               | Form RJ-1: The assuming insurer must agree to and provide a signed Form RJ-1, which must be properly executed by an officer of the assuming insurer. [Insert link to copy of form on state web site.] | | |
| Model #786 § 9C(4)                 | Financial/Regulatory Filings: • For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer’s annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report; • For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer’s supervisor; • Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated list | | |</p>
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<tr>
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<tr>
<td>Model #786 § 9C(5)(d)</td>
<td>of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and</td>
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<td>• Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer’s assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer. <strong>This is for purposes of evaluating Prompt Payment of Claims.</strong></td>
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<td>Model #786 § 9C(6)</td>
<td><strong>Prompt Payment of Claims:</strong> The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met:</td>
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<tr>
<td>Model #785 §2F(1)(f)</td>
<td>• More than fifteen percent (15%) of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commissioner;</td>
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<td></td>
<td>• More than fifteen percent (15%) of the assuming insurer’s ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer $100,000, or as otherwise specified in a Covered Agreement; or</td>
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<td>• The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds $50,000,000, or as</td>
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<tr>
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<td>otherwise specified in a Covered Agreement.</td>
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<tr>
<td>Fee:</td>
<td>Insert $ amount of the fee applicable in this state.</td>
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</table>

II. **Filing Requirements for “Passporting State” of Reciprocal Jurisdiction Reinsurer**

In order to facilitate multi-state recognition of assuming insurers and to encourage uniformity among the states, the NAIC has initiated a process called “passporting” under which the commissioner has the discretion to defer to another state’s determination with respect to compliance with this section. Passporting is based upon individual state regulatory authority, and states are encouraged to act in a uniform manner in order to facilitate the passporting process. States are also encouraged to utilize the passporting process to reduce the amount of documentation filed with the states and reduce duplicate filings.

If an NAIC accredited jurisdiction has determined that the conditions set forth under the *Filing Requirements for Lead States* have been met, the commissioner has the discretion to defer to that jurisdiction’s determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit. The commissioner may accept financial documentation filed with the Lead State or with the NAIC.

The following documentation must be filed with the Passporting State:

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>Model #786 § 9E(2)</td>
<td>Form RJ-1: An assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require, except to the extent that they conflict with a Covered Agreement.</td>
<td></td>
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<tr>
<td>Model #785 §2F(3)</td>
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<tr>
<td>Model #786 § 9E(1)</td>
<td>Lead State: If an NAIC accredited jurisdiction has determined that the required conditions have been met, the commissioner has the discretion to defer to that jurisdiction’s determination. The commissioner may accept financial</td>
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</tbody>
</table>
III. Interaction Between Certified Reinsurers and Reciprocal Jurisdiction Reinsurers

Under Section 8A(5) of the Credit for Reinsurance Model Regulation (#786), credit for reinsurance shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer with respect to Certified Reinsurers. Under Section 2F(7) of the Credit for Reinsurance Model Law (#785), credit may be taken with respect to Reciprocal Jurisdiction Reinsurers only for reinsurance agreements entered into, amended, or renewed on or after the effective date of the statute adding this subsection, and only with respect to losses incurred and reserves reported on or after the later of (i) the date on which the assuming insurer has met all eligibility requirements to be designated a Reciprocal Jurisdiction Reinsurer, and (ii) the effective date of the new reinsurance agreement, amendment, or renewal.

It is expected that certain assuming insurers may be considered to be Certified Reinsurers for purposes of in-force business and Reciprocal Jurisdiction Reinsurers with respect to reinsurance agreements entered into, amended, or renewed on or after the effective date. In addition, these same reinsurers may also have certain blocks of business that are fully collateralized under the prior provisions of Model #785 and Model #786. The NAIC blanks will be amended to reflect the status of these reinsurers with respect to each type of insurance assumed.

w:\national meetings\2020\summer\tf\reinsurance\national meeting\minutes\att one-c - uniform checklist for reciprocal jurisdiction reinsurers 5-04-2020.docx
Uniform Application Checklist for Certified Reinsurers

(Initial and Renewal Applications)

Applicant Information

Company Name:
Address:
Primary Contact:
Domiciliary Jurisdiction / Supervisory Authority:
Applicable Lines of Business:

1. Filing Requirements for Reinsurer Currently Certified by Another NAIC-Accredited Jurisdiction

If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the [Commissioner] has the discretion to defer to that jurisdiction’s certification and assigned rating; i.e., “passporting.” To assist the [Commissioner] in the determination to defer to another jurisdiction’s certification the following application procedures should be followed:

a. Has the applicant been certified by an NAIC accredited jurisdiction? (Yes or No) _____;

   [If “Yes,” this state (the “Lead” state) will confirm that the initial or renewal certification has been reviewed by the NAIC Reinsurance Financial Analysis (E) Working Group (“ReFAWG”) for passporting purposes.]

b. If the answer to question I.a. (above) is “No,” please proceed to Section II of this application.

c. If the answer to question I.a. (above) is “Yes,” the applicant shall provide the information specified in the table below for consideration by the [Commissioner]. In the alternative, the [Commissioner] may permit the applicant to provide written certification that some or all the required information was previously filed with the Lead State and the ReFAWG.

