

Date: 11/11/19

*2019 Fall National Meeting
Austin, Texas*

SURPLUS LINES (C) TASK FORCE
Saturday, December 7, 2019
2:00 – 3:00 p.m.
JW Marriott Austin—Lone Star Ballroom D—Level 3

ROLL CALL

James J. Donelon, Chair	Louisiana	Marlene Caride	New Jersey
Al Redmer Jr., Vice Chair	Maryland	John G. Franchini	New Mexico
Lori K. Wing-Heier	Alaska	Mike Causey	North Carolina
Ricardo Lara	California	Glen Mulready	Oklahoma
Michael Conway	Colorado	Elizabeth Kelleher Dwyer	Rhode Island
Stephen C. Taylor	District of Columbia	Raymond G. Farmer	South Carolina
Dafne M. Shimizu	Guam	Larry Deiter	South Dakota
Colin M. Hayashida	Hawaii	Kent Sullivan	Texas
Robert H. Muriel	Illinois	Mike Kreidler	Washington
Vicki Schmidt	Kansas	James A. Dodrill	West Virginia
Nancy G. Atkins	Kentucky	Jeff Rude	Wyoming
Barbara D. Richardson	Nevada		

NAIC Support Staff: Andy Daleo/Bob Schump

AGENDA

1. Consider Adoption of its Summer National Meeting Minutes
—*Commissioner James J. Donelon (LA)* Attachment One
2. Consider Adoption of the Report of the Surplus Lines (C) Working Group
—*Stewart Guerin (LA)*
3. Discuss Comments Received on an Exposure of a Blanks Proposal Regarding Home State Direct Premiums Written—*Commissioner James J. Donelon (LA)* Attachment Two
4. Receive an Update on its Referral to the Producer Licensing (D) Task Force
—*Director Larry Deiter (SD) and Tim Mullen (NAIC)* Attachment Three
5. Hear Adjustments to Exempt Commercial Purchaser Minimum Qualifications
—*Andy Daleo (NAIC)* Attachment Four
6. Discuss Any Other Matters Brought Before the Task Force
—*Commissioner James J. Donelon (LA)*
7. Adjournment

W:\National Meetings\2019\Fall\TF\SURL\SLTF Agenda.docx

Draft Pending Adoption

Draft: 8/13/19

Surplus Lines (C) Task Force
New York, New York
August 3, 2019

The Surplus Lines (C) Task Force met in New York, NY, Aug. 3, 2019. The following Task Force members participated: James J. Donelon, Chair, Stewart Guerin and Warren Byrd (LA); Al Redmer Jr., Vice Chair (MD); Lori K. Wing-Heier, represented by Joanne Bennett (AK); Ricardo Lara represented by Susan Stapp and Emma Hirschhorn (CA); Michael Conway represented by Rolf Kaumann (CO); Stephen C. Taylor represented by David Christhlf (DC); Colin M. Hayashida represented by Paul Yuen (HA); Robert H. Muriel represented by Patrick Hyde (IL); Vicki Schmidt represented by Tat Flott (KS); Nancy G. Atkins represented by Russell Hamblen (KY); Mike Causey represented by Fred Fuller (NC); Marlene Caride represented by Shail Mankad (NJ); John G. Franchini represented by Victoria Baca (NM); Barbara D. Richardson (NV); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Raymond G. Farmer represented by Lee Hill (SC); Larry Deiter (SD); Kent Sullivan represented by Jamie Walker (TX); Mike Kreidler represented by Mel Anderson (WA); and Jeff Rude represented by Donna Stewart (WY).

1. Adopted its Spring National Meeting Minutes

Mr. Hamblen made a motion, seconded by Mr. Hill, to adopt the Task Force's April 6 minutes (*see NAIC Proceedings – Spring 2019, Surplus Lines (C) Task Force*). The motion passed unanimously.

2. Adopted its 2020 Proposed Charges

Commissioner Donelon said the Task Force's 2020 proposed charges (Attachment One) have been updated to provide a more accurate and complete description of the focus area for the Task Force and its supporting Surplus Lines (C) Working Group. He said a new charge describes the Task Force's responsibility to develop or amend relevant NAIC model laws, regulations and/or guidelines. David Kodama (American Property Casualty Insurance Association—APCIA) asked whether the new charge was drafted with any specific topic in mind. Andy Daleo (NAIC) said the primary reason for the new charge was to consider revision of the *Nonadmitted Insurance Model Act* (#870). He indicated that Model #870 had not been updated since 2002, and staff had identified several areas within the model that require revision. Commissioner Donelon added that the *Guideline on Nonadmitted Accident and Health Coverages* (#1860) is a recent example of an effort by the Task Force to address Model #870. Mr. Kodama asked if any additional coverages, like accident and health, were anticipated by the charge. Mr. Daleo said none were under current consideration.

Mr. Hill made a motion, seconded by Ms. Anderson, to adopt its 2020 proposed charges. The motion passed unanimously.

3. Adopted the Report of the Surplus Lines (C) Working Group

Mr. Guerin reported that the Surplus Lines (C) Working Group met via conference call May 13 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings; and June 27, once in open session and once in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings.

