Draft date: 12/14/22

2022 Fall National Meeting
Tampa, Florida

FINANCIAL CONDITION (E) COMMITTEE
Thursday, December 15, 2022
1:30 – 2:00 p.m. (ET)
JW Marriott—Tampa Bay Ballroom 5–9—Level 4

ROLL CALL

Scott A. White, Chair	Virginia	Chlora Lindley-Myers	Missouri
Elizabeth Kelleher Dwyer, Vice Chair	Rhode Island	Marlene Caride	New Jersey
Michael Conway	Colorado	Adrienne A. Harris	New York
David Altmaier	Florida	Michael Wise	South Carolina
Doug Ommen	Iowa	Cassie Brown	Texas
Timothy N. Schott	Maine	Nathan Houdek	Wisconsin
Grace Arnold	Minnesota	Jeff Rude	Wyoming
Mike Chaney	Mississippi		

NAIC Support Staff: Dan Daveline/Julie Gann/Bruce Jenson

AGENDA

1. Consider Adoption of its Nov. 15 and Summer National Meeting Minutes —*Commissioner Scott A. White (VA)* — Attachment One

2. Consider Adoption of its Task Force and Working Group Reports —*Commissioner Scott A. White (VA)*
   A. Accounting Practices and Procedures (E) Task Force — Attachment Two
   B. Capital Adequacy (E) Task Force — Attachment Three
   C. Examination Oversight (E) Task Force — Attachment Four
   D. Financial Stability (E) Task Force — Attachment Five
   E. Receivership and Insolvency (E) Task Force — Attachment Six
   F. Reinsurance (E) Task Force — Attachment Seven
   G. Risk Retention Group (E) Task Force — Attachment Eight
   H. Valuation of Securities (E) Task Force — Attachment Nine
   I. Group Solvency Issues (E) Working Group — Attachment Ten
   J. Mortgage Guaranty (E) Insurance Working Group — Attachment Eleven
   K. NAIC/American Institute of Certified Public Accountants (AICPA) (E) Working Group — Attachment Twelve
   L. National Treatment and Coordination (E) Working Group — Attachment Thirteen
   M. Restructuring Mechanisms (E) Subgroup — Attachment Fourteen
   N. Risk-Focused Surveillance (E) Working Group — Attachment Fifteen

3. Hear Presentation from National Conference of Insurance Guaranty Funds (NCIGF) Regarding Background on Cybersecurity Coverage Considerations —*Barbara Cox and Roger Schmelzer (NCIGF)*

4. Consider Adoption of a Request for NAIC Model Law Development to Amend the *Property and Casualty Insurance Guaranty Association Model Act* (#540)—*Kevin Baldwin (IL)* — Attachment Sixteen

5. *Consider Adoption of* Qualified Jurisdictions & Reciprocal Jurisdictions—Bob Wake *(ME)* — Attachment Seventeen

6. Overview and Update on Interest Maintenance Reserve—*Dale Bruggeman (OH)* — Attachment Eighteen

7. Discuss Any Other Matters Brought Before the Committee—*Commissioner Scott A. White (VA)*

8. Adjournment

Draft: 11/28/22

Financial Condition (E) Committee
Virtual Meeting
November 15, 2022

The Financial Condition (E) Committee met Nov. 15, 2022. The following Committee members participated: Scott A. White, Chair (VA); Elizabeth Kelleher Dwyer, Vice Chair (RI); Michael Conway represented by Rolf Kaumann (CO); David Altmaier represented by Chris Struk (FL); Doug Ommen represented by Carrie Mears (IA); Timothy N. Schott and Vanessa Sullivan (ME); Grace Arnold represented by Kathleen Orth (MN); Chlora Lindley-Myers and John Rehagen (MO); Mike Chaney represented by David Browning (MS); Marlene Caride (NJ); Adrienne A. Harris represented by Bob Kasinow (NY); Michael Wise represented by Tom Baldwin (SC); Cassie Brown represented by Jamie Walker (TX); Nathan Houdek and Amy Malm (WI); and Jeff Rude (WY). Also participating were: Kim Hudson (CA); James J. Donelon (LA); and Pat Gosselin (NH).

1. Adopted a Pre-Receivership Memorandum of Understanding

Commissioner Donelon reported that the Receivership and Insolvency (E) Task Force and its Receivership Law (E) Working Group have developed a proposal that was originally presented to the NAIC by the National Conference of Insurance Guaranty Funds (NCIGF) related to pre-liquidation coordination and information sharing. He stated that the original proposal recommended either various model law changes or the use of a memorandum of understanding to provide the legal ability to share information between receivers and guaranty funds during the process of planning in advance of a liquidation of an insurer. Commissioner Donelon reported that the memorandum of understanding was the option that members of the Working Group preferred. He said that it was an optional tool that can be customized to the unique circumstances of a liquidation. Commissioner Donelon noted that it is applicable to property/casualty (P/C) liquidations and was not drafted for life or health insolvencies as the National Organization of Life and Health Guaranty Associations (NOLHGA) has indicated it has mechanisms that it has used successfully for coordination in pre-liquidation planning of life and health insurers.

Commissioner Donelon stated that the Receivership Law (E) Working Group worked collaboratively with the NCIGF to finalize the memorandum. He reported that it was released for public comment and that no comments on the content of the memorandum were received. The Working Group and the Task Force subsequently adopted the memorandum without any objections. Commissioner Donelon indicated that once finally adopted, referrals would be sent to the appropriate NAIC working groups that maintain analysis and examination handbooks to request they include a reference and description of the memorandum within the handbooks' pre-receivership guidance.

Commissioner Donelon closed by noting that the memorandum is a valuable tool that furthers the collaborative efforts between the state receivers and guaranty funds to improve the receivership process and to ultimately minimize delays that affect guaranty funds' ability to timely assume their duties to protect policyholders and claimants.

Roger H. Schmelzer (NCIGF) stated that the NCIGF is committed to making this process work, and he thanked the following for their work: the Committee: Commissioner Donelon; the Receivership and Insolvency (E) Task Force; and Kevin Baldwin, co=-chair of the Receivership Law (E) Working Group.

Kaumann made a motion, seconded by Commissioner Caride, to adopt the pre-receivership memorandum of understanding (Attachment One-A). The motion passed unanimously.

2. Adopt its 2023 Proposed Charges

Commissioner White noted that the Committee had previously exposed its 2023 proposed charges for a 30-day public comment period and received one comment letter, which would be discussed. He described some of the other more significant changes to the charges. Specifically, White referenced the charges of the Valuation Analysis (E) Working Group, which on the face appeared to have several changes, but most were more clarifying in nature. This included collapsing its two first charges to remove any unnecessary redundancy. Commissioner White noted the updated charges also reflect appropriately that the Working Group has been reviewing *Actuarial Guideline LI—The Application of Asset Adequacy Testing to Long-Term Care Insurance Reserves* (AG 51) files for some time and include the newly adopted *Actuarial Guideline LIII—Application of the Valuation Manual for Testing the Adequacy of Life Insurer Reserves* (AG 53), which was largely the result of conversations leading up to the development of the 13 considerations related to, but not exclusively for, private equity. Other changes are to further simplify and clarify what is occurring now versus the origins of Valuation Analysis (E) Working Group and how things have had to evolve to address its purpose, which is to address practical issues and questions and outliers of principle-based reserving (PBR).

Commissioner White also noted that the Financial Stability (E) Task Force and the Macroprudential (E) Working Group charges were being updated to reflect a settling of the roles of these two groups. He noted that these groups have been extremely busy this past year, but the long-term purpose of both is becoming clearer, and the charges of the Task Force are being simplified to reflect that reality.

Commissioner White noted that the one comment letter received was related to a proposed change to the Accounting Practices and Procedures (E) Task Force charges. A couple members of the industry suggested an objective of less duplication in the annual statement blank. More specifically, the language resulted from a recommendation from the Blanks (E) Working Group chair and a few other members of the Working Group who were willing to meet with those parties and develop language to address their request. Commissioner White said the comment letter suggested more changes were needed but noted he is not inclined to make the changes unless supported by the chair of the Blanks (E) Working Group, Pat Gosselin.

Tip Tipton (Thrivent) stated his appreciation for the time and effort that leadership of the Blanks (E) Working Group had provided to himself and Joe Zolecki (Blue Cross Blue Shield Association—BCBSA) in drafting a charge. Tipton said that when they spoke to that leadership team, they felt like this proposed charge was going in the right direction. However, he said that they did have a few minor edits. Tipton noted excitement about the opportunity to highlight potential redundancy and to optimize the data that state insurance regulators received from the industry. Zolecki noted appreciation for the draft charge to make the data as effective as possible, noting redundancy may not be the correct word. He emphasized getting state insurance regulators the materials they need but initially tackling some of the low-hanging fruit, like eliminating some of the quality improvement information in Part 3 of the Supplemental Health Insurance Exhibit. The idea is to find areas such as these where information could be consolidated. Zolecki noted as an example state supplemental filings noting a project on the life side 10–15 years prior. Commissioner White noted that conceptually all agree that if there are areas where burdensome duplicative reporting can be eliminated, that should be considered. Commissioner White said he believes they had the support of the Blanks Working (E) Group to work through that issue in the coming year. Commissioner White asked Gosselin to provide a recommendation based upon a review of the proposed language from interested parties. Gosselin stated support for some but not all the suggestions from the interested parties and would accept the following revised language:

A. Coordinate with the applicable task forces and working groups as needed to avoid duplication of reporting within the annual and quarterly statement blanks.

B. Consider proposals presented that would address duplication in reporting; eliminate data elements, financial schedules and disclosures that are no longer needed; and coordinate with other NAIC task forces and working groups if applicable, to ensure revised reporting still meets the needs of regulators.

Tipton stated support for the revised charge proposed by Gosselin. Birny Birnbaum (Center for Economic Justice—CEJ) suggested combining some of the collective language of the two bullets. He also suggested keeping the original proposed language and rejecting the interested parties' suggested changes. Gosselin disagreed with combining the two because the first charge deals specifically with proposals from other NAIC groups and reminded meeting participants that the Blanks (E) Working Group is not a policy-making group. Gosselin also noted the other suggestions have some merit as they clarify how the Blanks Working Group process works and members have already tried to start addressing the request by modifying the proposal form to add a new data element. Hudson noted as a member of Blanks Working (E) Group, they support the recommendations from Gosselin. Brendan Bridgeland (Center for Insurance Research—CIR) stated consumers or consumer groups often use elements of data from the annual statement and stated support for Birnbaum's recommendation. Bridgeland stated support for removing redundancies but noted hope for the opportunity to comment on each of these proposals from a consumer perspective before they are adopted from a consumer perspective. Acting Superintendent Schott stated support for Gosselin's proposal.

Acting Superintendent Schott made a motion, seconded by Mears, to modify the Blanks (E) Working Group charge with this proposal. The motion passed unanimously.

Acting Superintendent Schott made a motion, seconded by Commissioner Rude, to adopt the Committee's 2023 proposed charges with the revision made to the Blanks (E) Working Group (Attachment One-B). The motion passed unanimously.

Having no further business, the Financial Condition (E) Committee adjourned.

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Pending Final Adoption

Draft: 8/16/22

Financial Condition (E) Committee
Portland, Oregon
August 12, 2022

The Financial Condition (E) Committee met in Portland, OR, Aug. 12, 2022. The following Committee members participated: Scott A. White, Chair (VA); Elizabeth Kelleher Dwyer, Vice Chair (RI); Michael Conway represented by Rolf Kaumann (CO); David Altmaier (FL); Doug Ommen (IA); Timothy N. Schott and Vanessa Sullivan (ME); Grace Arnold represented by Kathleen Orth (MN); Chlora Lindley-Myers and John Rehagen (MO); Mike Chaney represented by David Browning (MS); Marlene Caride (NJ); Adrienne A. Harris represented by Bob Kasinow (NY); Michael Wise (SC); Cassie Brown represented by Jamie Walker (TX); Nathan Houdek and Amy Malm (WI); and Jeff Rude (WY). Also participating was: Dale Bruggeman (OH).