Note: The ReFAWG and the Lead State may have already collected, reviewed and approved relevant documentation such as; Biographical Affidavits, Certificates of Good Standing, Licenses, Rating Agency Reports, Reports of Auditors and other certification documents. States are encouraged to accept these prior filings as complete, in lieu of duplicative filing requests.

<table>
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<tbody>
<tr>
<td>Status of Domiciliary Jurisdiction:</td>
<td>The applicant must be domiciled and licensed in a Qualified Jurisdiction, as determined by this state.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Verification of Certification Issued by an NAIC Accredited Jurisdiction:</td>
<td>If the applicant is requesting that the Commissioner recognize the certification issued by another NAIC accredited jurisdiction (i.e., passporting), the applicant must provide a copy of the approval letter or other documentation provided to the applicant</td>
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</tbody>
</table>
by such NAIC accredited jurisdiction. At a minimum, this letter must confirm the following information:

a. Name of state(s) in which applicant is currently certified.

b. The rating and collateral percentage assigned by the accredited jurisdiction with respect to the applicant.

c. The effective and expiration dates with respect to the certification.

d. The lines of business to which the certification is applicable.

e. The applicant’s commitment to comply with all requirements necessary to maintain certification.

Mechanisms Used to Secure Obligations Incurred as a Certified Reinsurer:
The applicant must specify the mechanisms it will use to secure obligations incurred as a Certified Reinsurer. If the applicant intends to utilize a multi-beneficiary trust for this purpose, the applicant must submit (1) a copy of the approval from the domiciliary regulator with regulatory oversight of the 100% collateral and reduced collateral multi-beneficiary trusts or its intention to secure the approval of the domiciliary regulator of the trust before either trust can be used. (2) the form of the trust that will be used to secure obligations incurred as a certified reinsurer; and (3) the form of the trust that will be used to secure obligations incurred outside of the applicant’s certified reinsurer status, i.e., the applicant’s 100% collateralized trust (if applicable). The form of each trust is required to be submitted pursuant to state law in order to ensure that security for these obligations will be kept separate and to ensure that each trust meets the requirements of the...
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</table>
| state’s Credit for Reinsurance statute and/or regulation. | **NOTE:**  
**The MBT includes a provision that:**  
The certified reinsurer must bind itself by the language of the multi-beneficiary trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account. |       |                                   |
| Form CR-1 (For Initial and Renewal Applications):  
The applicant must provide [insert name of state] Form CR-1, which must be properly executed by an officer authorized to bind the applicant to the commitments set forth in the form.  
[Insert link to copy of form on state web site.] |                                                      |       |                                   |
| Fee:  
[Insert $ amount of the fee applicable in this state.] |                                                      |       |                                   |
| Other Requirements:  
The applicant must:  
a. Commit to comply with other reasonable requirements deemed necessary for certification by the certifying state. Failure to comply with such other requirement could disqualify the reinsurer from certification.  
b. Provide a statement that the applicant agrees to post 100% security upon the entry of an order of rehabilitation or conservation against the ceding insurer or its estate. |                                                      |       |                                   |
II. **Filing Requirements for Full Application**

a. The applicant shall provide the information required within Section II if:
   - The applicant has not been certified by an NAIC accredited jurisdiction; or
   - The Commissioner makes a determination not to recognize or defer to the certification issued by another NAIC accredited jurisdiction; or
   - The applicant is renewing its certification with the lead state or a state is not relying on the certification by another NAIC accredited jurisdiction.

b. Check appropriate box:
   - [ ] Initial Application
   - [ ] Renewal Application