During the May 13 conference call, the Working Group discussed draft enhancements and edits to the International Insurer Department (IID) Plan of Operation, which guides alien insurers on filing and compliance requirements to become and remain listed on the *Quarterly Listing of Alien Insurers*. Proposed changes to the Plan of Operation included a clarification of the role of the Property and Casualty Insurance (C) Committee, a flow chart that describes the IID process, a requirement for insurers to submit updated biographical affidavits when a material change in an individual's personal record has occurred, and language describing required attestations for Lloyd's syndicates and managing agencies that are partially or wholly owned, directly or indirectly, by a sovereign government.

During the June 27 open call (Attachment Two), three comments related to the exposure of the IID Plan of Operation were discussed. Following a couple of friendly amendments, the IID Plan of Operation was unanimously adopted. A comment letter was also received regarding the exposure of the private flood data collection form. Following a brief discussion, the private flood data collection form was adopted, and it will be implemented beginning with the financial YE 2019 filing. The Working Group also discussed revisions to be considered for the YE 2020 filing which included: 1) separation of first dollar and excess premium for residential private flood; and 2) collection of the number of policies in-force and endorsements at the beginning

Draft Pending Adoption

and ending of the reporting period. Birny Birnbaum (Center for Economic Justice—CEJ) asked whether those revisions will be made or merely considered for the 2020 reporting year. Mr. Guerin said the two enhancements would be exposed in the summer of 2020 for comment and voted on by the Working Group before implementing.

During the June 27 regulator-only call, the Working Group heard a summary of two applications for admission to the *Quarterly Listing of Alien Insurers*. Following a brief discussion, both applications were admitted to the July 1 addition of the listing. The Working Group also discussed the results of a Surplus Lines Tax Reconciliation Survey.

Mr. Kaumann made a motion, seconded by Ms. Bennett, to adopt the report of the Surplus Lines (C) Working Group. The motion passed unanimously.

4. Exposed a Blanks Proposal Regarding Home State Direct Premiums Written

Mr. Guerin indicated that during the June 27 regulator-only call, the Working Group discussed the results of a Surplus Lines Tax Reconciliation Survey. The survey resulted from discussions with NAIC staff, and it was based on numerous inquiries from the states regarding resources for help in the reconciliation of surplus lines premium tax. The survey consisted of five questions, and 33 states responded. Mr. Guerin said the survey addressed the extent to which the states perform premium tax reconciliation and the frequency. A question was posed to the states regarding the benefit of either: 1) a new part 3 to Schedule T – Exhibit of Premiums Written to address home state direct premiums written; or 2) an entirely new schedule that would provide allocation of surplus lines premiums by line of business and home state direct premiums written. Mr. Guerin said a majority of the responses were in favor of the Schedule T proposals. The Working Group decided on a new part to Schedule T.

Mr. Kodama asked if Schedule T is used for solvency regulation. Mr. Guerin said it is. Mr. Kodama then asked how the proposed enhancement to Schedule T related to solvency regulation. Mr. Daleo said not all information contained within the financial statements relates strictly to solvency regulation. He said the home state premium information would provide state insurance regulators with a starting point in determining whether the correct amount of surplus lines premium tax was collected. Mr. Guerin added that in Louisiana, reconciliation of premium taxes for admitted carriers already occurs. He said by obtaining home state direct premium written, state insurance regulators would be able to do the same for nonadmitted carriers.

Commissioner Donelon asked Mr. Kodama whether he thought this new information would pose an additional burden on the nonadmitted carriers. Mr. Kodama said he hoped the exposure period would be long enough to allow the impacted companies to determine whether the information is readily available, determine any required changes to systems, and determine if the companies would need to coordinate this information with the brokers. At the request of Mr. Kodama, Commissioner Donelon indicated that the exposure period would be extended to a 60-day comment period.

5. Heard an Update on its Referral to the Producer Licensing (D) Task Force

Commissioner Donelon said the referral to the Producer Licensing (D) Task Force suggested modifications to the *State Licensing Handbook* to accommodate the newly adopted Guideline #1806. Director Deiter, chair of the Producer Licensing (D) Task Force, said the referral was discussed at its Spring National Meeting. Following the discussion, a draft amendment to the *Uniform Licensing Standards for Surplus Lines*, and the *State Licensing Handbook* was circulated for comment to the Producer Licensing (D) Task Force members, state licensing directors, and interested parties. Consistent with the Surplus Lines (C) Task Force request, the draft proposal to the Producer Licensing (D) Task Force is to expand the underlying licensure requirements to qualify for a surplus lines license to include the accident and health line of authority. The Producer Licensing (D) Task Force will discuss the proposal and comments during its meeting later that day. Director Deiter said the Task Force may possibly adopt the proposal at that time. However, he said it is likely that there may be additional discussion and comments at the meeting, and he will look for some action on the proposal in the near future.

Commissioner Donelon asked Director Deiter to provide an update for the Surplus Lines (C) Task Force at the Fall National Meeting.