1. Adopted its July 21, May 20, and Spring National Meeting Minutes

The Committee met July 21 and took the following action: 1) adopted a Request for NAIC Model Law Development to amend the *Property and Casualty Insurance Guaranty Association Model Act* (#540); 2) adopted a document entitled of *Regulatory Considerations Applicable to (But Not Exclusive to) Private Equity (PE) Insurers*; and 3) adopted the *NAIC List of Jurisdictions that Recognize and Accept the Group Capital Calculation (GCC)*. During its May 20 e-vote, the Committee adopted a memorandum of support for certain work performed related to various workstreams created because of the low interest rate environment and ongoing pressure from certain assets.

Commissioner Caride made a motion, seconded by Commissioner Ommen, to adopt the Committee's July 21 (Attachment One), May 20 (Attachment Two), and Spring National Meeting (*see NAIC Proceedings – Spring 2022, Financial Condition (E) Committee*) minutes. The motion passed unanimously.

2. Adopted the Reports of its Task Forces and Working Groups

Commissioner White stated that the Committee usually takes one motion to adopt the Committee's task force and working group reports that are considered technical, noncontroversial, and not significant by NAIC standards; i.e., they do not include model laws, model regulations, model guidelines, or items considered to be controversial. He reminded Committee members that subsequent to the Committee's adoption of its votes, all the technical items included within the reports adopted will be sent to the NAIC members for review shortly after the conclusion of the Summer National Meeting as part of the Financial Condition (E) Committee Technical Changes report. Pursuant to the Technical Changes report process previously adopted by the NAIC Plenary, the members will have 10 days to comment. Otherwise, the technical changes will be considered adopted by the NAIC and effective immediately. With respect to the task force and working group reports, Commissioner White asked the Committee: 1) whether there were any items that should be discussed further before being considered for adoption and sent to the Members for consideration as part of the Financial Condition (E) Committee Technical Changes report; and 2) whether there were other issues not up for adoption that are currently being considered by task forces or workings groups reporting to this Committee that require further discussion. The response to both questions was no.

In addition to presenting the reports for adoption, Commissioner White also noted that the Financial Analysis (E) Working Group met July 22, July 6, June 29, and June 15 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities, or individuals) of the NAIC Policy Statement on Open Meetings, to discuss letter responses and financial results. Additionally, the Valuation Analysis (E) Working Group met Aug. 9, March 23, and Feb. 8 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities, or individuals) of the NAIC Policy Statement on Open Meetings, to discuss valuation items related to specific companies

Pending Final Adoption

Commissioner Caride made a motion, seconded by Ms. Malm, to adopt the following task force and working group reports: Accounting Practices and Procedures (E) Task Force; Capital Adequacy (E) Task Force; Examination Oversight (E) Task Force; Financial Stability (E) Task Force; Receivership and Insolvency (E) Task Force; Reinsurance (E) Task Force; Valuation of Securities (E) Task Force; Group Capital Calculation (E) Working Group (Attachment Three); Group Solvency Issues (E) Working Group (Attachment Four); Mutual Recognition of Jurisdictions (E) Working Group (Attachment Five); and National Treatment and Coordination (E) Working Group (Attachment Six). The motion passed.

3. Adopted Agenda Item 2021-21 and Blanks Proposal 2021-22BWG

Mr. Bruggeman said that included in the materials were agenda item 2021-21: Related Party Reporting, which adds reporting codes to identify related party transactions in several investment schedules, from the Statutory Accounting Principles (E) Working Group and blanks proposal 2021-22BWG from the Blanks (E) Working Group. Both proposals were previously summarized to the Committee during its July 21 meeting. They had now been unanimously adopted by the Accounting Practices and Procedures (E) Task Force and were ready for the Committee's consideration.

Ms. Walker made a motion, seconded by Mr. Kaumann, to adopt agenda item 2021-21: Related Party Reporting and blanks proposal 2021-22BWG (Attachment Seven). The motion passed.

4. Heard a Presentation from the Federal Reserve on their Supervisory Framework

Matt Walker (Federal Reserve Board—FRB) provided a summary of some of the updates the FRB has made recently to its supervisory framework (Attachment Eight) as it relates to insurance groups. The summary included discussion of how the revised framework recognizes differences with the banking industry and more specifically the role of state insurance regulators and the role of the FRB in such situations where a depository institution is also included within the holding company structure. In particular, the new guidance emphasizes the importance of collaborating with state insurance regulators and describes how FRB supervisory teams do this. The summary also discussed how the guidance distinguishes between complex groups and non-complex groups and how the guidance for each differs. Finally, the update describes how supervisory teams coordinate with state insurance regulators in order to minimize supervisory burden without sacrificing effective oversight.

Having no further business, the Financial Condition (E) Committee adjourned.

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NAIC | NATIONAL MEETING **FALL 2022**

2022 Fall National Meeting
Tampa, Florida`

ACCOUNTING PRACTICES AND PROCEDURES (E) TASK FORCE
Wednesday, December 14, 2022
11:00 a.m. – 12:00 p.m. ET

Meeting Summary Report

The Accounting Practices and Procedures (E) Task Force met Dec. 14, 2022. During this meeting, the Task Force:

1. Adopted its Summer National Meeting minutes.

2. Adopted the report of the Statutory Accounting Principles (E) Working Group, which met Dec. 13 and took the following action:
   A. Adopted its Nov. 16 minutes, which included the following action:
      i. Exposed, as new statutory accounting principle (SAP) concepts, a revised *Statement of Statutory Accounting Principles* (*SSAP) No. 26R—Bonds, SSAP No. 43R—Loan-Backed and Structured Securities*, and revisions to other SSAPs to reflect updated proposed guidance under the principles-based bond project for a public comment period ending Feb. 23, 2023.

      ii. Exposed revisions to *Interpretation (INT) 22-02: Third Quarter 2022 Reporting of the Inflation Reduction Act – Corporate Alternative Minimum Tax* to extend the effective date to include year-end 2022 and first-quarter 2023 with an additional disclosure regarding applicable entities for a public comment period ending Dec. 1. This INT provides an exception related to accounting impacts of the federal Inflation Reduction Act.

      iii. Received comments on negative interest maintenance reserve (IMR) in regard to bonds sales in the current rising interest rate environment.

   B. Adopted its Oct. 24 minutes, which included the following action:
      i. Adopted INT 22-02, which includes proposed changes for new required disclosures and allows a subsequent event exception but does not require reporting changes for third-quarter 2022 as reasonable estimates cannot be made

      ii. Discussed INT 22-03 and planned further discussion during its Nov. 16 meeting.

   C. Adopted its Oct. 6, minutes, which included the following action:
      i. Exposed INT 22-02 to include accounting exceptions to the federal Inflation Reduction Act for third-quarter 2022, with required disclosures.

      ii. Exposed INT 22-03 to address fourth-quarter 2022 and interim 2023 accounting of the federal Inflation Reduction Act.

D. Adopted its Summer National Meeting minutes.

E. Adopted the following clarifications to statutory accounting guidance:
   i. Revisions clarify that leasehold improvements shall be immediately expensed upon lease termination unless limited exceptions are met. (Ref #2021-25)

   ii. Revisions identify foreign open-end investment funds as a fund in which ownership percentage is not deemed to reflect control unless the entity actually controls with the power to direct the underlying company. (Ref #2022-13)

   iii. Revisions reject *Accounting Standards Update (ASU) 2022-02, Troubled Debt Restructurings and Vintage Disclosures* and identify that retained guidance reflects superseded U.S. generally accepted accounted principles (GAAP). (Ref #2022-10)

   iv. Revisions adopt with modification derivative guidance from *ASU 2017-12, Derivatives and Hedging* and *ASU 2022-01, Fair Value Hedging – Portfolio Layer* to include guidance for the portfolio layer method and partial-term hedges. These revisions are effective Jan. 1, 2023, with early adoption permitted. (Ref #2022-09)

   v. *INT 22-02: Third Quarter 2022 through First Quarter 2023 Reporting of the Inflation Reduction Act – Corporate Alternative Minimum Tax*: Revisions extend INT 22-02 for Dec. 31, 2022, and first-quarter 2023 statutory financial statements. This INT provides an exception that does not require entities to assess valuation allowance and deferred tax asset impacts from the federal Inflation Reduction Act for third-quarter 2022 through first-quarter 2023 and provides subsequent event exceptions.

F. Exposed the following revisions to statutory accounting for a public comment period ending Feb. 10, 2023:
   i. Exposure proposes a new or revised *SSAP No. 93—Low-Income Housing Tax Property Investments* to expand current guidance to capture all tax equity investments that qualify and provide general federal business tax credit or state premium tax credits. (Ref #2022-14)

   ii. Re-exposure of an issue paper and SSAP changes revising the definition of a liability to be consistent with Financial Accounting Standards Boards (FASB) Concepts Statement and directing NAIC staff to collaborate on proposed clarifying language. (Ref #2022-01)

   iii. Exposure of the agenda item on interest maintenance reserve (IMR) guidance, focusing on negative IMR. Requested industry to provide potential guardrails and details on unique considerations. Directed NAIC staff to coordinate a joint regulator discussion with the Life Actuarial (A) Task Force and to develop a memorandum regarding considerations for state insurance regulators. (Ref #2022-19)

   iv. Revisions clarify that an asset pledged as collateral must qualify as an admitted invested asset for a collateral loan to be admitted. (Ref #2022-11)

v. Revisions clarify that any invested asset held by a reporting entity that is issued by an affiliated entity or includes the obligations of an affiliated entity is an affiliated investment. (Ref #2022-15)

vi. Exposure proposes additional disclosures for interest income due and paid-in-kind (PIK) interest included in current principal balances. Also supports a blanks proposal to data-capture the disclosure. (Ref #2022-17)

vii. Exposure proposes to adopt with modification *ASU 2022-03, Fair Value Measurement of Equity Securities Subject to Contractual Sale*. (Ref #2022-16)

viii. Exposure proposes to reject *ASU 2022-04, Disclosure of Supplier Finance Program Obligations* for statutory accounting. (Ref #2022-18)

ix. Exposure proposes a new issue paper to detail adopted revisions from the review of *ASU 2017-12, Derivatives and Hedging* and *2022-01 Fair Value Hedging – Portfolio Layer Method*. (Ref #2017-33)

x. Exposure details proposed reporting changes for bonds in response to the principles-based bond project. In addition to a new schedule and granular reporting lines, the exposure includes proposed revisions to other schedules and instructions that reference bond reporting. Exposure also included a revised issue paper to detail current discussions and decisions on the bond project. (Ref #2019-21)

xi. Re-exposure nullifies *INT 03-02: Modification to an Existing Intercompany Pooling Arrangement* as it is inconsistent with other related party guidance, with comments requested on specific items. (Ref #2022-12)

G. Received an update on the status of items referred by the Macroprudential (E) Working Group.

H. Received an update on U.S. GAAP exposures, noting that pending items will be addressed during the normal maintenance process.