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<table>
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<tbody>
<tr>
<td><strong>Public Notice Requirement:</strong></td>
<td>The [Commissioner] is required to post notice on the insurance department’s website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The [Commissioner] may not take final action on the application until at least [insert number of days required in the specific state] days after posting such notice. The [Commissioner] will consider any comments received during the public notice period with respect to this application.</td>
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</thead>
<tbody>
<tr>
<td><strong>Status of Domiciliary Jurisdiction / Proof of Licensure and Good Standing:</strong></td>
<td>The applicant must be domiciled and licensed in a Qualified Jurisdiction, as determined by this state. The applicant must be in good standing (or the jurisdiction’s equivalent classification) and maintain capital and surplus in excess of its domiciliary jurisdiction’s highest regulatory action level. The Commissioner will consider the following information with respect to the applicant’s domiciliary jurisdiction:</td>
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<tr>
<td>Citation to State Law / Regulation</td>
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<tr>
<td></td>
<td>a. Whether the domestic supervisory authority been approved as a Qualified Jurisdiction in this state.</td>
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<tr>
<td></td>
<td>b. Confirmation as to whether the domestic supervisory authority is included on the NAIC List of Qualified Jurisdictions.</td>
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<tr>
<td>The applicant must provide the following information:</td>
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<tr>
<td>a. A copy of the certificate of authority or license to transact insurance and/or reinsurance from the applicant’s domiciliary jurisdiction.</td>
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<tr>
<td>b. A certification from the applicant’s domestic supervisory authority affirming that the applicant is in good standing (or the jurisdiction’s equivalent classification) and maintains capital and surplus in excess of the jurisdiction’s highest regulatory action level.</td>
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</table>

**Mechanisms Used to Secure Obligations Incurred as a Certified Reinsurer:**
The applicant must specify the mechanisms it will use to secure obligations incurred as a Certified Reinsurer. If the applicant intends to utilize a multi-beneficiary trust for this purpose, the applicant must submit (1) a copy of the approval from the domiciliary regulator with regulatory oversight of the 100% collateral and reduced collateral multi-beneficiary trusts or its intention to secure the approval of the domiciliary regulator of the trust before either trust can be used; (2) the form of the trust that will be used to secure obligations incurred as a certified reinsurer; and (3) the form of the trust that will be used to secure obligations incurred outside of the applicant’s certified reinsurer status, i.e., the applicant’s 100% collateralized
trust (if applicable). The form of each trust is required to be submitted pursuant to state law in order to ensure that security for these obligations will be kept separate and to ensure that each trust meets the requirements of the state’s Credit for Reinsurance statute and/or regulation.

**NOTE:**

*The MBT includes a provision that:*

The certified reinsurer must bind itself by the language of the multi-beneficiary trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

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**Financial Strength Ratings (Stand-Alone or Group):**

The applicant must maintain interactive financial strength ratings from two or more acceptable rating agencies. Initial or Affirmed financial strength rating dates must be within 15 months of the application date/renewal filing date. The applicant must provide the following:

a. Confirm all interactive financial strength ratings currently maintained by the applicant.

b. Specify the type of financial strength rating (i.e., stand-alone or group).

c. If the financial strength rating is not on a stand-alone basis, provide the rationale for the group rating.

d. Copies of full rating agency reports with respect to all financial strength ratings currently maintained by the applicant. If a full report is not available, the applicant must provide a letter from the applicable rating agency.
agency affirming its current financial strength rating. Initial or Affirmed financial strength rating dates must be within 15 months of the application date/renewal filing date.

e. An explanation of any changes in the financial strength rating during the last three years.

**NOTE:** Acceptable rating agencies include A.M. Best, Fitch Ratings, Moody’s Investor Service, Standard & Poor’s, Kroll Bond Rating Agency, or any other Nationally Recognized Statistical Rating Organization recognized by the SEC to provide financial strength ratings on insurance companies.

<table>
<thead>
<tr>
<th>Disputed and/or Overdue Reinsurance Claims / Business Practices:</th>
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<tbody>
<tr>
<td>The Commissioner may consider the applicant’s business practices in dealing with its ceding insurers, including compliance with contractual terms and obligations. The applicant must provide the following if 1) applicant’s reinsurance obligations to U.S. cedents that are in dispute and/or more than 90 days past due exceed 5% of its total reinsurance obligations to U.S. cedents as of the end of its prior financial reporting year; or 2) the applicant’s reinsurance obligations to any of the top 10 U.S. cedents (based on the amount of outstanding reinsurance obligations as of the end of its prior financial reporting year) that are in dispute and/or more than 90 days past due exceed 10% of its reinsurance obligations to that U.S. cedent,</td>
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<tr>
<td>Then, in either case, the applicant will provide:</td>
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<tr>
<td>a. Notice of that fact to the Commissioner and a detailed explanation regarding the reason(s) for the amount of disputed or overdue claims exceeding the levels noted above; and</td>
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</tbody>
</table>

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b. A description of the applicant’s business practices in dealing with U.S. ceding insurers and a statement that the applicant commits to comply with all contractual requirements applicable to reinsurance contracts with U.S. ceding insurers.

Upon receipt of such notice and explanation, the Commissioner may request additional information concerning the applicant’s claims practices with regard to any or all U.S. ceding insurers.