6. Heard a Financial Summary of the 2018 Surplus Lines Market

Mr. Daleo indicated that 151 entities, 62 companies, and 89 Lloyd's syndicates were on the *Quarterly Listing of Alien Insurers* at year-end 2018. He said alien entities, or those insurers domiciled outside the U.S., collectively wrote \$15.3 billion in direct surplus lines premiums in the U.S., a 12.4% increase from the prior year. Further, he indicated that U.S. domestic insurers wrote \$34.7 billion in surplus lines premiums in 2018, a 10.3% increase from 2017. He said in 2018, alien insurer surplus lines

Draft Pending Adoption

premiums accounted for 30.6% of total U.S. surplus lines exposure, up from 30.2% and 29.8% in 2017 and 2016, respectively. He said on Dec. 31, 2018, the 151 alien insurers reported an aggregate \$25.2 billion in gross loss, loss adjustment expense (LAE), and incurred but not reported (IBNR) reserves. As of March 31, 2019, the gross reserves were partially secured by nearly \$6.8 billion, or about 27%, in individual U.S. trust fund assets.

Mr. Daleo indicated that cybersecurity coverage written by alien insurers is in its third year of collection, and 72 entities reported exposure in 2018, virtually unchanged from the 71 reported in 2017. He said 14 insurers reported only stand-alone policies, 26 wrote only package policies, and 32 wrote both stand-alone and package policies. He said cyber direct premiums written increased by 53% in 2018 to \$1.8 billion versus \$1.2 billion in 2017. He commented that the growth in premiums was driven by a 91% jump in stand-alone policies written to \$1.5 billion, while package policy direct premiums written were down 14% to \$370 million. Further, he indicated that direct losses incurred increased by 87% from the previous year to \$346 million, which equates to a direct loss ratio of 28.1%, up from about 20% in 2017. Lastly, he said there were close to 207,000 alien cyber policies in force reported for 2018, representing a 33% increase over the previous year.

Mr. Daleo also provided an update on domestic surplus lines insurers (DSLIs), a type of insurer authorized to write surplus lines coverage in its state of domicile. Legislation authorizing DSLIs has been enacted in 21 states: AR, AZ, CT, DE, GA, IA, IL, LA, MO, NC, ND, NE, NH, NJ, NV, OH, OK, TX, VA, VT and WI. Currently, there are 76 DSLIs authorized in 14 states that in 2018 collectively wrote \$10.2 billion in surplus lines premiums, of which nearly \$353 million was written in their states of domicile.

Commissioner Donelon said for anyone interested in additional review of these results, they would be posted to the Task Force webpage.

Having no further business, the Surplus Lines (C) Task Force adjourned.

W:\National Meetings\2019\Summer\TF\SURL\Draft Minutes Final.dotx

NAIC BLANKS (E) WORKING GROUP

Blanks Agenda Item Submission Form

<p style="text-align: right;">DATE: <u>7/12/2019</u></p> <p>CONTACT PERSON: <u>Andy Daleo/Bob Schump – NAIC staff</u></p> <p>TELEPHONE: <u>(816)783-8141/(816) 783-8437</u></p> <p>EMAIL ADDRESS: <u>adaleo@naic.org/rschump@naic.org</u></p> <p>ON BEHALF OF: <u>Surplus Lines (C) Working Group</u></p> <p>NAME: <u>Stewart Guerin</u></p> <p>TITLE: <u>Chair of Surplus Lines (C) Working Group</u></p> <p>AFFILIATION: <u>Louisiana Department of Insurance</u></p> <p>ADDRESS: _____</p>	<p style="text-align: center;"><u>FOR NAIC USE ONLY</u></p> <p>Agenda Item # _____</p> <p>Year <u>2020</u></p> <p>Changes to Existing Reporting <input type="checkbox"/>]</p> <p>New Reporting Requirement <input checked="" type="checkbox"/>]</p> <p style="text-align: center;"><u>REVIEWED FOR ACCOUNTING PRACTICES AND PROCEDURES IMPACT</u></p> <p>No Impact <input checked="" type="checkbox"/>]</p> <p>Modifies Required Disclosure <input type="checkbox"/>]</p> <p style="text-align: center;"><u>DISPOSITION</u></p> <p><input type="checkbox"/>] Rejected For Public Comment</p> <p><input type="checkbox"/>] Referred To Another NAIC Group</p> <p><input type="checkbox"/>] Received For Public Comment</p> <p><input type="checkbox"/>] Adopted Date _____</p> <p><input type="checkbox"/>] Rejected Date _____</p> <p><input type="checkbox"/>] Deferred Date _____</p> <p><input type="checkbox"/>] Other (Specify) _____</p>
---	--

BLANK(S) TO WHICH PROPOSAL APPLIES

- | | | |
|--|---|---|
| <input checked="" type="checkbox"/> ANNUAL STATEMENT | <input checked="" type="checkbox"/> INSTRUCTIONS | <input checked="" type="checkbox"/> CROSSCHECKS |
| <input type="checkbox"/> QUARTERLY STATEMENT | <input checked="" type="checkbox"/> BLANK | |
| <input type="checkbox"/> Life, Accident & Health/Fraternal | <input type="checkbox"/> Separate Accounts | <input type="checkbox"/> Title |
| <input checked="" type="checkbox"/> Property/Casualty | <input type="checkbox"/> Protected Cell | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Health | <input type="checkbox"/> Health (Life Supplement) | |

Anticipated Effective Date: 2020 Annual

IDENTIFICATION OF ITEM(S) TO CHANGE

Add a new Schedule T – Part 3 to the Property/Casualty blank for the purpose of collecting direct premiums written data allocated by “home State.”