3. Adopted the report of the Blanks (E) Working Group, which met Nov. 17 and took the following action:
   A. Adopted its June 8 and May 25 minutes, which included the following action:
      i. Adopted its March 29 minutes.

      ii. Deferred proposal 2021-18BWG.

      iii. Adopted its editorial listing and the following proposals:
         a. 2021-22BWG – Reporting of related party direct loans in the investment schedules.
         b. 2022-01BWG – Add general interrogatories regarding cryptocurrency as payment of premiums.
         c. 2022-02BWG – Add electronic-only columns in Schedule D, Part 6, Section 1; 2022-03BWG, line correction in Quarterly Part 1 – Loss Experience and Part 2 – Direct Premiums Written.

d. 2022-04BWG – Add more granularity of lines in the Exhibit of Premiums and Losses (State Page) – Other Liability.
e. 2022-05BWG – Add status data points in Schedule T footnote; 2022-06BWG – Revise health annual statement test language.
f. 2022-07BWG – Health actuarial opinion instructions modification.
g. 2022-08BWG – Modification of instructions in the property/casualty (P/C) actuarial opinions.
h. 2022-09BWG – Life/fraternal VM-20, Requirements for Principle-Based Reserves for Life Products, changes.
i. 2022-10BWG – Schedule T, state pages, and the Accident and Health (A&H) Policy Experience Exhibit changes to clarify guidance for reporting premium adjustments by jurisdiction.
j. 2022-11BWG – Update the life/fraternal blank asset valuation reserve (AVR) factors to correspond with the adopted risk-based capital (RBC) factors for the expanded bond designation categories.
k. 2022-13BWG – Modify the life blank Five-Year Historical Data questions 68 and 69 to reference group comprehensive and questions 70 and 71 to reflect the inclusion of all health lines of business other than group comprehensive.

iv. Received the Property and Casualty Risk-Based Capital (E) Working Group memorandum.

B. Adopted its editorial listing and the following proposals:
i. 2022-12BWG – Combine the Health Analysis of Operations by Lines of Business Supplement page and the Health Care Receivable Supplement pages (Exhibits 3 and 3A) into one supplement filing set for health blank pages filed as a supplement by life/fraternal companies.

ii. 2022-19BWG Modified – Modify the Life Insurance (State Page) to include the line of business detail reported on the Analysis of Operations by Lines of Business pages. Adds definitions for life and annuity products to the lines of business definitions in the health appendix.

C. Exposed six new proposals for a public comment period ending Feb 1, 2023.

D. Approved adding language to the blanks proposal form to address duplication of reporting.

E. Reviewed its 2023 proposed charges adopted by the Financial Condition (E) Committee.

F. Received a Statutory Accounting Principles (E) Working Group memorandum referencing INT 22-02*: Third Quarter 2022 Reporting of the Inflation Reduction Act - Corporate Alternative Minimum Tax*.

G. Approved the state filing checklists.

NATIONAL MEETING
FALL 2022

2022 Fall National Meeting
Tampa, Florida

CAPITAL ADEQUACY (E) TASK FORCE
Wednesday, December 14, 2022
4:00 – 5:00 p.m. ET

Meeting Summary Report

The Capital Adequacy (E) Task Force met Dec. 14, 2022. During this meeting, the Task Force:

1. Adopted its Nov. 18, Sept. 22, and Summer National Meeting minutes. During these meetings, the Task Force took the following action:
   A. Adopted proposal 2022-04-CR (2013-2021 Wildfire Event Lists).
   B. Adopted the Jan. 1 – Sept. 30, 2022, U.S. and non-U.S. catastrophe risk event lists.
   C. Adopted its 2023 proposed charges.
   D. Exposed proposal 2022-09-CA (Revised Affiliated Investments Structures and Instructions) for a 60-day public comment period ending Oct. 10.

2. Adopted the report of the Health Risk-Based Capital (E) Working Group, which met Dec. 12 and took the following action:
   A. Adopted its Sept. 9 minutes, which included the following action:
      i. Adopted its Summer National Meeting Minutes.
      ii. Exposed proposal 2022-10-H (Preferred Stock Instructions) and proposal 2022-11-H (Analysis of Operations – Underwriting Risk Experience Fluctuation page) for a 30-day public comment period ending Oct. 11.
      iii. Discussed the next steps for the H2-Underwriting Risk Review with the American Academy of Actuaries (Academy).
      iv. Exposed a request for input regarding health runoff companies for a 30-day public comment period ending Oct. 11.
   B. Adopted proposal 2022-10-H (Preferred Stock Instructions) for year-end 2023.
   C. Adopted proposal 2022-11-H (Underwriting Risk – Analysis of Operations) for year-end 2023.
   D. Adopted revisions to the health risk-based capital (RBC) working agenda.
   E. Heard a presentation from the Academy on the H2 – Underwriting Risk Component.
   F. Exposed a draft response letter to the Capital Adequacy (E) Task Force regarding health runoff companies.
   G. Received an update on the Excessive Growth Charge Ad Hoc Group and the Health Test Ad Hoc Group.

3. Adopted the report of the Life Risk-Based Capital (E) Working Group, which met Dec. 13 and took the following action:
   A. Adopted its Oct. 20, Oct. 7, and Summer National Meeting minutes, which included the following action:
      i. Discussed the Academy's C-2 Mortality Risk Work Group's instruction supplement.
      ii. Discussed the status of mortgage and reinsurance proposals.

iii. Discussed proposed revisions to CM6 and CM7 mortgage RBC factors and formula.
iv. Discussed reinsurance and comfort trusts.
v. Adopted its June 17, June 3, April 22, April 7, and Spring National Meeting minutes.
vi. Adopted the 2022 life and fraternal RBC newsletter.
vii. Adopted the 2021 life and fraternal RBC statistics.
viii. Discussed affiliated investments.
ix. Adopted its working agenda.

B. Discussed C-2 mortality risk guidance.
C. Discussed runoff companies.

4. Adopted the report of the Property and Casualty Risk-Based Capital (E) Working Group, which met Dec. 13 and took the following action:
   A. Adopted its Nov. 15 and Summer National Meeting minutes, which included the following action:
      i. Adopted the Jan. 1 – Sept. 30 U.S. and non-U.S. catastrophe risk event lists.
   B. Adopted the report of the Catastrophe Risk (E) Subgroup, including its Nov. 15 and Sept. 26 minutes. During these meetings, the Subgroup took the following action:
      i. Adopted its Nov. 15 and Sept. 26 minutes.
      ii. Received a status update from its Catastrophe Model Technical Review Ad Hoc Group.
      iii. Discussed the wildfire peril impact analysis.
      iv. Heard a presentation from Verisk on its severe convective thunderstorm model.
   C. Adopted proposal 2022-07-9 (PR035 Line of Business), which the Working Group exposed for a 30-day public comment period ending Sept. 8.
   D. Discussed its 2023 working agenda.
   E. Heard an update on current property/casualty (P/C) RBC projects from the Academy.

5. Adopted the report of the Risk-Based Capital Investment Risk and Evaluation (E) Working Group, which met Dec. 14 and took the following action:
   A. Adopted its Summer National Meeting minutes.
   B. Adopted its working agenda.
   C. Heard a presentation from the Academy on collateralized loan obligations (CLOs).
   D. Received updates from the Valuation of Securities (E) Task Force and the Statutory Accounting Principles (E) Working Group.
   E. Discussed an interim proposal to address arbitrage.

6. Forwarded proposal 2022-09-CA (Revised Affiliated Investments Structure and Instructions) to the Blanks (E) Working Group and the Statutory Accounting Principles (E) Working Group for a 45-day comment period ending Jan. 28.

7. Adopted proposal 2022-10-H (Preferred Stock Instructions), which the Health Risk-Based Capital (E) Working Group exposed for a 30-day public comment period ending Oct. 11.

8. Adopted proposal 2022-11-H (Underwriting Risk – Analysis of Operations), which the Health Risk-Based Capital (E) Working Group exposed for a 30-day public comment period ending Oct. 11.

9. Adopted proposal 2022-07-P (PR035 Line of Business), which the Property and Casualty Risk-Based Capital (E) Working Group exposed for a 30-day public comment period ending Sept. 8.

10. Adopted proposal 2022-08-CR (Independent Model Review Instructions), which the Catastrophe Risk (E) Subgroup exposed for a 30-day public comment period ending Sept. 8.

11. Adopted its working agenda.

12. Exposed proposal 2022-13-CA (Health Premiums and Underwriting Risk Premium References) for a 45-day public comment period ending Jan. 28, 2023.

13. Discussed a referral from the Restructuring Mechanisms (E) Subgroup.

14. Received a referral on the risk assessment of structured securities and CLOs from the Valuation of Securities (E) Task Force.

NATIONAL MEETING
FALL 2022

2022 Fall National Meeting
Tampa, Florida

EXAMINATION OVERSIGHT (E) TASK FORCE
Wednesday, December 14, 2022
11:00 a.m. – 12:00 p.m. ET

Meeting Summary Report

The Examination Oversight (E) Task Force met Dec. 14, 2022. During this meeting, the Task Force:

1. Adopted its Sept. 30 and Summer National Meeting minutes. During these meetings, the Task Force took the following action:
   A. Adopted its 2023 proposed charges with revisions to the Information Technology (IT) Examination (E) Working Group charges to encourage coordination with the Cybersecurity (H) Working Group to monitor cybersecurity trends and develop guidance as necessary.

2. Adopted the report of the Electronic Workpaper (E) Working Group, which met Dec. 6, Oct. 6, and Sept. 14 in regulator-to-regulator session, pursuant to paragraph 4 (internal or administrative matters of the NAIC or any NAIC member) of the NAIC Policy Statement on Open Meetings.

3. Adopted the report of the Financial Analysis Solvency Tools (E) Working Group, which met Dec. 6 and Oct. 20. During these meetings, the Working Group took the following action:
   A. Adopted the following revisions to the *Financial Analysis Handbook*:
      i. Revisions to incorporate relevant elements from the Common Framework for the Supervision of Internationally Active Insurance Groups (ComFrame) into the analysis process.
      ii. Terrorism reinsurance guidance was removed from the *Solvency Monitoring Risk Alert* and incorporated into the Pricing/Underwriting Risk Repository – Property/Casualty (P/C).
      iii. Revisions to the Credit Risk Repository to include information about the fiduciary responsibility of agents and brokers for trust accounts, as well as procedures that the analyst could consider if there are concerns in this area.
      iv. Revisions to the Strategic Risk Repository to include additional considerations for analysts, such as obtaining a five-year business plan and projections from the insurer and assessing future capital funding, growth expectations, and profitability.
      v. Revisions to the Introduction – Interstate Communication and Cooperation section of the Handbook to encourage state insurance regulator communication before a priority insurer is approved for redomestication.
      vi. Revisions to expand use of a combined risk assessment and/or Insurer Profile Summary (IPS) to all pool participants, even those domiciled in other states.
      vii. Revisions to no longer require a separate analysis worksheet or checklist for the lead and non-lead state where the review of Form F and the Corporate Governance Annual Disclosure (CGAD) is filed on a group basis when performing a holding company analysis.
      viii. A new procedure added in the Credit, Market, Liquidity, and Operational Risk Repositories for identifying material exposure to investments involving related parties along with qualitative procedures related to expertise, fee structure, and investment policies.

- ix. Revisions to the risk assessment clarify guidance regarding how the three branded risk assessment levels are defined. A new procedure in the Reputational Risk Repository for health insurers was added to assess the impact of the rating or changes in the rating on the insurer's reputation and strategic plans going forward.
- x. New guidance on complex assets was included in the Reserving Risk Repository – Life/Accident and Health (A&H)/Fraternal. New guidance was also included in the Statement of Actuarial Opinion Worksheet – Life/A&H/Fraternal regarding assumptions and sensitivity testing, asset adequacy testing (AAT) on high-yielding complex assets, and whether concerns exist in meeting asset adequacy requirements. Revisions also include a footnote explaining that additional guidance may be added in the future, as this is a new reporting requirement for annual 2022.