### Schedules for Reinsurance Assumed and Reinsurance Ceded:
The applicant must provide the following:

a. For applicants domiciled in the U.S., provide the most recent NAIC Annual Statement Blank Schedule F (property/casualty) and/or Schedule S (life and health).

b. For applicants domiciled outside the U.S. provide Form CR-F (property/casualty) and/or Form CR-S (life and health), completed in accordance with the instructions adopted by the NAIC [include link to instructions.]

### Regulatory Actions:
The applicant must provide a description of any regulatory actions taken against the applicant.

a. Include all regulatory actions, fines and penalties, regardless of the amount.

b. Provide a description of any changes in with respect to the provisions of the applicant’s domiciliary license.

[NOTE: Reinsurance-FAWG requires this information for the last three years for passporting purposes.]
a. A copy of the most recent report of the independent auditor.

b. Copies of the audited financial statements for the last three years filed with its jurisdiction supervisor. Financial statements must demonstrate that the applicant has minimum capital and surplus, or the equivalent, of at least $250,000,000. If the applicant is an association including incorporated and individual unincorporated underwriters, statements must demonstrate that the applicant has capital and surplus equivalents (net of liabilities) of at least $250,000,000, and a central fund containing a balance of at least $250,000,000. Please note the following requirements with respect to these financial statements:

c. Audited U.S. GAAP basis statements must be submitted if available.

d. Audited IFRS basis statements are acceptable but must include an audited footnote reconciling equity and net income to a U.S. GAAP basis.

- With the permission of the Commissioner, an applicant may be allowed to submit audited IFRS basis statements with reconciliation to U.S. GAAP certified by an officer of the applicant. The reconciliation of equity and net income must include all adjustments (positive or negative) by line item equal to or greater than 5% of equity and/or in aggregate equal to or greater than 10% of equity where each line item is less than 5% of equity.

- Upon the initial certification, the Commissioner may consider audited financial statements for the last three years as filed with the applicant’s non-U.S.
jurisdiction supervisor. If the Commissioner accepts such statements in the initial filing, the applicant must acknowledge and commit that future financial statement filings will include the appropriate reconciliation to a U.S. GAAP basis, as indicated above.

e.b. A copy of the Actuarial Opinion and other regulatory filings, as filed with the applicant’s reinsurer’s domiciliary jurisdiction supervisor.

[NOTE: Reinsurance-FAWG requires a stand-alone Actuarial Opinion for passporting purposes, or the functional equivalent under the Supervisor’s applicable Actuarial Function Holder Regime.]

<table>
<thead>
<tr>
<th>Solvent Schemes of Arrangement:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>The applicant must provide:</td>
<td></td>
</tr>
<tr>
<td>a. A description of any past, present or proposed future participation in any solvent scheme of arrangement, or similar procedure, involving U.S. ceding insurers.</td>
<td></td>
</tr>
<tr>
<td>b. A statement that the applicant commits to notify the commissioner of any future proposed participation in any solvent scheme of arrangement, or similar procedure, as soon as practicable.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Form CR-1 (For Initial and Renewal Applications):</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The applicant must provide [insert name of state] Form CR-1, which must be properly executed by an officer authorized to bind the applicant to the commitments set forth in the form. [Insert link to copy of form on state web site.]</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Fee:</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>[Insert $ amount of the fee applicable in this state.]</td>
<td></td>
</tr>
</tbody>
</table>
Other Requirements:
The applicant must:

a. Commit to comply with other reasonable requirements deemed necessary for certification by the certifying state.

b. Provide a statement that the applicant agrees to post 100% security upon the entry of an order of rehabilitation or conservation against the ceding insurer or its estate.

Public Notice Requirement:
The [Commissioner] is required to post notice on the insurance department’s website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The [Commissioner] may not take final action on the application until at least [insert number of days required in the specific state] days after posting such notice. The [Commissioner] will consider any comments received during the public notice period with respect to this application.

Protocol for Considering a Group Rating
Section 8B(4) of the NAIC Credit for Reinsurance Model Regulation (¶786) provides, in relevant part: “Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate...” Understanding the rating agency basis for utilizing a group rating is a key factor in determining whether an applicant’s group rating may be considered appropriate. The recommended protocol for understanding the rationale involves one or more of the following protocol steps:

- For reasons set forth in the rating agency report or its published ratings standards or guidelines, the rating agency utilizes the group rating as a consequence of finding that the company had sufficient interconnectivity with the group;
- For reasons set forth in the rating agency report or its published ratings standards or guidelines, the rating agency enhances the group rating due to the subsidiary’s potential benefit of capital support from one or more affiliated companies;
- The group rating was utilized because the subsidiary derives benefit from its inclusion within a financially strong and well-capitalized insurance group;
- The lead state has contacted the rating agency and was provided a written explanation for the use of the group rating;
- Other factors deemed appropriate by the Reinsurance Financial Analysis (E) Working Group; or
- To assist the Lead State in the assessment of the appropriateness of the use of a group rating, applicants are encouraged to provide their rational for the use of a group rating.
26th May 2020

Mr Rehagen
NAIC

Response submitted via email

IUA Response to NAIC Uniform Checklist for Reciprocal Jurisdiction Reinsurers and the Uniform Application Checklist for Certified Reinsurers

Dear Mr Rehagen,

We are pleased to be able to provide comments to the National Association of Insurance Commissioners (NAIC) in relation to the above checklists.