REASON, JUSTIFICATION FOR AND/OR BENEFIT OF CHANGE**

The intent is to provide a basis for state regulators to reconcile broker reported surplus lines premium with company provided information to better ensure that states are receiving the proper amount of surplus lines premium taxes. Premium taxes on surplus lines premiums are based on the total policy premium and paid by surplus lines brokers solely to the “home State” of the insured as defined in Section 527 of the Nonadmitted and Reinsurance Reform Act of 2010 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Currently, the only resource available to the state for tax reconciliation is Schedule T – Exhibit of Premiums Written, which allocates premium by geographic concentration of risk. Collecting premium information within the annual blank for “Home State Direct Premiums Written” provides the state a starting point for surplus lines premium tax reconciliation. Throughout the year NAIC staff receives frequent inquiries regarding assistance with surplus lines premium tax reconciliation and cannot provide a resource to the state. This blanks proposal will provide significant value to the states/territories regarding surplus lines tax reconciliation.

NAIC STAFF COMMENTS

Comment on Effective Reporting Date: _____

Other Comments:

** This section must be completed on all forms.

Revised 7/18/2018

ANNUAL STATEMENT INSTRUCTIONS – PROPERTY

SCHEDULE T – PART 3
EXHIBIT OF PREMIUMS WRITTEN

ALLOCATED BY HOME STATES AND TERRITORIES

This schedule is intended to report surplus lines premiums written to a state or territory of the insured that conforms to the definition of “home State” as provided in the Dodd-Frank Wall Street Reform and Consumer Protection Act. Allocation of surplus lines premiums reported on this schedule should be based on the “home State” of the insured, regardless of jurisdiction where the risks are located

All U.S. surplus lines business must be allocated to the “home State” of the insured, regardless of license status or concentration of risk.

Column 1 – Active Status

Use the following codes to identify the reporting entity’s status for each state or territory in which surplus lines premium is to be reported in the schedule as of the end of the reporting period. Enter the code that applies to the reporting entity’s status in the state or territory.

- | | |
|---------------------------|---|
| L – Licensed or Chartered | (Licensed Insurance Carrier and Domiciled Risk Retention Groups referred to in some states as admitted.) |
| R – Registered | (Non-domiciled Risk Retention Groups) |
| E – Eligible | (Reporting Entities eligible or approved to write Surplus Lines in the state (other than their state of domicile – see DSLI). In some states referred to as nonadmitted.) |
| Q – Qualified | (Qualified or Accredited Reinsurer) |
| D – DSLI | (Domestic Surplus Lines Insurer (DSLI) – Reporting Entities authorized to write Surplus Lines in the state of domicile) |
| N – None of the above | (Not allowed to write business in the state or none of the above codes apply) |

Column 2 – Home State Direct Premiums Written

The following is provided to illustrate appropriate allocation bases for surplus lines of business:

- All surplus lines policy premiums are to be allocated to the appropriate state that conforms to the “home State” definition as provided in Section 527 of the Nonadmitted and Reinsurance Reform Act within the Dodd-Frank Wall Street Reform and Consumer Protection Act:

Definition:

(6)HOME STATE.

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “home State” means, with respect to an insured—

- (i) the State in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or
- (ii) if 100 percent of the insured risk is located out the State referred to in clause (i), the State to which the greatest percentage of the insured’s taxable premium for that insurance contract is allocated.

(B) **AFFILIATED GROUPS.**—If more than 1 insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term “home State” means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

Column 3 – Percentage of Total Home State Direct Premiums Written

Amount represents the percentage of the individual line items in Column 2 to the Total Home State Direct Premiums Written amount presented in Column 2, Line 59.

Line 59 should equal 100%.

The allocation method established by the reporting entity in compliance with these instructions and the instructions of the domiciliary state should be consistently applied to all policies and reporting periods.

The data reported in Schedule T – Part 3 of the annual statement may or may not be used for the calculation of the amount of premium tax due to a state/jurisdiction. Individual states/jurisdictions may require a separate schedule to support premium tax calculations.

NOTE: Existing state laws and regulations need to be considered when applying these instructions.

Footnote (a):

Provide the total of each active status code in Column 1. The sum of all the counts of all active status codes should equal 57.

ANNUAL STATEMENT BLANK – PROPERTY

SCHEDULE T – PART 3

EXHIBIT OF SURPLUS LINES PREMIUMS WRITTEN
Allocated by Home States and Territories