4. Adopted the report of the Financial Examiners Coordination (E) Working Group, which met Dec. 13 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities, or individuals) of the NAIC Policy Statement on Open Meetings.

5. Adopted the report of the Financial Examiners Handbook (E) Technical Group, which conducted an e-vote that concluded Nov. 15 and met Oct. 5. During these meetings, the Technical Group took the following action:
   - A. Adopted revisions to guidance within the *Financial Condition Examiners Handbook* (Handbook) related to:
     - i. Revisions to incorporate relevant elements from ComFrame into the exam process.
     - ii. Revisions to the Capital & Surplus Examination Repository to integrate the updated Own Risk and Summary Assessment (ORSA) guidance, including Capital Model Review Procedures, more directly into the exam process.
     - iii. Additional guidance to address regulatory concerns arising from the Financial Analysis (E) Working Group, including:
       - a. Terrorism reinsurance – Guidance in this area was added to the Handbook that was previously maintained in the *Solvency Monitoring Risk Alert*.
       - b. Uncollected premiums and agent balances – Guidance emphasizes the importance of understanding and evaluating affiliated relationships in monitoring the services provided by and receivable balances due from key agents and producers.
       - c. Monitoring of startup insurers – Guidance was added to evaluate the reasonableness of an insurer's business plan, projections, and strategy, and specifically, the projected timeline to profitability and the level of funding needed to meet targets.
     - iv. Revisions related to private equity issues intended to assist examiners in evaluating related party investment holdings, as well as asset adequacy of complex investments.
     - v. Revisions to Exhibit E to clarify expectations surrounding Audit Awareness Letters.

6. Adopted the report of the Information Technology (IT) Examination (E) Working Group, which met Nov. 18 and Oct. 13 and took the following action:
   - A. Adopted revisions to guidance within the *Financial Condition Examiners Handbook* related to:
     - i. Revisions to incorporate guidance for identifying and addressing IT prospective risks, and communicating such matters to the financial examiner.
     - ii. Revisions to highlight areas of importance when conducting an IT review of a company that heavily outsources IT functions to third parties.

iii. Updates to the Exhibit C Mapping document to include a new tab that maps Service Organization Control (SOC) 2 principles to existing Exhibit C procedures.

NATIONAL MEETING
FALL 2022

2022 Fall National Meeting
Tampa, Florida

JOINT MEETING OF THE FINANCIAL STABILITY (E) TASK FORCE
AND THE MACROPRUDENTIAL (E) WORKING GROUP
Tuesday, December 13, 2022
2:00 – 3:00 p.m.

Meeting Summary Report

The Financial Stability (E) Task Force met Dec. 13, 2022, in joint session with the Macroprudential (E) Working Group. During this meeting, the Task Force:

1. Adopted its Summer National Meeting minutes.

2. Adopted its Oct. 28 minutes, which included the following action:
   A. Adopted its 2023 proposed charges.
   B. Received an update on key initiatives.

3. Adopted the 2022 Liquidity Stress Testing Framework (LST Framework).

4. Received a Working Group update.

5. Heard an Update on Financial Stability Oversight Council Developments

6. Heard an international update, which included an update on the International Association of Insurance Supervisors' (IAIS's) Global Monitoring Exercise. The Global Monitoring Exercise includes the individual insurers monitoring exercise and the sector wide monitoring exercise with three more additional topics of interest: private equity, climate, and cyber.

NAIC NATIONAL MEETING
FALL 2022

2022 Fall National Meeting
Tampa, Florida

RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE
Wednesday, December 14, 2022
11:00 a.m. – 12:00 p.m.

Meeting Summary Report

The Receivership and Insolvency (E) Task Force met Dec. 14, 2022. During this meeting, the Task Force:

1. Adopted its Oct. 11 and Summer National Meeting minutes. During these meetings, the Task Force took the following action:
   A. Exposed a Request for NAIC Model Law Development to amend the *Property and Casualty Insurance Guaranty Association Model Act* (#540) for cybersecurity insurance.

2. Adopted a Request for NAIC Model Law Development to amend the *Property and Casualty Insurance Guaranty Association Model Act* (#540) for cybersecurity insurance.

3. Adopted the report of the Receiver's Handbook (E) Subgroup, which plans to meet in December. The drafting groups have continued to make progress on drafting revisions to the *Receiver's Handbook for Insurance Company Insolvencies.*

4. Adopted the report of the Receivership Law (E) Working Group, including its Nov. 7 and Sept. 14 minutes. During these meetings, the Working Group took the following action:
   A. Exposed and received comments on amendments to Model #540 for restructuring mechanisms. A drafting group was formed to consider the comments and make revisions to the proposed amendments.

5. Adopted the report of the Receivership Financial Analysis (E) Working Group. The Working Group will meet Dec. 14 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities, or individuals) of the NAIC Policy Statement on Open Meetings, to discuss companies in receivership and related topics.

6. Heard a report on the Receivers Uniform Data Standards (UDS) Ad Hoc Group. States are encouraged to participate in future technical discussions on future revisions to UDS.

7. Heard an update on international resolution activities. The International Association of Insurance Supervisors (IAIS) is developing an application paper on policyholder protection schemes. Further progress is anticipated in 2023. The Financial Stability Board (FSB) Plenary announced on Dec. 9 that it endorsed the Holistic Framework, and it has decided to discontinue the annual identification of G-SIIs. The Task Force discussed the results of the FSB's Targeted Jurisdictional Assessment. It agreed to work on a joint project with the Group Solvency Issues (E) Working Group to address results related to resolution planning.

Draft Pending Adoption

Draft: 11/28/22

Reinsurance (E) Task Force
Virtual Meeting *(in lieu of meeting at the 2022 Fall National Meeting*)
November 17, 2022

The Reinsurance (E) Task Force met Nov. 17, 2022. The following Task Force members participated: Chlora Lindley-Myers, Chair, represented by John Rehagen (MO); Chris Nicolopoulos, Vice Chair, represented by Pat Gosselin (NH); Lori K. Wing-Heier represented by David Phifer (AK); Alan McClain and Chris Irwin (AR); Ricardo Lara represented by Monica Macaluso (CA); Michael Conway represented by Rolf Kaumann (CO); Andrew N. Mais represented by Philip Barrett and Wanchin Chou (CT); Trinidad Navarro represented by Charles Santana (DE); David Altmaier represented by Virginia Christy (FL); Doug Ommen represented by Kevin Clark (IA); Amy L. Beard represented by Roy Eft (IN); Vicki Schmidt represented by Tish Becker (KS); James J. Donelon represented by Stewart Guerin (LA); Gary D. Anderson represented by Christopher Joyce (MA); Timothy N. Schott represented by Robert Wake (ME); Troy Downing represented by Steve Matthews (MT); Jon Godfread represented by Matt Fischer (ND); Eric Dunning represented by Lindsay Crawford (NE); Marlene Caride represented by John Tirado (NJ); Russell Toal represented by Patrick Zeller (NM); Adrienne A. Harris represented by Michael Campanelli (NY); Judith L. French represented by Dale Bruggeman (OH); Elizabeth Kelleher Dwyer represented by John Tudino (RI); Cassie Brown represented by Jamie Walker (TX); Jon Pike represented by Jake Garn (UT); Scott A. White represented by Edward Buyalos (VA); Kevin Gaffney represented by Dan Petterson and Heidi Rabtoy (VT); and Nathan Houdek represented by Mark McNabb (WI).

1. Adopted its Summer National Meeting Minutes

Macaluso made a motion, seconded by Gosselin, to adopt the Task Force's July 25 minutes (*see NAIC Proceedings – Summer 2022, Reinsurance (E) Task Force*). The motion passed unanimously.

2. Adopted the Report of the Reinsurance Financial Analysis (E) Working Group

Kaumann stated that the Working Group meets in regulator-to-regulator session pursuant to paragraph 3 (specific companies, entities, or individuals) of the NAIC Policy Statement on Open Meetings. He stated that the Working Group met Oct. 18, Sept. 6, and Aug. 31 to approve several certified and reciprocal jurisdiction reinsurers for passporting. He noted that the Working Group will meet Nov. 22 and in December.

Kaumann stated that the Working Group has now approved 40 reciprocal jurisdiction reinsurers for passporting. He noted that the list of passported reinsurers can be found on the Certified and Reciprocal Jurisdiction Reinsurer web page. He stated that NAIC staff have revised the web page to better meet the needs of state insurance regulators, industry, and other interested parties. He added that the reciprocal jurisdiction reinsurer list has been updated to include a new column that displays the period for which the minimum standards have been confirmed to have been met. Kaumann stated that NAIC staff have created a point-of-contact list to be included on that web page, which includes the single best contact for each state for any issues regarding reciprocal jurisdiction reinsurers and certified reinsurers. He requested that each state provide its point-of-contact person to NAIC staff if they have not already done so.

Kaumann made a motion, seconded by Phifer, to adopt the Working Group's report. The motion passed unanimously.

Draft Pending Adoption

3. Received a Status Report on the Reinsurance Activities of the Mutual Recognition of Jurisdictions (E) Working Group

Wake stated that the Working Group met Nov. 7 to reapprove the status of Bermuda, France, Germany, Ireland, Japan, Switzerland, and the United Kingdom (UK) as qualified jurisdictions and to reapprove Bermuda, Japan, and Switzerland as reciprocal jurisdictions. He stated that NAIC staff completed a due diligence review and provided a recommendation to the Working Group that the existing qualified jurisdictions and reciprocal jurisdictions not subject to either the *Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance* (EU Covered Agreement) or the *Bilateral Agreement Between the United States of America and the United Kingdom on Prudential Measures Regarding Insurance and Reinsurance* (UK Covered Agreement) should retain their status, and this recommendation was then adopted by the Working Group.

Zeller asked if Bermuda has been automatically reapproved for qualified and reciprocal jurisdiction status. Wake stated that Bermuda has been reapproved for both statuses for 2023. He noted that the Working Group will provide a memorandum to the Financial Condition (E) Committee, which was prepared by NAIC staff, that notes there is ongoing macroprudential work by multiple groups at the NAIC and that these factors are not unique to Bermuda. He concluded that there are no changes to any jurisdictions' statuses at this time.

4. Received a Status Report on the States' Implementation of the 2019 Revisions to Model #785 and Model #786

Dan Schelp (NAIC) stated that all 56 NAIC jurisdictions have adopted the 2019 revisions to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) and that all action had been completed prior to the Sept. 22 deadline from the Covered Agreements. 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 One).

Schelp noted that the Federal Insurance Office (FIO) had released its 2022 Federal Preemption Report on Sept. 30 and reported that there was no action regarding the preemption of any inconsistent state insurance measures. He added that the report stated that the FIO continues to monitor the status of state measures adopting and implementing Model #785 and Model #786 for consistency with the Covered Agreements and that he anticipates publishing a comprehensive update during 2023. He stated that the FIO had reached out to a small number of states and recommended minor revisions to their adopted credit for reinsurance law and regulation and asked that any state that is contacted by the FIO to provide this information to NAIC staff. Schelp noted that through discussions with the EU and the UK, some reinsurers had expressed concern about being recognized as reciprocal jurisdiction reinsurers and the timeliness of the recognition process. He emphasized that passing the law and regulation is only the first part of the process and that all the states need to take additional steps to timely implement Model #785 and Model #786. He recommended that to place uniformity around the review process, regardless of whether the reinsurer is seeking to be passported into other states, every state should send these reinsurers for review to the Reinsurance Financial Analysis (E) Working Group.

