The Surplus Lines (C) Task Force met in Austin, TX, Dec. 7, 2019. The following Task Force members participated: James J. Donelon, Chair, and Stewart Guerin (LA); Al Redmer Jr., Vice Chair (MD); Lori K. Wing-Heier, represented by Michael Ricker (AK); Michael Conway represented by Rolf Kaumann (CO); Colin M. Hayashida represented by Paul Yuen (HA); Robert H. Muriel represented by Patrick Hyde (IL); Nancy G. Atkins represented by John Melvin (KY); Mike Causey represented by Fred Fuller (NC); Marlene Caride represented by Philip Gemnace (NJ); Glen Mulready represented by Buddy Combs (OK); Elizabeth Kelleher Dwyer represented by Beth Vollucci (RI); Raymond G. Farmer represented by Lee Hill (SC); Larry Deiter represented by Johanna Nickelson (SD); Mike Kreidler represented by Jeff Baughman (WA); James A. Dodrill represented by Greg Elam (WV); and Jeff Rude represented by Donna Stewart (WY). Also participating was: Scott Greenberg (AZ); and Robert Wake (ME).

1. **Adopted its Summer National Meeting Minutes**

Mr. Fuller made a motion, seconded by Commissioner Redmer, to adopt the Task Force’s Aug. 3 minutes ([see NAIC Proceedings – Summer 2019, Surplus Lines (C) Task Force](#)). The motion passed unanimously.

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

Mr. Guerin reported that the Surplus Lines (C) Working Group met Sep. 26 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings.

During the conference call, the Working Group heard a summary of five applications for admission to the Quarterly Listing of Alien Insurers. All five of the applying companies were discussed, and four companies were admitted to the Oct. 1 edition of the listing.

Ms. Stewart made a motion, seconded by Commissioner Redmer, to adopt the report of the Surplus Lines (C) Working Group. The motion passed unanimously.

3. **Heard Comments on an Exposure of a Blanks Proposal Regarding Home State Direct Premiums Written**

Commissioner Donelon summarized the background on a blanks proposal to add a new column to Schedule T within the Property/Casualty (P/C) financial blank. Specifically, this new section would provide Home State direct premiums written. The blanks proposal was exposed for a 45-day public comment period ending Oct. 10. During the exposure period, comment letters were received from three interested parties.

Commissioner Donelon said the overall intent of the proposal is to provide a means for insurance departments to arrive at an estimate of surplus lines premium tax dollars due to their states by applying the state surplus lines tax rate to the direct premiums written as would be reported on a home state basis. He said there is a general understanding that this is not a perfect solution to the surplus lines tax reconciliation issues experienced by several state insurance departments. He added that the proposal does provide the states with a starting point to begin the process of tax reconciliation. This issue came to the Task Force’s attention due to inquiries received by NAIC staff from state insurance departments seeking assistance in surplus lines tax reconciliation.

Commissioner Donelon invited Task Force members to provide comments.

Ms. Nickelson said the difference between home state premium and risk state premium makes it difficult to tie back to one another. She said it would be helpful if brokers and companies would report on a home state basis as it would benefit audit practices.

Commissioner Redmer said he sees only an incremental benefit from implementing this approach, and he believes that the burden placed on industry would not prove worthwhile. He suggested fine tuning the approach.
David Kodama (American Property Casualty Insurance Association—APCIA) said a key concern from his comment letter related to the precedent, which would be set by using the financial statements to impose a responsibility on surplus lines insurance companies, is that it is not a statutory duty.

Brady Kelley (Wholesale & Specialty Insurance Association—WSIA) said he would like a reasonable method of estimating premium tax, but he thinks that the proposal may be an imperfect solution, as the company versus broker reporting will never match. He said driving this type of change in the industry would likely be troublesome. He said an alternative solution that is more reasonable may be developed with additional time.

Mr. Kodama said this proposal would not only place obligations on the insurance industry, but it would also require a commitment of additional resources from state insurance regulators at state insurance departments to review the policy level detail. He is unsure whether an actual benefit would be achieved. He said that the APCIA would remain committed to finding an alternative solution.

Ms. Nickelson said that receiving the home state premium on Schedule T would allow state insurance regulators a premium amount to compare to broker reported premium, as both would be prepared on the same basis.

Mr. Kodama said the broker is the regulated entity in the surplus lines transaction, and theirs is the statutory duty to bill, collect and remit premium taxes. He said the proposal attempts to add the insurance companies as a third party to the transaction.

Commissioner Donelon clarified that the proposal attempts to impose a statutory obligation on surplus lines insurance companies that are unregulated in all the states except for their state of domicile, while licensed surplus lines brokers are the regulated entities.

Mr. Wake said he is unsure why company reporting cannot be consistent with broker reporting since federal law provides a definition for identifying home state premium. He said the laws in his state require brokers to pay the tax and insurance companies to do thorough business reporting. He said the tax collecting authority in Maine, separate from the insurance department, has said receiving the home state premium would provide a definite benefit.