States, Etc.	1 Active Status (a)	2 Home State Direct Premiums Written	3 Percentage of Total Home State Direct Premiums Written
1. Alabama.....AL			
2. Alaska.....AK			
3. Arizona.....AZ			
4. Arkansas.....AR			
5. California.....CA			
6. Colorado.....CO			
7. Connecticut.....CT			
8. Delaware.....DE			
9. Dist. Columbia.....DC			
10. Florida.....FL			
11. Georgia.....GA			
12. Hawaii.....HI			
13. Idaho.....ID			
14. Illinois.....IL			
15. Indiana.....IN			
16. Iowa.....IA			
17. Kansas.....KS			
18. Kentucky.....KY			
19. Louisiana.....LA			
20. Maine.....ME			
21. Maryland.....MD			
22. Massachusetts.....MA			
23. Michigan.....MI			
24. Minnesota.....MN			
25. Mississippi.....MS			
26. Missouri.....MO			
27. Montana.....MT			
28. Nebraska.....NE			
29. Nevada.....NV			
30. New Hampshire.....NH			
31. New Jersey.....NJ			
32. New Mexico.....NM			
33. New York.....NY			
34. No. Carolina.....NC			
35. No. Dakota.....ND			
36. Ohio.....OH			
37. Oklahoma.....OK			
38. Oregon.....OR			
39. Pennsylvania.....PA			
40. Rhode Island.....RI			
41. So. Carolina.....SC			
42. So. Dakota.....SD			
43. Tennessee.....TN			
44. Texas.....TX			
45. Utah.....UT			
46. Vermont.....VT			
47. Virginia.....VA			
48. Washington.....WA			
49. West Virginia.....WV			
50. Wisconsin.....WI			
51. Wyoming.....WY			
52. American Samoa.....AS			
53. Guam.....GU			
54. Puerto Rico.....PR			
55. U.S. Virgin Islands.....VI			
56. Northern Mariana Islands.....MP			
57. Canada.....CAN			
58. Aggregate other alien.....OT	XXX	XXX	XXX
59. Totals	XXX		

(a) Active Status Counts:

L – Licensed or Chartered - Licensed insurance carrier or domiciled RRG
 R – Registered - Non-domiciled RRGs
 E – Eligible - Reporting entities eligible or approved to write surplus lines in the state (other than their state of domicile – See DSLI)
 Q – Qualified - Qualified or accredited reinsurer
 D – Domestic Surplus Lines Insurer (DSLI) – Reporting entities authorized to write surplus lines in the state of domicile
 N – None of the above – Not allowed to write business in the state



October 4, 2019

Commissioner James J. Donelon, Chair
Commissioner Al Redmer Jr., Vice Chair
Surplus Lines (C) Task Force
NAIC Central Office
1100 Walnut, Suite 1500
Kansas City, MO 64106-2197

Attn: Andy Daleo, Sr. Manager, P/C & Title Financial Analysis

VIA Electronic Mail: ADaleo@naic.org

RE: Schedule T Blanks Proposal

Dear Commissioners Donelon and Redmer:

The American Property Casualty Insurance Association (APCIA)¹ welcomes the opportunity to provide feedback on the draft Schedule T Blanks Proposal (Proposal) that would create a new and unprecedented financial reporting requirement for U.S. insurers writing surplus lines insurance. The APCIA respectfully provides the following comments in response to the proposal for consideration by you and members of the Surplus Lines (C) Task Force.

As drafted, the Proposal calls for the NAIC Blanks (E) Working Group to adopt a new Part 3 financial statement form to the Schedule T. This would require U.S. insurance companies to report as additional information surplus lines premium (active status E and D) in accordance with the "home state" of the insured as defined in Section 527 of the Nonadmitted and Reinsurance Reform Act of 2010 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Currently, carriers report surplus lines premiums on the Schedule T form - Exhibit of Premiums Written, which allocates premium by geographic concentration of risk. This allocation of premium is inconsistent with the "home state" basis for the computation, remittance and reporting of surplus lines policies, premiums and taxes under the statutorily required duties of the surplus lines broker (licensee). As such, the Schedule T should not be used for state reconciliation of surplus lines premium tax reporting.

While it is understood that the Proposal, if adopted, would create a new financial statement based on the "home state" definition, the draft Part 3 would not provide an effective means to determining the accuracy of information on the policies and premiums reported by the brokers as basis for surplus lines taxation. Yet, the U.S. insurance company would incur the cost and burden of collecting, accounting and reporting data to the NAIC for a purpose that is otherwise not necessary for the business nor legally required by the state. The Part 3 financial statement would represent only information for information sake.

¹ Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA membership represents over 70 percent of surplus lines premiums written by U.S. insurance companies. APCIA members represent all sizes, structures, and regions, protecting families, communities, and businesses in the U.S. and across the globe.

Proposal is “Unfit for Purpose”

For the following reasons, the APCIA objects to the Proposal as drafted.