5. Received a Status Report on the States' Implementation of Model #787

Schelp stated that the *Term and Universal Life Insurance Reserve Financing Model Regulation* (#787) becomes an accreditation standard on Sept. 1, with enforcement beginning on Jan. 1, 2023. He noted that as of Oct. 27, 25 jurisdictions have adopted Model #787, with another eight jurisdictions with action under consideration. He noted that Model #787 mirrors *Actuarial Guideline XLVIII—Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation* (AG 48) and that under the accreditation standards, a state may meet the requirements through an administrative practice, such as an actuarial guideline. He stated that six states have advised NAIC staff that

Draft Pending Adoption

they will rely on AG 48, either through an insurance bulletin or through simple adoption of the NAIC's *Accounting Practices and Procedures Manual* (AP&P Manual). He added that if a state adopts Model #787, it also will need to adopt Section 5B(4) of Model #785. He stated that the map showing the current adoption status for Model #787 was included in the meeting materials (Attachment Two).

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

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NATIONAL MEETING
FALL 2022

RISK RETENTION GROUP (E) TASK FORCE

Meeting Summary Report

The Risk Retention Group (E) Task Force met Nov. 17, 2022. During this meeting, the Task Force:

1. Adopted its Oct. 5 minutes, which included the following actions:
   A. Adopted its April 19 minutes, which included the following actions:
      a. Exposed for 30 days the RRG Preliminary Memorandum, which is designed to be completed by a domiciliary state when a new risk retention group (RRG) is formed, and the Insurer Profile Summary (IPS) is not yet available. It can then be shared with non-domiciliary states in which the RRG is registering. The memorandum forms the basis of the IPS, and would be replaced by the IPS once the first annual statement filing is received.
      b. Discussed potential recommendations to the Financial Regulation Standards and Accreditation (F) Committee regarding the application of the group capital calculation (GCC) to risk retention groups (RRGs).
   B. Adopted the RRG Preliminary Memorandum.
   C. Exposed for 30 days a recommendation to the Financial Regulation Standards and Accreditation (F) Committee regarding the application of the GCC to RRGs.
   D. Exposed for 30 days a recommendation to the Financial Analysis Solvency Tools (E) Working Group to include RRG-specific guidance in the Financial Analysis Handbook when considering applicability of the GCC.

2. Adopted a recommendation to the Financial Regulation Standards and Accreditation (F) Committee regarding the application of the GCC to RRGs. The recommendation supports requiring the GCC filing for RRGs as long as the allowance for an exemption without first requiring an initial filing remains part of the standard.

3. Adopted a recommendation to the Financial Analysis Solvency Tools (E) Working Group to include RRG-specific guidance in the Financial Analysis Handbook when considering applicability of the group capital calculation. The guidance includes discussion of various RRG structures that may impact applicability.

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2022 Fall National Meeting
Tampa, Florida

VALUATION OF SECURITIES (E) TASK FORCE
Wednesday, December 14, 2022
2:00 – 3:30 p.m. ET

Meeting Summary Report

The Valuation of Securities (E) Task Force met Dec. 14, 2022. During this meeting, the Task Force:

1. Adopted its Oct. 20 and Summer National Meeting minutes. During these meetings, the Task Force took the following action:
   A. Adopted its 2023 proposed charges.
   B. Exposed a proposed amendment to the *Purposes and Procedures Manual of the NAIC Investment Analysis Office* (P&P Manual) to add instructions for the financial modeling of collateralized loan obligations (CLOs) for a 45-day public comment period ending Dec. 5.
   C. Exposed a proposed amendment to the P&P Manual to update instructions for related party and subsidiary, controlled, and affiliated (SCA) investments for a 45-day public comment period ending Dec. 5.
   D. Exposed a proposed amendment to the P&P Manual to clarify the definition of an NAIC designation in Part One and Part Two for a 45-day public comment period ending Dec. 5.

2. Exposed an updated amendment to the P&P Manual to include CLOs as a financial model security in Part Four for a 15-day public comment period ending Jan. 6. The amendment had previously been exposed for a 45-day public comment period ending Dec. 5.

3. Adopted an amendment to the P&P Manual to update instructions for related party and SCA investments. The amendment had been exposed for a 45-day public comment period ending Dec. 5.

4. Directed Securities Valuation Office (SVO) staff to update an amendment to the P&P Manual to clarify the definition of an NAIC designation.

5. Exposed an amendment to the P&P Manual to add instructions for structured equity and funds for a 60-day public comment period ending Feb. 13, 2023. Directed SVO staff to refer the amendment to the Capital Adequacy (E) Task Force and the Risk-Based Capital (RBC) Investment Risk and Evaluation (E) Working Group.

6. Exposed a non-substantive technical amendment to the P&P Manual to update references to a 5GI designation for a 60-day public comment period ending Feb. 13, 2023.

7. Exposed proposed CLO modeling methodology (excluding scenarios and probabilities) for a 60-day public comment period ending Feb. 13, 2023.

8. Received a staff report on projects of the Statutory Accounting Principles (E) Working Group.

9. Received a staff report from the Structured Securities Group (SSG) of the NAIC Investment Analysis Office (IAO).

NATIONAL MEETING
FALL 2022

2022 Fall National Meeting
Tampa, Florida

GROUP SOLVENCY ISSUES (E) WORKING GROUP
Wednesday, December 14, 2022
9:30 – 10:30 a.m. ET

Meeting Summary Report

The Group Solvency Issues (E) Working Group met Dec. 14, 2022. During this meeting, the Working Group:

1. Received and discussed a referral from the Financial Stability (E) Task Force and its Macroprudential (E) Working Group related to issues associated with private equity ownership of insurers. The referral outlined two issues for Working Group consideration. The first issue is that state insurance regulators may not be obtaining clear pictures of risk due to holding companies' structuring contractual agreements to avoid regulatory disclosures and requirements. The second issue relates to the definition of control outlined in the *Insurance Holding Company System Regulatory Act* (#440) and how that affects regulatory reporting and monitoring activities. After some discussion, the Working Group agreed to form a drafting group to develop a work plan to address these issues.

2. Received an update on the status of the Uniform Certificate of Authority Application (UCAA) redevelopment project led by the National Treatment and Coordination (E) Working Group. Members of the Group Solvency Issues (E) Working Group were encouraged to monitor and participate in changes to the Form A - Change of Control portion of the project as deemed appropriate.

3. Discussed takeaways from the International Association of Insurance Supervisors (IAIS) Targeted Jurisdictional Assessment program, which recently concluded. One of the concrete takeaways discussed is the importance of state insurance regulators in working with internationally active insurance groups (IAIGs) in recovery and resolution planning. The Working Group discussed the possibility of working with the Receivership and Insolvency (E) Task Force on a joint project in this area and agreed to continue discussions on this possibility in the future.

4. Received an update on other international activities related to group supervision, which noted that the IAIS has disbanded its Insurance Groups Working Group and encouraged supervisory aspects relating to group-wide supervision to be integrated into the work of its re-mandated Supervisory Forum. As such, the Working Group's charges will be updated to encourage monitoring the Supervisory Forum's efforts in this area.

NATIONAL MEETING
FALL 2022

2022 Fall National Meeting
Tampa, Florida

MORTGAGE GUARANTY INSURANCE (E) WORKING GROUP
Tuesday, December 13, 2022
8:00 – 9:00 a.m. ET

Meeting Summary Report

The Mortgage Guaranty Insurance (E) Working Group met Dec. 13, 2022. During this meeting, the Working Group:

1. Adopted its Oct. 6 minutes. During this meeting, the Working Group took the following action:
   A. Exposed the draft Mortgage Guaranty Insurance Model Act (#630) for a 30-day public comment period ending Nov. 7.

2. Discussed comments received on the exposure of the *Mortgage Guaranty Insurance Model Act* (#630).

Draft: 10/26/22

NAIC/American Institute of Certified Public Accountants (AICPA) (E) Working Group
E-Vote
October 21, 2022

The NAIC/AICPA (E) Working Group of the Financial Condition (E) Committee conducted an e-vote that concluded Oct. 21, 2022. The following Working Group members participated: Laura Clements (CA); Rylynn Brown (DE); Dan Mathis and Kevin Clark (IA); Judy Weaver (MI); Shannon Schmoeger (MO); Lindsay Crawford (NE); Doug Bartlett (NH); Dale Bruggeman (OH); and Jake Garn (UT).

1. Adopted the Contract Examiner Attestation Template

The Working Group conducted an e-vote to consider adoption of an optional contract examiner attestation template into the existing "AICPA Four Step Process to Obtain CPA Workpapers" document posted to its website. A majority of the members voted in favor of adopting the document (Attachment XXX-A). The motion passed.

Having no further business, the NAIC/AICPA (E) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/E CMTE/2022-3-Fall/AICPA/9-15-22 AICPAWGmin.docx

Draft: 9/23/22

NAIC/American Institute of Certified Public Accountants (AICPA) (E) Working Group
Virtual Meeting
September 15, 2022

The NAIC/AICPA (E) Working Group of the Financial Condition (E) Committee met Sept. 15, 2022. The following Working Group members participated: Doug Stolte, Chair (VA); Laura Clements (CA); Rylynn Brown (DE); Kevin Clark (IA); Levi Nwasoria (KS); Lindsay Crawford (NE); Doug Bartlett (NH); Dale Bruggeman (OH); Johanna Nickelson (SD); and Malis Rasmussen (UT).

1. Discussed the Premium Threshold

Mr. Stolte said the Working Group is responsible for reviewing the premium threshold amounts contained within the *Annual Financial Reporting Model Regulation* (#205) on an annual basis. Bruce Jenson (NAIC) gave an update on the results of the annual review, noting that as of Dec. 31, 2021, 91% of all direct written premiums and 95% of all gross written premiums would be subject to reporting requirements.

Mr. Stolte noted that these results are within the Working Group's expectations, and no action to adjust the threshold is deemed necessary at this time.

2. Discussed a Referral from the Chief Financial Regulator Forum on Contractor Access to External Audit Workpapers

Mr. Stolte stated that the Working Group received a referral from the NAIC's Chief Financial Regulator Forum in April regarding contractor access to external audit workpapers. The referral indicates that some states have had difficulty obtaining access to external audit workpapers in situations where the department uses contractors to conduct an examination. At issue is whether the department and its contractors should sign a separate confidentiality agreement proposed by the external audit firm to obtain access to the workpapers. These states have attempted to demonstrate that they have confidentiality agreements in place with their contractors and legislation provides for confidential treatment of audit workpapers, but some firms have refused to release the workpapers until a separate agreement is completed. In some instances, the separate confidentiality agreements have been pursued by medium-sized external audit firms that raise concerns regarding the potential for contractors to compete with them for future audit work.

Mr. Stolte stated that Virginia's statutes and regulations are very clear in this area and allow the state to designate a contractor to represent it in conducting a financial examination and require contractors to keep all information they receive while conducting the examination confidential. In addition, the statutes and regulations clearly require the insurer to make the external audit workpapers available to the contractor for the purposes of conducting the examination.

Mr. Stolte stated that the Working Group reached out to the NAIC Legal Department to get an opinion on how to address these concerns, and it advised against providing the insurer or the external audit firm with a copy of the state's agreement with its contractors or the signing of a separate agreement. Instead, it recommended that state insurance regulators consider the use of an attestation form that could be provided to the insurer and its external audit firm to indicate that the department has designated a contractor to represent it on the examination and cite statutory authority to protect the confidentiality of information provided to the contractor. In addition, the attestation could include an optional section aimed at addressing any competitive issues or concerns raised by the external audit firm.