The International Underwriting Association of London (IUA) represents international and wholesale insurance and reinsurance companies operating in or through London. It exists to promote and enhance the business environment for its members. The IUA’s London Company Market Statistics Report shows that overall premium income for the company market in 2018 was £28.4376bn. Gross premium written in London totalled $19,559bn, while a further £8.877bn was identified as written in other locations, but managed and overseen by London operations. For further information about our organization and membership, please visit our web site, www.iua.co.uk, under the section “About the IUA.”

While we do not have any general comments on the proposals, we do propose to request further clarification to specific questions.

Specific Questions

The comments on the Uniform Checklist for Reciprocal Jurisdiction Reinsurers are as follows.

1. We would appreciate further clarification on who is required to evidence the criteria under section “Prompt Payment of Claims.” It is understood that the first and second criteria may require the US ceding insurance company to provide evidence. In respect of the third criteria, does the criterion response need to be confirmed by the reciprocal reinsurer?

2. We would also appreciate further clarification on the format and details required by the fourth criteria under section “Financial/Regulatory Filings.” It would be helpful, perhaps, to define the requirements in a similar way to the corresponding requirement in the checklist for certified reinsurers, under “Schedules for Reinsurance Assumed and Reinsurance Ceded."

We have no comments on the changes to the Uniform Application Checklist for Certified Reinsurers.
We hope that our comments will help NAIC officials to add clarity in those areas in which we feel could assist the market. We would be pleased to clarify or expand on our comments as required.

Yours sincerely,

Helen Dalziel BSc(Hons), Dip CII

Senior Legal & Market Services Executive
International Underwriting Association of London
Tel: +44 (0)20 7617 5449
Email: helen.dalziel@iua.co.uk
May 26, 2020

Director Chlora Lindley-Myers, Chair
Reinsurance (E) Task Force
National Association of Insurance Commissioners
c/o Mr. Jake Stultz
Via e-mail jstultz@naic.org

Re: NAIC Request for Comments on NAIC Exposure Draft Uniform Checklist for Reciprocal Reinsurers

Dear Director Lindley-Myers:

The Reinsurance Association of America (RAA) and the Lloyd’s market appreciate the opportunity to submit comments on the NAIC’s Exposure Draft of the Uniform Checklist for Reciprocal Reinsurers. The Reinsurance Association of America (RAA) is a national trade association representing reinsurance companies doing business in the United States. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the U.S. and those that conduct business on a cross-border basis. The RAA also has life reinsurance affiliates. The Lloyd’s market is one of the largest non-U.S. domiciled sources of reinsurance capacity to the U.S. insurance industry. In 2019, Lloyd’s underwriters assumed over $5.96 billion in reinsurance premiums from U.S. cedants.

We appreciate the continued work of the Task Force to implement the 2019 changes to the NAIC Credit for Reinsurance Model Law and Regulation. This process is critical to honoring the U.S.’s commitments under the U.S./EU and U.S./UK covered agreements, as well as to providing the opportunity to extend equal treatment to other reinsurers from other jurisdictions that meet the requirements specified in the revised Model Law/Regulation.

Section I: Filing Requirements for “Lead State” of Reciprocal Jurisdiction Reinsurer

The use of the term “lead state” in this context may cause confusion, as the model and state holding company acts use a lead state concept that is different than the concept reflected here. Perhaps the phrase “Primary State” or “Lead Submission State” could be used to differentiate this term from the lead state concept in other contexts.

Status of Reciprocal Jurisdiction: It would be helpful if the checklist could make clear what reference and supporting documents would be required for this element. Would it be sufficient for the applicant to submit a statement that it is domiciled in a reciprocal jurisdiction? Would the applicant be required to submit a copy of the covered agreement? Would the reference to the applicant’s domiciliary jurisdiction on the top of the checklist be sufficient?

Form RJ-1: To the extent that this form will resemble Form CR-1, our members may have some comments. We respectfully request that a draft of the form be released for public comment.
Financial Regulatory Filings: As drafted, the checklist appears to take language from the model regulation that gives a commissioner the discretion to ask for more information and elevate those items to regulatory requirements. The model regulation indicates that the reinsurer must provide the information in Model #786 9C(5) “if requested by the commissioner.” The checklist should be amended to reflect the “only on request” nature of these items. In general, regulators are unlikely to need the “on request” information for most applicants. The discretion to request additional information would allow a regulator to dig deeper into applicants where there is a question or concern. This provision should not be converted to a requirement that applies broadly.