- **Current Status?** No evidence has been presented to demonstrate the amount of surplus lines tax revenue collected by the states is deficient. It would be informative to understand the historical trendline of this state data to provide some context to this matter.
- **Statutory Duty?** The surplus lines licensee has the legal burden for properly adhering to the laws, rules and regulations of the home state of the insured. The duties and responsibilities for the collection and payment of surplus lines taxes are clearly imposed upon the state licensed surplus lines broker, as are the penalties for non-compliance. This proposal would create a new duty and responsibility on the insurance carrier not set forth in statute and in an unprecedented manner for ensuring the compliance of the licensee of the state.
- **Purpose of Schedule T?** While Schedule T may be used for the calculation of the amount of premium tax due to a state/jurisdiction from licensed insurers writing admitted business, the draft Part 3 provides for a distinctly different purpose. The tax liability does not exist for insurers writing surplus lines business as they are not licensed to transact business in the state. Draft Part 3 therefore represents information that does not relate to the financial condition of the filing insurance company and therefore should not be treated as a financial statement to be adopted and incorporated by the states by reference.
- **Home state?** It is the responsibility of the surplus lines broker/licensee to determine and report the home state of the insured. Most underwriting and reporting systems of insurance companies are designed based upon the physical location of the risk and underwriting requirements in those particular physical locations or states. The insurer reporting by home state will require many companies to endure significant system and process changes. Such changes and associated costs would be borne with no financial, underwriting or legal purpose.
- **Taxing Authority?** States should rely on broker filings, with brokers remitting surplus lines taxes on 100% of the premium to the home state of the insured at the home state’s tax rate in accordance with federal law under the NRRRA. Additional auditing and comparisons of broker and insurer reporting of home state will generate burdens on the market with highly questionable and unknown benefit.
- **Reconciliation?** Comparing the broker reported premiums on a state by state basis to aggregated premium reported by insurers will provide no assurance of the accurate reporting of individual policies nor the accurate determination of the home state.
- **Discrepancy?** Additional fees and costs beyond the insurer’s base premium are reported by the broker only and will not be reflected in the premium reported by the insurance company. Some states require that surplus lines premium tax be paid on these fees as well, such that the tax base for the broker will be different than the premium reported by the insurer. Not all premium is taxable. It is not unusual for certain risks, such as inland marine, ocean marine, boiler & machinery, interstate commerce related railways, to be exempt from taxation. The associated premiums would be reported by the insurer but would not be reflected in broker tax filings. Some states exempt taxation or have a different tax requirement or structure if a consumer is allowed to procure policies without an insurance producer. These premiums are reported by carriers but there would be no record of the transaction from a broker to cross reference.
- **Mid-term changes?** Policies can change throughout the year and the original premium reported by the company may differ based on the broker reporting period due to return premium, midterm endorsements, cancellations or, possibly a change in the home state of the insured.
- **State Reporting and Payment Dates for Brokers?** Whereas all insurance companies report their annual statement premiums at the same time each year (March 1) for the prior calendar year. Reconciliation differences will also be generated by instances of deferred premiums earned but unbilled (SAP 53, Section 9 EBUB)--which is primarily attributed to audits of a liability policies that are initially issued on an estimated premium basis.

The APCIA recognizes the states' interest to ensure the complete and accurate reporting and remittance of surplus lines taxes where they are the home state of the insured. Our concern is that the Proposal provides no straightforward solution. Instead it would create new obligations and costs but yield no benefit to the stated goal.

As evidenced in numerous states that pursue a state reconciliation, the process creates not only a significant administrative burden on both the broker and insurer, but also on the DOI staff. The APCIA strongly encourages the Task Force to table this proposal to the Blanks (E) Working Group and to continue to work with the industry to 1) determine the global scale of multistate policies impacted by the home state tax rule; 2) develop an industry-wide means to report data without the need for insurer transactional reporting or reconciling financial statement numbers against broker reports; and, 3) look for more effective ways to improve the tax filing process and its compliance to provide greater assurance for the state.

Thank you again for your consideration of industry feedback. We welcome the opportunity to discuss any of these comments in further detail, should you have questions or concerns.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Kodama, Jr.", with a stylized flourish extending to the right.

David Kodama, Jr.
Assistant Vice President
American Property Casualty Insurance Association



Daniel F. Maher
Executive Director

The Honorable James J. Donelon
Chair, Surplus Lines (C) Task Force
National Association of Insurance Commissioners
1100 Walnut Street
Kansas City, MO 64106
October 1, 2019

SUBJECT: Surplus Lines Task Force Proposal Regarding Schedule T Modification

Dear Commissioner Donelon:

On behalf of the Excess Line Association of New York (“ELANY”), a nonprofit industry advisory association charged with facilitating and encouraging compliance with the excess line law of New York, thank you for the opportunity to comment on the Surplus Lines Task Force’s proposal regarding home state direct premiums written. ELANY supports uniformity in regulation whenever possible and practical. ELANY supported passage of the NRRA and works diligently to educate excess and surplus line brokers regarding the NRRA’s requirements. After careful study we respectfully submit the Schedule T proposed modifications will produce duplicative, incomplete and inconsistent information, confuse insurers and prove to be too flawed to be useful for regulators. Due to the practical reasons discussed below, ELANY urges the Task Force to reject its adoption.

1. E&S brokers are licensees charged with the legal duty to determine the insured’s Home State and pay taxes accordingly. E&S insurers have no such legal obligation.
2. Many E&S insurers do not currently collect this data. A significant volume of business is written through brokers with binding authorities which allows insurers to reduce costs and not duplicate broker data collection.
3. 25% of New York E&S risks are written by alien insurer markets. These insurers are not required to produce Schedule T. To the extent, state by state, data is reported by Alien insurers at all, there is no requirement to segment it by Home State. As such the proposal will place a burden on U.S. insurers that is not placed on alien insurers with whom they compete. If adopted as proposed, 25% of the data sought will not be reported.
4. If the proposal is adopted, it is likely the insurers will obtain Home State information from the brokers which will mirror the information reported by brokers, making the new report of little value.
5. To the extent the proposal is intended to impose a duty on insurers to determine Home State independently, discrepancies are likely to occur. What happens then? Will brokers

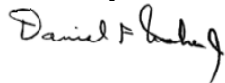


be audited against data provided by insurers which had no legal duty to determine Home State in the first place?