Mr. Jenson provided an overview of a draft attestation document that NAIC staff prepared for the Working Group to consider. The attestation included references to statutory or regulatory authority to designate a contractor to represent the state on a financial examination, protect the confidentiality of examination workpapers, and require the insurer to provide access to all relevant external audit workpapers. In addition, the attestation includes a section for the state to list those contractors that have been designated to represent the state on a particular examination, as well as an optional section addressing competition concerns.

Kara Binderup (NAIC) stated that the NAIC Legal Department would be happy to assist states in reviewing their statutory citations when customizing the template for their use. In addition, she indicated that states should ensure that their agreements with contractors conform to the language included within the attestation before completing it and providing it to an insurer or its external audit firm.

Mr. Stolte stated that the intent of the Working Group is to expose the draft attestation for a short public comment period to give everyone adequate time to review and provide comments, but he asked for initial reactions to this proposal. Members of the Working Group expressed their agreement with this proposal. Dave Osborn (Ernst & Young LLP) stated his agreement with this approach and indicated that the external audit firms would closely review the proposed attestation and provide comments during the exposure period, if necessary.

Ms. Brown stated that while she views the attestation as a good interim solution to this problem, state insurance regulators may need to consider a more permanent solution to this issue by modifying existing NAIC model laws and regulations. Mr. Stolte indicated that the Working Group could monitor the effectiveness of the attestation before determining if any additional work is necessary in this area.

3. Discussed Audit Awareness Letter Expectations

Mr. Stolte stated that the next agenda item relates to an issue that has been discussed by the Working Group in the past but continues to be raised as a concern by the external audit firms in conducting statutory audits. Model #205 includes a requirement that a letter be filed by the external auditor indicating that they are aware of the provisions of the insurance code and the regulations of the insurance department of the state of domicile regarding accounting and financial matters, and they will express their opinion on the financial statements in terms of their conformity to those provisions and regulations.

However, Model #205 does not prescribe when or how often such a letter is required to be provided by the external audit firm. To get a better understanding of practices in this area, the Working Group conducted a survey of all states in 2020 regarding their expectations in this regard. While most states indicated that they only expect a new letter to be filed whenever there is a change in the audit firm; several states indicated that their preference is to receive an annual awareness letter, including California, Connecticut, the District of Columbia, Florida, Nevada, North Dakota, and New York. In addition, Texas indicated that its statute explicitly requires that an awareness letter be filed annually.

In response to these results, the Working Group updated the NAIC's *Guide to Compliance with State Audit Requirements* to reflect these expectations. However, external audit firms have found that there are other states that are requesting audit awareness letters more frequently, which makes it difficult for the firms to know how to comply in this area. One of the reasons this could be occurring is due to a procedure step included in Exhibit E of the *Financial Condition Examiners Handbook* (Handbook), which encourages the exam team to verify that an audit awareness letter has been received but does not clarify practices or expectations in this area.

After discussing this matter with the external audit firms and NAIC staff, Mr. Stolte stated that it is his opinion that the Handbook guidance should be updated to indicate that the exam team should only verify that an audit awareness letter has been received if there has been a change in audit firm since the prior examination. In addition, the Handbook should reference the *Guide to Compliance with State Audit Requirements* as an additional source of information on state expectations related to audit awareness letters.

Mr. Stolte also recommended that each state review their expectations in this area and contact NAIC staff if they would like their section of the *Guide to Compliance with State Audit Requirements* to be updated to reflect current expectations. However, he reiterated that the Working Group's official position on this issue is that a new audit awareness letter should only be required if there is a change in audit firm.

Mr. Osborn expressed his agreement with these proposed changes to assist external audit firms in knowing how to comply with each state's expectations, while minimizing the reporting burden on firms. He stated that any efforts to reduce inconsistent application across states would be appreciated. Members of the Working Group also expressed their support for the proposed Handbook edits.

Ms. Nickelson made a motion, seconded by Mr. Bruggeman, to refer the proposed Handbook edits to the Financial Examiners Handbook (E) Technical Group for consideration of adoption. The motion passed unanimously.

Jeff Martin (UnitedHealth Group—UHG) asked whether the *Guide to Compliance with State Audit Requirements* is available to the public. Mr. Jenson stated that it is available to the public on the NAIC website.

4. Heard an Update on Recent Auditing Pronouncements

Mr. Osborn provided an overview of recent accounting and auditing pronouncements affecting statutory audits. He stated that *Statement on Auditing Standards (SAS) No. 142—Audit Evidence* is effective for periods ending on or after Dec. 15, and it explains what constitutes audit evidence in an audit of financial statement and sets out attributes of information that are considered by the auditor when evaluating information to be used as audit evidence.

Mr. Osborn stated that *SAS No. 145—Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement* is effective for audits of financial statements for periods ending on or after Dec. 15, 2023, but early implementation is permitted. SAS No. 145 does not fundamentally change the key concepts underpinning audit risk, but it instead clarifies and enhances certain aspects of the identification and assessment of the risks of material misstatement to drive better risk assessments and enhance audit quality.

Mr. Osborn stated that the Auditing Standards Board (ASB) and the Accounting and Review Services Committee (ARSC) issued four interrelated final standards on quality management (QM) that are effective for engagements for periods beginning on or after Dec. 15, 2025. The biggest change reflected in the new QM standards is the introduction of a risk-based approach to achieving quality objectives, which helps firms identify and address risks specific to their practice and creates a more scalable approach to quality for all firms.

Mr. Stolte thanked Mr. Osborn for his overview and encouraged Working Group members to continue educating themselves on new auditing standards.

Having no further business, the NAIC/AICPA (E) Working Group adjourned.

Https://naiconline.sharepoint.com/sites/NAICSupportStaffHub/Member Meetings/E CMTE/2022-3-Fall/AICPA/9-15-22 AICPAWGmin.docx

Draft: 11/16/22

National Treatment and Coordination (E) Working Group
Virtual Meeting
November 9, 2022

The National Treatment and Coordination (E) Working Group of the Financial Condition (E) Committee met Nov. 9, 2022. The following Working Group members participated: Debbie Doggett, Co-Chair (MO); Cameron Piatt, Co-Chair represented by Dale Bruggeman (OH); Cindy Hathaway (CO); William Mitchell and Alan Sundell (CT); Sherry Wilson (DE); Alison Sterett (FL); Stewart Guerin (LA); Kari Leonard (MT); Doug Hartz (OR); Karen Feather (PA); John Carter (TX); Jay Sueoka (UT); Ron Pastuch (WA); Amy Malm (WI); and Doug Melvin (WY). Also participating were: Kim Cross (IA); Amy Blue (MA); and Scott Wicker (NC).

1. Adopted its Aug. 17 Minutes

Doggett said the Working Group met Aug. 17 and took the following action: 1) adopted proposal 2022-02 MOD (Primary and Redomestication Application and Instructions); 2) discussed the Enhanced Guidance Referral regarding the Form A application; and 3) exposed proposal 2022-03 (Domestic Corporate Amendment Application and Instructions).

Pastuch made a motion, seconded by Malm, to adopt the Working Group's Aug. 17 minutes. The motion passed unanimously.

2. Re-Exposed Proposal 2022-03

Doggett said Missouri was the only state to provide comments on the exposure for proposal 2022-03, (Domestic Corporate Amendment Application and Instructions), and those comments have been incorporated into the attached proposal.

Jane Barr (NAIC) summarized the following edits:

- A new change type was added to change company structure. A drop-down selection will be provided so the company can identify how the company structure is changing; i.e., reciprocal to stock or stock to reciprocal.
- Requirements for a company structure change will be added to Form 2, so if that change type was selected, the highlighted information would be required to be answered.
- The requirement for date of last market conduct examination was deleted.
- On the adding a line of business, question 8 was edited to pertain to the company's management experience for the requested line.
- An additional requirement to submit a Form D with the application was added to question 9, as well as other questions pertaining to affiliated parties (Questions 17, 19I, 20C, and 20D). Doggett said that Form Ds are more in line with the wording of the contract. She said they may not be required at the time of submission but might be referenced as a reminder. Cross suggested adding "if applicable" to the note. Wicker and Wilson indicated that their states do not require Form D. Barr suggested making a note in the corporate amendment instructions and not placing on the application form itself that Form Ds may be required by the state. Cross and Carter agreed with the suggestion to amend the instructions to reference Form D.

- Question 19F and question 20D request the need for a draft prospectus to be submitted for variable life. Barr asked if that was required at the time of filing or if it would be a follow-up question after approval. Carter said that it is not a statutory requirement to be filed with the application but would be like confirmation that one will be filed with the U.S. Securities and Exchange Commission (SEC). He suggested removing the requirement from the questionnaire and placing the reminder in the instructions that a draft should be sent to the state when filed with the SEC.
- Question 20F was removed because a statutory reference is not required to be given to the domestic state.
- For "Deleting Lines of Business," the company should confirm that those lines have been removed from all foreign states. Provide a "Yes" or "No" response. If "No," then explain why. The instructions would indicate that the line cannot be removed from its domestic.
- It was suggested to remove Form 12 as a requirement. Several states confirmed that it is not required for their domestic. This requirement would be state-specific for those states that require Form 12.
- Several changes were made to Form 14 by adding the option to provide a change to the administrative office address, and contacts were added for Market Conduct Annual Statement (MCAS) attestation contacts.
- The format of the Voluntary Dissolution form changed so the company can provide the electronic tracking number for the applications filed with the foreign state. Doggett mentioned that some states may not accept this form to be filed in their state. Barr confirmed that a survey will be sent prior to development of the electronic filing process for state-specific requirements.
- Several edits were made throughout the corporate amendment instructions. Updates were made to reference the electronic filing process. Additionally, the instructions will be updated once the Uniform Certificate of Authority Application (UCAA) website is redesigned to update the links to specific items referenced. References were added for the lead reviewer regardless of whether those regulators' titles are analyst or examiner, and the request for information (RFI) has been identified throughout the instructions as RFIs. The reference for Uniform Consent to Service of Process was removed, based on discussion it will be added back into the instructions and indicate the form is state-specific.

The Working Group exposed Proposal 2022-03 for a 30-day comment period, ending Dec. 12.

3. Discussed the Biographical Affidavit and Addendum Page

Barr said that over the past several months, NAIC staff have received numerous complaints and questions regarding discrepancy letters and the addition or removal of lines from the biographical affidavit and the use of the templates that the Working Group recently adopted. Crystal Brown (NAIC) confirmed that there have been comments regarding the use of the portable document format (pdf) version and the preference for the Word format. The suggested changes allow for better spaces for responses and an indication that an addendum page is provided for overflow or additional information where needed. Gina Hudson (Liberty Mutual) asked why the instruction specifies not to add or remove lines and why the check boxes are only needed if the biographical affidavit form was full, and the overflow would be provided on an addendum page. She suggested that the check box only be used if the biographical affidavit was full. Karen Fallstrom (UnitedHealth Group—UHG) concurred that addendum pages should be used if the biographical affidavit was full. She said the fewer pages that must be signed the better.

Barr asked if there was any state objection to making changes to the biographical affidavit. She reminded the Working Group that no significant changes would be made prior to the development of the biographical affidavit database. Blue said that she preferred that no changes be made to the biographical affidavit. She said she has not received any questions or complaints regarding the forms. Wilson concurred that Delaware was not aware of any issues with the current forms. Sandy Schmehl (Cigna) said that their biographical affidavits are generated through a database and that there have been instances where lines were added or removed. It is a huge manual undertaking to complete the biographical affidavits. Fallstrom said that the use of Adobe Pro and is able to complete the biographical affidavits with no issues to font size and that she does not see the need to use Word. She said any changes at this point would cause confusion and more work for the companies that are preparing updated biographical affidavits for year-end submission to the states.