In addition, the reference on page 3 to “prior to entry into the reinsurance agreement” is confusing when considered in reference to large global reinsurers that enter into many reinsurance agreements and make annual reciprocal jurisdiction reinsurer filings. We suggest removing that phrase from the uniform checklist.

**Section III: Interaction Between Certified Reinsurers and Reciprocal Jurisdiction Reinsurers.**

In addition to the information contained in this section, it is clear that some states will adopt the revised model laws and regulations before other states adopt them. This has already occurred. The checklist should include information about how passporting will work if the “Lead State” (proposed “Primary State”) has adopted the revised model law and regulation and other passporting states have not adopted it.

Lastly, in conjunction with the release of the final version of the uniform checklist, we urge the NAIC to develop and host training sessions for state reviewers so that we can achieve more operational uniformity. Uniform implementation of these rules is crucial to assure that all parties receive equal treatment and equal benefits from their application.

**Conclusion**

We appreciate the opportunity to offer comments and work with the NAIC on the Exposure Draft of the Uniform Checklist for Reciprocal Reinsurers. Please do not hesitate to contact us with any questions or concerns.

Sincerely,

Karalee C. Morell  
Reinsurance Association of America

Sabrina Miesowitz  
Lloyd’s
Uniform Checklist for Reciprocal Jurisdiction Reinsurers

Reciprocal Jurisdiction Reinsurer Information:
Company Name:
Address:
Primary Contact:
Domiciliary Jurisdiction / Supervisory Authority:
Applicable Lines of Business:

I. Filing Requirements for “Lead State” of Reciprocal Jurisdiction Reinsurer

Check appropriate box:
☐ Initial Filing
☐ Annual Filing

The “Lead State” will uniformly require assuming insurers to provide the following documentation so that other states may rely upon the Lead State’s determination:

<table>
<thead>
<tr>
<th>Citation to State Law / Regulation</th>
<th>Requirements</th>
<th>Y or N</th>
<th>Reference and Supporting Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Model #786 § 9A &amp; B</td>
<td><strong>Status of Reciprocal Jurisdiction:</strong> The assuming insurer must be licensed to write reinsurance by, and has its head office or is domiciled in, a Reciprocal Jurisdiction that is listed on the <strong>NAIC List of Reciprocal Jurisdictions:</strong></td>
<td></td>
<td>The Reciprocal Jurisdiction Reinsurer should identify which type of jurisdiction it is domiciled in and provide any documentation to confirm this status if requested by the commissioner.</td>
</tr>
<tr>
<td>Model #785 §2F(1)(a)</td>
<td>• A non-U.S. jurisdiction that is subject to an in-force Covered Agreement with the United States;</td>
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<td></td>
<td>• A U.S. jurisdiction that meets the requirements for accreditation under the NAIC Financial Standards and Accreditation Program;</td>
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<tr>
<td></td>
<td>• A Qualified Jurisdiction that has been determined by the commissioner to meet all applicable requirements to be a Reciprocal Jurisdiction.</td>
<td></td>
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</tr>
<tr>
<td>Citation to State Law / Regulation</td>
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<td>Y or N</td>
<td>Reference and Supporting Documents</td>
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</table>
| Model #786 § 9C(2)               | Minimum Capital and Surplus: The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated on at least an annual basis as of the preceding December 31 or at the annual date otherwise statutorily reported to the Reciprocal Jurisdiction:  
  - No less than $250,000,000 (USD); or  
  - If the assuming insurer is an association, including incorporated and individual unincorporated underwriters:  
    ▪ Minimum capital and surplus equivalents (net of liabilities) or own funds of the equivalent of at least $250,000,000 (USD); and  
    ▪ A central fund containing a balance of the equivalent of at least $250,000,000 (USD). | | |
| Model #785 §2F(1)(b)             | The assuming insurer’s supervisory authority must confirm to the commissioner on an annual basis according to the methodology of its domiciliary jurisdiction that the assuming insurer complies with this requirement. | | |
| Model #786 § 9C(7)               | Minimum Solvency or Capital Ratio: The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio.  
  - The ratio specified in the applicable in-force Covered Agreement where the assuming insurer has its head office or is domiciled; or  
  - If the assuming insurer is domiciled in an accredited state, a risk-based capital (RBC) ratio of three hundred percent (300%) of the authorized | | |
<p>| Model #785 §2F(1)(c)             | | | |</p>
<table>
<thead>
<tr>
<th>Citation to State Law / Regulation</th>
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<th>Reference and Supporting Documents</th>
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<tbody>
<tr>
<td>Model #786 § 9C(7)</td>
<td>control level, calculated in accordance with the formula developed by the NAIC; or • If the assuming insurer is domiciled in a Reciprocal Jurisdiction that is a Qualified Jurisdiction, such solvency or capital ratio as the commissioner determines to be an effective measure of solvency. <strong>The assuming insurer’s supervisory authority must confirm to the commissioner on an annual basis that the assuming insurer complies with this requirement.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Model #785 §2F(1)(g)</td>
<td>Form RJ-1: The assuming insurer must agree to and provide a signed Form RJ-1, which must be properly executed by an officer of the assuming insurer. [Insert link to copy of form on state web site.]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Model #786 § 9C(4)</td>
<td>Financial/Regulatory Filings: • For the two years preceding entry into the reinsurance agreement and on an annual basis thereafter, the assuming insurer’s annual audited financial statements, in accordance with the applicable law of the jurisdiction of its head office or domiciliary jurisdiction, as applicable, including the external audit report; • For the two years preceding entry into the reinsurance agreement, the solvency and financial condition report or actuarial opinion, if filed with the assuming insurer’s supervisor; • Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, an updated</td>
<td></td>
<td>The Reciprocal Jurisdiction Reinsurer shall provide this information if requested by the commissioner consistent with the requirements of Model #785 &amp; Model #786.</td>
</tr>
<tr>
<td>Model #785 §2F(1)(d)</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Citation to State Law / Regulation</td>
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</tr>
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<tr>
<td>Model #786 § 9C(5)(d)</td>
<td>list of all disputed and overdue reinsurance claims outstanding for 90 days or more, regarding reinsurance assumed from ceding insurers domiciled in the United States; and Prior to entry into the reinsurance agreement and not more than semi-annually thereafter, information regarding the assuming insurer’s assumed reinsurance by ceding insurer, ceded reinsurance by the assuming insurer, and reinsurance recoverable on paid and unpaid losses by the assuming insurer. <strong>This is for purposes of evaluating Prompt Payment of Claims.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Model #786 § 9C(6)</td>
<td><strong>Prompt Payment of Claims:</strong> The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements. The lack of prompt payment will be evidenced if any of the following criteria is met: More than fifteen percent (15%) of the reinsurance recoverables from the assuming insurer are overdue and in dispute as reported to the commissioner; More than fifteen percent (15%) of the assuming insurer’s ceding insurers or reinsurers have overdue reinsurance recoverable on paid losses of 90 days or more which are not in dispute and which exceed for each ceding insurer $100,000, or as otherwise specified in a Covered Agreement; or The aggregate amount of reinsurance recoverable on paid losses which are not in dispute, but are overdue by 90 days or more, exceeds $50,000,000, or as</td>
<td></td>
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</tbody>
</table>
II. Filing Requirements for “Passporting State” of Reciprocal Jurisdiction Reinsurer

In order to facilitate multi-state recognition of assuming insurers and to encourage uniformity among the states, the NAIC has initiated a process called “passporting” under which the commissioner has the discretion to defer to another state’s determination with respect to compliance with this section. Passporting is based upon individual state regulatory authority, and states are encouraged to act in a uniform manner in order to facilitate the passporting process. States are also encouraged to utilize the passporting process to reduce the amount of documentation filed with the states and reduce duplicate filings.

If an NAIC accredited jurisdiction has determined that the conditions set forth under the Filing Requirements for Lead States have been met, the commissioner has the discretion to defer to that jurisdiction’s determination, and add such assuming insurer to the list of assuming insurers to which cessions shall be granted credit. The commissioner may accept financial documentation filed with the Lead State or with the NAIC.

The following documentation must be filed with the Passporting State:

<table>
<thead>
<tr>
<th>Citation to State Law / Regulation</th>
<th>Requirements</th>
<th>Y or N</th>
<th>Reference and Supporting Documents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Model #786 § 9E(2) Model #785 §2F(3)</td>
<td>Form RJ-1: An assuming insurer must submit a properly executed Form RJ-1 and additional information as the commissioner may require, except to the extent that they conflict with a Covered Agreement.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Model #786 § 9E(1)</td>
<td>Lead State: If an NAIC accredited jurisdiction has determined that the required conditions have been met, the commissioner has the discretion to defer to that</td>
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</tbody>
</table>

Fee: [Insert $ amount of the fee applicable in this state.]
III. Interaction Between Certified Reinsurers and Reciprocal Jurisdiction Reinsurers

Under Section 8A(5) of the Credit for Reinsurance Model Regulation (#786), credit for reinsurance shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer with respect to Certified Reinsurers. Under Section 2F(7) of the Credit for Reinsurance Model Law (#785), credit may be taken with respect to Reciprocal Jurisdiction Reinsurers only for reinsurance agreements entered into, amended, or renewed on or after the effective date of the statute adding this subsection, and only with respect to losses incurred and reserves reported on or after the later of (i) the date on which the assuming insurer has met all eligibility requirements to be designated a Reciprocal Jurisdiction Reinsurer, and (ii) the effective date of the new reinsurance agreement, amendment, or renewal.