Mr. Kelley said that although it would be possible for companies to collect home state premium data, it would be difficult to accurately compare to broker reported data.

Mr. Kodama said that home state identification is not a straightforward process; and to assure consistency, new process rules would need to be created.

Commissioner Donelon said if there is inconsistency in identifying a home state, it points to a need for new rules or a model law for brokers.

Ms. Stewart added that state insurance regulators have updated their systems, statutes and procedures to recognize a home state, but many insurance companies have not.

Mr. Kelley said that the distinction of home state is not a concern of surplus lines carriers, as it does not influence risk underwriting.

Dan Maher (Excess Line Association of New York—ELANY) said surplus lines brokers have the legal duty to identify the home state, and should there be a disagreement in that identification with the company or another state, that would affect the ability to perfectly reconcile a broker versus company home state premium reporting.

Commissioner Donelon said that situations in which such disagreements occur are isolated, and the inability to have a perfect process should not prevent the creation of a tool that would allow for a more accurate accounting of premium taxes.

Ms. Nickelson said she recognizes that a perfect reconciliation between company and broker reporting will never be possible because of report timing and other factors. However, she said that it would provide a starting point for accessing whether additional investigation is necessary.

Mr. Kodama said the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) was written to streamline the surplus lines market, and adding additional responsibilities to surplus lines carriers would be contrary to the intent of the legislation.
Mr. Greenberg clarified that the proposal would require separate Schedule T reporting for home state premium. He noted that companies would need to discount reported premiums for the additional fees that brokers are obligated to collect, premium returns, and cancellations.

Commissioner Donelon asked whether, at this point, a vote to forward the proposal to the Blanks (E) Working Group for more discussion is appropriate.

Andy Daleo (NAIC) said that he had discussed with NAIC staff regarding the proposal, and he was told that no additional technical evaluation and discussion of the proposal would be completed by the Blanks (E) Working Group. He said that because of the technical nature of the proposal, all discussion would be limited to the Task Force.

Mr. Kodama asked whether the proposal involved a question of whether it was legal to compel insurance companies to report home state premium when it is not a statutory responsibility.

Mr. Kelley asked if there were alternative methods to assess whether accurate premiums were available, rather than imposing reporting duties on insurance companies that will have dramatic changes on current reporting requirements.

Commissioner Donelon said that based on the discussion, he views the proposal as a much more convoluted attempt to remedy an acknowledged problem faced by state insurance regulators. He added that the proposal is problematic and may be more burdensome to insurers than perceived, and it may not be legal. He also questioned what enforcement options would be available to the states other than the state of domicile to enforce compliance on nonadmitted carriers.

Commissioner Donelon asked if a postponement would be appropriate due to the amount of time spent on this issue.

Commissioner Redmer made a motion, seconded by Mr. Hill, to postpone a decision on the blanks proposal until the Task Force’s meeting at the Spring National Meeting. The motion passed unanimously.

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

Commissioner Donelon introduced Tim Mullen (NAIC) to provide an update on a referral from this Task Force to the Producer Licensing (D) Task Force regarding suggested modifications to the Producer Licensing Handbook to accommodate the adopted Guideline on Nonadmitted Accident and Health Coverages (#1860).

Mr. Mullen said the Producer Licensing (D) Task Force had discussed this referral at several meetings, and it had exposed the issue for comment in October. He said 11 letters were received with two primary concerns. The first concern was that the members of Producer Licensing (D) Task Force did not understand the scope of the accident & health (A&H) market in their states. The second concern was that existing state laws would not provide for the modifications to the Uniform Licensing Standards (ULS).

Mr. Mullen said that the ULS was adopted shortly after the adoption of the Producer Licensing Model Act (#218). The ULS provides for a high level of authority among NAIC member states, and it is not regarded as guidance, but as standards that the state market would need to develop and only then be modified. He said the Producer Licensing (D) Task Force would meet following this Task Force meeting; and although there would be additional discussion, he assumed that the referral would be premature at this time.

5. Received Adjustments to Exempt Commercial Purchaser Minimum Qualifications

Mr. Daleo stated that according to the directive within the Nonadmitted section of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the minimum qualifying amounts for three categories of Exempt Commercial Purchaser requires adjustment every five years. The Dodd-Frank Act legislation does not provide guidance on how these adjustments are to be carried out. As a result, back in 2014, the Task Force determined that the September Consumer Price Index CPI) would be used for the five-year period beginning Jan. 1. The last adjustment the Task Force made was in September 2014 for the period beginning Jan. 1, 2015. He said within Section 527 of the Dodd-Frank Act, the qualifying amounts in subclauses (I), (II) and (IV) are to be adjusted effective “each fifth January 1 based on the CPI for all urban consumers.”

The percentage change calculation and adjusted minimum amounts for the categories are in your materials, and they reflect a 7.9% rise. At the 2024 Fall National Meeting, Mr. Daleo will present a similar adjustment.
Commissioner Donelon said that a copy of the adjustments would be posted on the Task Force webpage.

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