Barr suggested tabling the discussion on possible changes to the biographical affidavit. The Working Group concurred.

4. Discussed Other Matters

Barr said that the electronic primary application will be available for testing in production by Dec. 8. She said that if there are any states that are aware of a company looking to submit a primary application, let her know. NAIC staff will conduct on-site training for the new application for both state and company users. The purpose of the test pilot is to solicit user feedback on the application's functionality. The usage fee during the testing period will be waived.

Barr also reminded the Working Group members and interested parties that the development of the Form A application is currently underway by the ad hoc group, which would like to have more industry input for the application and instructions. Anyone interested in either the pilot project or Form A development should contact her.

Having no further business, the National Treatment and Coordination (E) Working Group adjourned.

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Draft: 11/30/22

Restructuring Mechanisms (E) Subgroup
Virtual Meeting
November 9, 2022

The Restructuring Mechanisms (E) Subgroup of the Restructuring Mechanisms (E) Working Group of the Financial Condition (E) Committee met Nov. 9, 2022. The following Subgroup members participated: David Smith and Doug Stolte, Co-Chairs (VA); Jack Broccoli and Jared Kosky, Co-Vice Chairs (CT); Leo Liu (AR); Judy Mottar (IL); Judy Weaver (MI); Fred Andersen (MN); James Le (MO); David Wolf (NJ); Dale Bruggeman (OH); Andrew Schallhorn (OK); Amy Garcia (TX); and Amy Malm (WI). Also participating was: Elizabeth Kelleher Dwyer (RI).

1. Reviewed Comments on Foundational Principles and Best Practices

Smith directed the Subgroup to an overview of the comments received from the May exposure of the foundational principles, best practices, and Property and Casualty Risk-Based Capital (E) Working Group's run-off response.

Robin Marcotte (NAIC) noted that the Subgroup received 11 comment letters (Attachment). She stated that to facilitate discussion, the comments were sorted into seven topics: 1) general; 2) independent expert; 3) no worse off; 4) guaranty associations; 5) due process; 6) analysis/approval; and 7) run-off. She noted that the Subgroup chairs and vice chairs had identified that the first four topics would receive initial discussion during today's meeting, and the other topics would be deferred for a future meeting.

a. General Comments

Marcotte stated that commenters noted that there is a need for an NAIC accreditation standard and also a need for guardrails to protect consumers. Another comment recommended that the principles and best practices should be combined into one document. Marcotte noted that the Subgroup envisions that a later step in the process will likely result in a single document. However she recommends that the Subgroup first gain buy-in on the principles because the best practices are an attempt to implement the principles.

Marcotte stated that the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) and the National Conference of Insurance Guaranty Funds (NCIGF) provided redline edits of both documents and noted that they are available for continued dialogue. She stated that comments from Locke Lord also recommended a review for duplications.

James Frasher (Northwestern Mutual) spoke regarding the joint letter from Northwestern Mutual, New York Life, and Western and Southern Financial. He stated that accreditation is an important tool and that transactions such as corporate divisions and insurance business transfers have the potential to affect policyholders in states well beyond the location of the reviewing state; that is, they have a consistent level of protection for policyholders and key stakeholders. He stated that insurance business transfers are inherently different from Form A reviews (acquisition of an insurer) in that in a Form A review, two entities are being combined to create a larger, more diversified entity that could be arguably a strong company. However, with corporate divisions and insurance business transfers, companies are being broken apart. Therefore, they are smaller and arguably often less diversified. So, the result for corporate divisions and insurance business transfers is very different. Frasher stated that the standards for these transactions need to be higher than what exists for Form A transactions, and there is a need for national uniformity to ensure that policyholders across the states are protected. He stated that to avoid regulatory arbitrage, whatever is developed should be used as an accreditation standard to promote national uniformity.

Smith stated that this is an important aspect and that part of the Subgroup's charges is to develop best practices to be used in corporate divisions and insurance business transfers transactions Once completed, the Subgroup will recommend to the Financial Regulation Standards and Accreditation (F) Committee for consideration. He stated that the Subgroup understands and acknowledges the need for an accreditation standard.

Wayne Mehlman (American Council of Life Insurers—ACLI) stated that it is critical that guardrails are in place before corporate divisions and insurance business transfers are approved by state insurance regulators. He stated that a few years ago, the ACLI developed its own set of principles and guidelines to consider as it evaluates legislation and regulations. These ACLI guidelines are broken into five general categories. The principles include that policyholders and other affected stakeholders must have access to the process, and the regulatory review must be robust. He also stated that it is crucial to use independent experts as part of the process. He stated court approval should be required for insurance business transfers, but not necessarily for corporate divisions. He also stated that it is important that policyholders and state-based guaranty association systems should be protected. Smith stated there are a lot of similarities between the ACLI principles and what the Subgroup has developed.

William O'Sullivan (NOLHGA) noted that one of the main comments in the joint letter from NOLHGA and the NCIGF is that the guaranty association coverage should not be reduced, eliminated, or otherwise changed as a result of corporate divisions and insurance business transfers which are types of restructuring transactions. He noted that a specific issue in their comment letter is regarding whether there is a need for a legal opinion. He noted that many of their redline-submitted comments were technical in nature and likely would not require discussion. Barbara Cox (NCIGF) noted that she concurred with O'Sullivan's remarks.

Smith summarized that ultimately the best practices document will be planned to be one document, but that there was a desire to keep a principles and best practices documents separate at this time. He stated that the best practices will ultimately be submitted to the Financial Regulation Standards and Accreditation (F) Committee.

b. Independent Expert Comments

Marcotte summarized some the comments on the topic of the use of an independent expert. She noted that comments on this section were divided on whether to require the use of an independent expert for corporate divisions. She stated that commenters opposed to requiring an independent expert for corporate divisions included Connecticut. She stated that the general recommendation in the Connecticut comment was not to mandate the use of an independent expert for corporate divisions, but if one was not used, a state would be required to document and conclude on the appropriateness of reliance on in-house expertise if an independent expert is not used. She stated that Missouri had proposed somewhat similar language in its comment letter, which also recommended documentation of the decision not to use an independent expert be provided to other affected state insurance regulators.

Marcotte stated that other commenters seemed to support the use of an independent expert for both corporate divisions and insurance business transfers. She also stated that all of the commenters seemed to support a requirement to use an independent expert for insurance business transfers.

Broccoli summarized the comments from Connecticut, noting that it supports the use of an independent expert for insurance business transfers that require court approval. He stated he agrees with earlier comments that the result of a corporate division is different from a Form A transaction. However, he noted that the review process for a corporate division is similar. He said that if a state reviewing the corporate division transaction has the expertise, it should be able to use it. He stated that, therefore, Connecticut agrees with adding a requirement to document the decision not to use an independent expert and that the state department of insurance (DOI) staff have the expertise to review the transaction. Kosky affirmed that the Connecticut position was to allow for state discretion with regard to the need to hire an independent expert. Kosky stated that this is consistent with the requirements for other similar reviews conducted by the insurance department. He stated that requiring an independent expert when it is not needed was a waste of funds. He also noted a concern with the potential to have disagreement between the insurance department staff and the independent expert, who may not know the company as well as the DOI staff. In response to an inquiry from Smith, Broccoli affirmed that Connecticut supports the use of an independent expert of insurance business transfers because it adds more value, but it supports discretion on the use of an independent expert for corporate divisions.

Andersen noted agreement with the comments from Kosky and Broccoli that there should be discretion regarding whether an independent expert is required for the review of corporate divisions. Smith noted that Missouri comments recommended notification to other states the reasons for not using an independent expert in the review of a corporate division. Le agreed with the summary of Missouri's comments and noted agreement with the other comments from Broccoli and Kosky.

Mehlman stated that the ACLI thinks it is critical that an independent expert be required for all transactions including corporate divisions and insurance business transfers. He stated that the report of the independent expert must also address several items, listed in their comment. These items include the business purposes of the proposed transaction; capital adequacy; risk-based capital (RBC) impact; a consideration of the effects of asset quality and nonadmitted assets; actuarial stress test of the reserve assumptions; and cash flow and reserve adequacy. In addition, the testing should review the impact, if any, of the concentration of lines of business following the transaction, as well as business plans and the management's competence experience and integrity. Mehlman stated that these steps are an important part of the review process for both corporate divisions and insurance business transfers.

Frasher noted that the joint letter from Northwestern Mutual, New York Life, and Western and Southern Financial on independent experts did not have a lot of disagreement with the comments from Connecticut and Missouri. He stated that one of the key goals of this whole process is to make sure that the resulting entities are financially sound and will be able to be sustained over the economic cycles. He noted their concern was primarily for ensuring that longer-duration products would have their obligations met. He agreed that insurance departments often have the expertise needed.

Frasher noted that staffing levels often change and that from a national consistency perspective, they would prefer to see an independent expert report required in all situations. However, if a department is able to document that it has the internal expertise and has the ability to provide an expert report, especially for shorter-duration products, then they would be comfortable with that discretion for short-duration products. He noted that for long-duration products, having that independent expert report should still be considered as it not only provides the court with comfort, but also it will provide other state insurance regulators, policyholders, and key stakeholders comfort. Smith noted that he agrees with some of those comments, especially for more complex transactions.

O'Sullivan stated that NOLHGA and NCGIF comments on the independent expert report more closely related to whether a legal opinion regarding the preservation of guaranty association coverage is required as part of the review process. He stated that they do not have a position on whether there ought to be an independent expert. Their comments were on ways to obtain confirmation regarding the preservation guaranty association coverage rather than a legal opinion. O'Sullivan stated that there may be some practical challenges for a lawyer or a law firm to give an opinion with respect to guaranty association coverage for corporate divisions and insurance business transfers. He stated that such coverage is determined by the individual guaranty association at the time of triggering. He said that determining the preservation of guaranty association coverage is more akin to due diligence on the life and health side regarding whether the successor entity is appropriately licensed in the relevant jurisdictions.

O'Sullivan stated that there are proposed amendments to the *Property and Casualty Insurance Guaranty Association Model Act* (#540) regarding the definition of a covered claim. He stated that either an independent expert or an expert in the DOI could do a factual inquiry to confirm the preservation guaranty association coverage and avoid some of the complications of asking a law firm. Cox noted that the NCIGF concurred with O'Sullivan's comments.

Smith stated NOLHGA and NCIGF comments are about whether there should be a requirement of a legal opinion as opposed to the independent expert issue. Broccoli stated that the review practices required that the company do its due diligence to make sure that it is in compliance with other state laws and that the guaranty fund phone coverage is not affected. Smith inquired about who would do such due diligence and or provide a legal opinion.

Cox stated that there would need to be a broad determination of fact, on the property casualty side, that would require a state-by-state review. She noted that making individual claims determinations would be difficult and that there could be complications. For example, the claim could be outside the policy period or other reasons the claim is not covered. She noted that reviewing at the current laws before that transaction is approved is the appropriate thing to do. O'Sullivan said that on the life side, the inquiry can be relatively narrow and that likely a due diligence, factual inquiry rather than a traditional legal opinion may not be needed.

Superintendent Dwyer suggested that while it would be difficult to predict future guaranty fund coverage. She recommends that the inquiry should really be: Does this transaction in any way affect guaranty fund coverage. She stated that the domestic state should review that the transaction does not adversely affect guaranty fund coverage. Smith asked if the initial burden of due diligence should be part of the company filing. Superintendent Dwyer agreed that the company would provide that information to the department. She noted that the insurance department could disagree as Cox mentioned. For example, if eight of the states where insurers live have not changed their guaranty fund statute, there could certainly be an issue. She agreed that the company should be initially presenting due diligence on guaranty fund coverage not being adversely affected. Then the department would check that and certainly any objectors could say they disagree as well. She stated that this approach was better than trying to affirm that there would be guaranty fund coverage because then other issues that have nothing to do with the transaction can be brought in. O'Sullivan noted that NOLHGA would be happy to help with drafting language as described by Superintendent Dwyer of affirming that coverage is not affected by the transaction. Smith noted appreciation for such assistance.