It is expected that certain assuming insurers may be considered to be Certified Reinsurers for purposes of in-force business and Reciprocal Jurisdiction Reinsurers with respect to reinsurance agreements entered into, amended, or renewed on or after the effective date. In addition, these same reinsurers may also have certain blocks of business that are fully collateralized under the prior provisions of Model #785 and Model #786. The NAIC blanks will be amended to reflect the status of these reinsurers with respect to each type of insurance assumed.
Proposed 2021 Charges of the
Reinsurance (E) Task Force

2021 Charges

The Reinsurance (E) Task Force will:

A. Provide a forum for the consideration of reinsurance-related issues of public policy.
C. Oversee the activities of the Qualified Jurisdiction (E) Working Group.
D. Monitor the implementation of the 2011, 2016 and 2019 revisions to the Credit for Reinsurance Model Law (#785), the 2011 and 2019 revisions to the Credit for Reinsurance Model Regulation (#786), and the Term and Universal Life Insurance Reserve Financing Model Regulation (#787).
E. Communicate and coordinate with the Federal Insurance Office (FIO), and other federal authorities and international regulators and authorities on matters pertaining to reinsurance.
F. Consider any other issues related to the revised Model #785, Model #786 and Model #787.
G. Monitor the development of international principles, standards and guidance with respect to reinsurance. This includes, but is not limited to, monitoring the activities of various groups within the International Association of Insurance Supervisors (IAIS), including the Reinsurance and Other Forms of Risk Transfer Subcommittee, the Reinsurance Mutual Recognition Subgroup and the Reinsurance Transparency Group.
H. Consider the impact of reinsurance-related federal legislation, including, but not limited to, the federal Nonadmitted and Reinsurance Reform Act (NRRA) and the Federal Insurance Office Act, and coordinate any appropriate NAIC action.
I. Continue to monitor the impact of reinsurance-related international agreements, including the "Bilateral Agreement Between the European Union and U.S. on Prudential Measures Regarding Insurance and Reinsurance" (Covered Agreement), and the Covered Agreement between the U.S. and the United Kingdom.

The Qualified Jurisdiction (E) Working Group will:

A. Maintain the NAIC List of Qualified Jurisdictions and the NAIC List of Reciprocal Jurisdictions in accordance with the Process for Evaluating Qualified and Reciprocal Jurisdictions.
B. Perform a yearly due diligence review of Qualified Jurisdictions to determine whether there have been any significant changes over the prior year that might affect their status as Qualified Jurisdictions.
C. Consider evaluations of any additional jurisdictions for inclusion on the NAIC List of Qualified Jurisdictions.

The Reinsurance Financial Analysis (E) Working Group will:

A. Operate in regulator-to-regulator session pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings and operate in open session when discussing certified reinsurance topics and policy issues, such as amendments to the Uniform Application for Certified Reinsurers.
B. Provide advisory support and assistance to states in the review of reinsurance collateral reduction applications. Such a process with respect to the review of applications for reinsurance collateral reduction and qualified jurisdictions should strengthen state regulation and prevent regulatory arbitrage.
C. Provide a forum for discussion among NAIC jurisdictions of reinsurance issues related to specific companies, entities or individuals.
D. Support, encourage, promote and coordinate multistate efforts in addressing issues related to certified reinsurers, including, but not limited to, multistate recognition of certified reinsurers.
E. Provide analytical expertise and support to the states with respect to certified reinsurers and applicants for certification.
F. Provide advisory support with respect to issues related to the determination of qualified jurisdictions.
G. Ensure the public passoring website remains current.
H. For reinsurers domiciled in Reciprocal Jurisdictions, determine the best and most effective approaches for the financial solvency surveillance to assist the states in their work to protect the interests of policyholders.
Implementation of the 2019 Revisions to the Credit for Reinsurance Model Law #785
[status as of July 7, 2020]

Disclaimer: This map represents state action or pending state action regarding NAIC amendments to the model(s). This map does not reflect a determination as to whether the pending or enacted legislation contains all elements of NAIC amendments to the model(s) or whether a state meets any applicable accreditation standards.
Implementation of the 2019 Revisions to the Credit for Reinsurance Model Regulation #786
[status as of July 7, 2020]

Disclaimer: This map represents state action or pending state action regarding NAIC amendments to the model(s). This map does not reflect a determination as to whether the pending or enacted legislation contains all elements of NAIC amendments to the model(s) or whether a state meets any applicable accreditation standards.