6. When determining Home State for an affiliated group, the broker is charged to determine home state by choosing the affiliate “to which the largest percentage of premium is attributable under the policy.” Is that determination based on “insured values” or perhaps “premiums based on rates charged by insured location” or some other criteria? If the broker and insurer choose different criteria, data discrepancies will occur. Furthermore, the states have adopted non uniform approaches to the reporting and taxation of purchasing group business and other master policy type transactions. This will create further complexity and discrepancies.
7. Requiring E&S insurers to attest to the accuracy of a new Schedule T, the data for which is not linked to statutory accounting nor financial analysis appears to go beyond the scope of what the attestation is intended to accomplish.
8. One last concern interested parties are compelled to raise, respectfully, is whether the proposal is within the province of the NAIC to require. Industry representatives are concerned about the direction of designing part of the Statutory Annual Statement primarily for tax reconciliation purposes. The long accepted purpose of the Statutory Annual Statement is financial analysis and helping regulators understand the financial performance, stability and solvency of an insurer. ELANY respectfully suggests that state tax revenue reconciliation is quite different from financial analysis and is inconsistent with the general understanding state policymakers may have as to the Statutory Annual Statement’s purpose. Is it the NAIC’s intent to make this exhibit an accreditation standard?

In light of the above, ELANY maintains that the proposed exhibit will not accomplish its stated goal and will create confusion among the states and marketplace participants. We therefore urge the Task Force to reject the proposed exhibit and to instead permit the NRRA to function as intended with the duty to select and report Home State squarely on the broker. If there is anything else you would like from ELANY, we will be happy to offer additional information.

Sincerely,



Daniel F. Maher
Executive Director
Excess Line Association of New York
One Exchange Plaza/55 Broadway, 29th Floor
New York, NY 10006-3728
Direct Line: (646) 292-5555
dmaher@elany.org | www.elany.org





October 4, 2019

The Honorable James J. Donelon
Chair, Surplus Lines (C) Task Force
National Association of Insurance Commissioners
1100 Walnut Street
Kansas City, MO 64106

Sent via email to: adaleo@naic.org

Re: Surplus Lines Premium Home State Blanks Proposal

Dear Commissioner Donelon:

On behalf of the Wholesale & Specialty Insurance Association (WSIA), we appreciate the opportunity to comment on the Task Force's proposal to include "home state" reporting of surplus lines premium through Schedule T on domestic carriers' Annual Statement filings. As the professional trade association representing the wholesale, specialty and surplus lines industry, WSIA is unique in that we represent both surplus lines brokers and surplus lines carriers. Although this proposal is directed at the reporting of premium by insurance carriers, it will impact both carriers and brokers such that we have worked with various representatives of both to conduct our analysis of the proposal and provide these comments.

Our members fully understand the motivation for this proposal is to help individual states reconcile surplus lines premium reported by surplus lines carriers to surplus lines taxes remitted by surplus lines brokers. They also understand and take seriously their surplus lines tax obligations; however, we are concerned that the proposed premium reporting changes will not yield the desired results. We are further concerned that an imperfect reconciliation process will require a significant investment of financial and human resources for all parties (i.e., carriers, brokers and regulators) and will result in no substantial change in surplus lines revenues for any of the states.

Reconciliation of surplus lines premium tax through the comparison of premium reported by surplus lines carriers to the surplus lines taxes remitted by surplus lines brokers will not result in an accurate or appropriate outcome for the regulators. Some of the most significant reasons that this approach to reconciliation will not produce accurate results are:

- **Fees.** Additional fees and costs beyond the carrier's base premium are reported by the broker only and will not be reflected in the premium reported by a carrier. Some states require that surplus lines premium tax be paid on these fees as well, such that the tax base for the broker will be different than the premium reported by the carrier.
- **Non-taxable premium.** Not all premium is taxable in some states. For example, it is not unusual for certain risks, such as inland marine, boiler & machinery, native lands and interstate commerce related railways, to be exempt from taxation. These are risks that carriers would report as premium but would

not be reflected in broker tax filings, further distinguishing the carrier's premium base from the broker's tax base and skewing any reconciliation thereof.

- **Independent Procurement.** Some states exempt taxation or have a different tax requirement or structure if a consumer is allowed to procure policies without an insurance producer. These premiums are reported by carriers but there would be no record of the transaction from a broker to cross reference. Again, these would skew any reconciliation results.
- **Home state.** It is the statutory responsibility of the surplus lines licensee to determine and report the home state of the insured, and a carrier may not always underwrite and report premium based on the same determination factors. Most carrier underwriting and reporting systems are designed based upon the physical location of the risk and underwriting requirements in those particular physical locations or states, such that carrier reporting by home state will require significant system and process changes. Such changes seem unwarranted when their purpose will not achieve the intended result for the reasons described herein.
- **Return premium, midterm endorsements and cancellations.** Policies can change throughout the year and the original premium reported by a carrier may differ based on the broker reporting period for these factors. This is very common and another key reason why reconciliation will be ineffective.
- **Reporting.** States have different reporting and payment dates for surplus lines brokers, whereas all surplus lines carriers report their annual premium at the same time each year (March 1) for the prior calendar year.


Based on these particular examples, we know that reconciliation is not a simple undertaking for any of the impacted parties (i.e., regulators, carriers or brokers). The above factors illustrate how difficult, if not impossible, it is to get an "apples to apples" accounting to effectively reconcile surplus lines premium taxes remitted by brokers to surplus lines premium reported by carriers. Attempts at reconciliation between broker and carrier data in the past on a state-by-state basis have rarely resulted in additional tax owed.

Finally, compliance with this proposal will have a significant impact on certain carriers. For some carriers, this change may be easier to implement because they generally write single state policies or monoline business. This could also be true for larger carriers writing personal lines or casualty risks where multistate policies are less common. However, this proposal gets much more complex and potentially costly, from a systems and administration perspective, when the surplus lines products are more complex and cover risks across many state lines. Regardless of the size of the carrier, all will be required to invest in technology changes to capture this information to comply with the proposal.

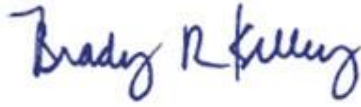
In closing, states should continue to rely on broker filings, with brokers remitting surplus lines taxes on 100% of the premium to the home state of the insured at the home state's tax rate. While we understand that states desire an easy reconciliation, we are concerned that implementing this Schedule T proposal will not yield the desired results. Before the states decide to move forward with a reconciliation approach, we encourage a more detailed discussion with the carriers and brokers regarding any underlying state concerns. We further suggest discussing reconciliation efforts with representatives from the fifteen Stamping Offices because of their significant experience in this area, either in performing reconciliations or electing not to because of their experiences. We want to work with the states to better understand any concerns and/or help identify the right solution, and, for all of the above factors, we respectfully request that the Task Force table this proposal and further study it with the industry's help.

We appreciate the opportunity to work with our members and provide their perspective on this proposal. Please contact us with questions of if you need any additional information.

Sincerely,



Keri Kish
Director of Government Relations
816.799.0855



Brady R. Kelley
Executive Director
816.799.0860



John Meetz
State Relations Manager
816.799.0863



MEMORANDUM

TO: Barbara D. Richardson, Chair, Producer Licensing (D) Task Force

FROM: James J. Donelon, Chair, Surplus Lines (C) Task force

DATE: August 4, 2018

RE: Referral on Surplus Lines Licensure

The Surplus Lines Task Force (SLTF) formed the Accident & Health Drafting Group (Drafting Group) following a nonadmitted and disability insurance presentation to the Task Force and subsequent survey of the states. The survey results indicated that nonadmitted accident and health (A&H) coverages were being written in a number of states. However, there were limitations in available coverages and several states appeared willing to address this market concern. As a result, the Drafting Group's charge was to produce draft guidelines that will assist the states in addressing A&H coverages in the non-admitted market.

Per the State Licensing Handbook, Page 220, Standard 39 - Surplus Lines Standards indicates, "States shall require an underlying property and casualty license prior to the issuance of a resident surplus lines license." The draft Nonadmitted A&H Guidelines, Section 2 – Background, outlines certain types of A&H coverages where a producer may be required to hold a Life or Accident & Health license. The Drafting Group would like to raise the point that a producer holding one of these licenses may not possess a property and casualty license, and therefore, not qualify for a surplus lines license.

The SLTF recommends the Producer Licensing (D) Task Force consider whether the requirement of an underlying property and casualty license needed to qualify for a surplus lines license should also allow a Life or Accident & Health license to fulfill the requirement. If it is determined that the underlying licensure requirement to qualify for a surplus lines license should be expanded to include Life or Accident & Health, it is recommended that State Licensing Handbook, Standard 39 - Surplus Lines Standards be changed to reflect the inclusion.

If there are any questions regarding the proposed recommendation, please contact me or NAIC staff (Andy Daleo at adaleo@naic.org or Bob Schump at rschump@naic.org) for clarification.

Thank you for your consideration.

Adjustment to Minimum Qualifying Amounts for Exempt Commercial Purchasers

According to a directive within the Nonadmitted title of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), the minimum qualifying amounts for three categories of Exempt Commercial Purchaser will increase on January 1, 2020.

The percentage change calculation and adjusted minimum amounts for the affected categories are shown below:

Change Calculation

CPI-U September 2014	238.031
CPI-U September 2019	256.759*
Adjustment Calculation:	$= (256.759 - 238.031) / 238.031$
Percentage Change:	$= .079$ or 7.9%

<u>Subclause Category</u>	<u>Previous Minimum</u>	<u>Adjusted Minimum Effective</u> <u>January 1, 2020</u>
(I) Net Worth	\$22,040,000	\$23,781,160
(II) Annual Revenues	\$55,100,000	\$59,452,900
(IV) Annual Budgeted Expenditures	\$33,060,000	\$35,671,740

*Source: CPI, October 2019, Consumer Price Index for All Urban Consumers (CPI-U)
<https://data.bls.gov/timeseries/CUUR0000SA0>