Peter Hartt (Randall & Quilter) stated support for the comments from Connecticut regarding the use of an independent expert, specifically regarding the comments regarding the ability to determine if the insurance department has expertise to review corporate divisions. Hartt noted that as this project progresses, they are supportive of adding checks and balances to obtain the best result and to provide comfort to stakeholders.

The Subgroup discussed if it wanted to revise the requirements regarding the use of an independent expert for corporate divisions. Broccoli made a motion, seconded by Malm to direct NAIC staff to revise the drafts of the foundational principles and best practices for future discussion. The revisions would note that an independent expert is not required for corporate divisions. However, if the domiciliary state reviewing the transaction decides not to use an independent expert, the reviewing state shall document its conclusion that it has the expertise and provide notice to other states with policyholders affected by the transaction on their conclusions regarding the use of in-house DOI expertise. The motion passed unanimously. It was noted that some of the revisions would be in the due process section, but other revisions may also be needed.

c. Guaranty Associations Comments

Smith directed the Subgroup to the summary of comments regarding guaranty association coverage. Marcotte noted that most of the comments were from NOLHGA and the NCGIF, which provided redline revisions to the exposed documents that included technical changes. Some of the edits were on how the associations were referenced, noting also that both property and casualty and life guaranty association coverage should be referenced. NOLHGA, the NCGIF, and other entities also commented that all policyholders should be covered by the same state guaranty association both before and after the transaction so that they have the same degree of protection if one of the insurers becomes insolvent. Some commenters noted concerns regarding monitoring for undue strain on individual state guaranty associations. Comments were also received regarding the differences between transactions with direct writers versus those that were only between reinsurers. Marcotte stated that as noted earlier in the meeting, there were also comments on whether there was a need to obtain a legal opinion regarding the impacts to guaranty association coverage.

Smith stated that his preliminary thoughts were to direct NAIC staff to work with the Subgroup co-chairs and with NOLHGA and the NCGIF as needed to incorporate the technical parts of these comments into a redline draft for future discussions. He also stated that it would be helpful to work with NOLHGA and the NCGIF to incorporate language regarding the earlier comments of Superintendent Dwyer that due diligence should identify that the transaction does not affect the guaranty association coverage of the policies involved in the transactions.

O'Sullivan noted that NOLHGA and the NCGIF would be willing to assist with developing such revisions for review. Cox noted agreement and stated that it is important for the final documents to include some of the differentiation language that they proposed in their redline edits regarding what the remedy looks like on the life and health side versus the property and casualty side because they are very different.

Mehlman stated that the primary points in the ACLI comments on this topic were ensuring that the resulting insurers are licensed in the appropriate states so that the policyholders are able to maintain guaranty association coverage in the same states in which they had it immediately before the transaction.

Frasher noted that the comments from Northwestern Mutual, New York Life, and Western and Southern Financial noted potential strains on individual state guaranty associations. He stated concentrating the transactions in a few states was problematic because there are assessment caps that exist and there is a real threat of straining the system. Smith noted agreement with monitoring for strains in the system and with ensuring the guaranty association coverage is not affected by the transactions.

Marcotte noted that the Petrellis letter commented that a legal opinion should not necessarily be required to verify guaranty association coverage. The letter was supportive about verifying that there is due diligence that the transaction does not affect existing guaranty association coverage.

Hartt noted that Randall & Quilter's comments were supportive of verifying the guaranty association coverage. He stated that they also commented that the procedures for review of transactions between reinsurers may need to be adjusted as most of the exposure documents were regarding transactions with direct writers. For example, ensuring licensure in all states with reinsurance transactions may be less relevant. Hartt responded to a query from Smith that they would be willing to provide additional proposed revisions on this topic.

Given that there were no objections from the Subgroup, Smith directed NAIC staff to proceed with redline revisions as discussed, including working with the Subgroup co-chairs and other commenters.

d. No Worse Off Comments

Smith noted that the discussion on no worse off would be preliminary as the remaining time during the meeting was limited. Marcotte stated this topic is on measurement principle used to judge the transaction. She stated that the exposure draft included language that the measurement principle should be that the policyholders and other key stakeholders affected by insurance business transfers and corporate divisions should be no worse off after the transaction.

Marcotte stated this topic received a diversity of comments. Some commenters expressed support for the exposed no worse off standard for policyholders and key stakeholders, noting that the change of a consumer's choice of an insurer without their consent is an extraordinary action to be taken. She stated that some commenters suggested that the standard should be no material adverse impact to key stakeholders. These commenters noting no material adverse impact was similar to what is used by the United Kingdom (UK), Prudential Regulation Authority, the Financial Conduct Authority (FCA) and in the UK court guidance. Commenters also noted that the insurance business transfer laws in Rhode Island, Arkansas, Oklahoma, and the National Council of Insurance Legislators (NCOIL) model required the use of no material adverse impact. Some commenters noted that the standard should be similar to the Form A standard in that the transaction results should be in the policyholder's best interest. The NAIC white paper on this topic noted that the UK Part 7 review process was robust. However, Marcotte noted that many of the U.S. laws have not incorporated the UK Part 7's robust review requirements. She stated that commenters noted that evaluations of management were helpful.

Schallhorn noted that Oklahoma law uses no material adverse impact for its Insurance business transfer law, and that is the standard that Oklahoma supports.

Stolte stated that the standard in Virginia for transactions when the state is stepping into the shoes of the policyholder and makes the decision for the policyholder is determining the best interest of policyholders. He stated that Virginia prefers the best interests of the policyholder's standard.

Le said that in Missouri, the assumption is that insurance law requires the policyholder to either reject or consent the transfer. He noted that transfers without policyholder consent would be inconsistent with Missouri law, and they would also have concerns with removing policyholder consent from a consumer protection standpoint.

Broccoli stated that with these transactions, its important to note that, the terms of the policy don't change at all. So the important review issue is the financial condition of the company that the policy is being transferred to has the ability to pay the claim throughout the life of the policy. He also stated that it is important that the entity has the expertise to be able to handle those claims in that particular line of business. He stated support for using no material adverse impact. He stated that, the independent expert could reach a conclusion whether there's a material adverse impact on the policyholder. He stated that a no worse off standard would be more difficult to conclude on. He cited an example of a lower risk-based capital ratio, but the resulting company would still have the ability to make payment on the obligations

Stolte questioned why any policyholder has any adverse impact. He also noted that materiality can be judged at different levels and can also be subjective.

Frasher stated that both no worse off and no material adverse impact could be subjective. He stated that in Northwestern Mutual's opinion, transferring policies to an entity with lower financial ratings after the transaction than before is certainly worse off and is certainly a material change.

James Mills (Enstar) stated that there is a lot of interest around reinsurance with the reinsurance policy transfers, supplementing assumption, or loss portfolio reinsurance transfer. He noted that reinsurance transfers do not typically have the same guaranty fund concerns. He noted that the independent expert plays a significant role in determining materiality in the UK Part 7 process. He stated that it is important to review the totality of the circumstances surrounding any proposed transfer to determine the review needed to ensure preservation of the rights of those policyholders and their protections going forward.

Hartt stated support for Broccoli's comments. He stated that there is no way to completely remove all subjectivity from the analysis and that there is always going to be some judgment applied. He stated support for no material adverse impact, which has been used for two successful insurance business transactions so far. He stated that he views the objective here is to facilitate business transactions that are good for market participants and that the benefits to participants should be considered. Stolte stated that the regulatory objective is to protect policyholders. Smith stated that the Subgroup will continue the discussion on no worse off and other topics during future meetings.

Having no further business, the Restructuring Mechanisms (E) Subgroup adjourned.

SharePoint/NAIC Support Staff Hub/Committees/E Committee/RMSG/11-9-22 Restructure SG.docx

Draft: 5/24/22

Restructuring Mechanisms (E) Subgroup
Virtual Meeting
May 4, 2022

The Restructuring Mechanisms (E) Subgroup of the Restructuring Mechanisms (E) Working Group of the Financial Condition (E) Committee met May 4, 2022. The following Subgroup members participated: David Smith and Doug Stolte, Co-Chairs (VA); Jack Broccoli, Vice Chair (RI); Mel Anderson (AR); Kathy Belfi (CT); Judy Mottar and Vincent Tsang (IL); Judy Weaver (MI); Fred Andersen and Ben Slutsker (MN); John Rehagen and James Le (MO); Diana Sherman (NJ); Dale Bruggeman and Tom Botsko (OH); Amy Garcia (TX); and Amy Malm and Richard Wicka (WI).

1. Exposed Foundational Principles and Best Practices

Mr. Smith stated that the Subgroup received a summary of the survey distributed to the states regarding insurance business transfers (IBTs) and corporate division laws, as well as input on run-off entities and their supervision. He indicated that the survey primarily included responses from 12 states that have laws on either corporate divisions or IBTs. He stated that the Subgroup directed NAIC staff to begin drafting best practices and sent a referral regarding the treatment of run-off entities and risk-based capital (RBC) to the Property and Casualty Risk-Based Capital (E) Working Group.

Mr. Smith stated that the foundational principles and the best practices drafts were prepared by NAIC staff using input from many of the documents, such as comment letters and other items that were submitted to the Subgroup and the Restructuring Mechanisms (E) Working Group as part of their research phase in preparation of their white paper. The documents also went through several rounds of review with the co-chairs and vice chair. Finally, the Subgroup members had the opportunity to preview the documents on March 28 in a regulator-to-regulator session, pursuant to paragraph 6 (consultations with NAIC staff members related to NAIC technical guidance) of the NAIC Policy Statement on Open Meetings.

Robin Marcotte (NAIC) stated that the foundational principles document was developed to provide baseline principles to use when reviewing the IBT and corporate division transactions. She stated that the Subgroup wanted a common set of objectives to guide the recommended best practices procedures. She stated that the best practices document is envisioned to be procedures similar to documents in the *Financial Condition Examiners Handbook*, the *Financial Analysis Handbook*, or the *Form A Handbook*. She said the source references were not all inclusive, as multiple sources had similar themes.

Ms. Marcotte stated that what IBTs and corporate divisions have in common is that they are moving policies, the liabilities are out of the direct writer with finality, and they do not require policyholder consent.

Ms. Marcotte stated that the first principle is that policyholders and other key stakeholders should not be worse off, and a drafting note requests comment on the term “no worse off” and how it is measured.

Mr. Rehagen indicated his written comments would note that there should be some additional notification safeguards regarding licensing in the states and coordination regarding assumption reinsurance laws.

Luann Petrellis (Luann Petrellis Consulting) commented that the United Kingdom (UK) Part 7 standard is no material adverse effects on the policyholders, and she recommended that wording. She stated that the draft document consistently used no adverse effect, but she believes this is subjective. She stated it would be difficult to opine on no adverse impact.

Mr. Smith stated that some states also use no materially adverse impact. He noted that the Virginia novation law requires a benefit or the best interests of the policyholders. Ms. Belfi asked Ms. Petrellis if the UK law defined materially adverse. Ms. Petrellis responded that materially was not defined in the statute. Ms. Belfi stated that if the standard is lower but still does not define materially adverse, it is still subjective. Ms. Petrellis said materially adverse has UK case law. Mr. Smith noted that any adverse impact, even though it may not be material, might not be in the best interest of the policyholder.

Birny Birnbaum (Center for Economic Justice—CEJ) stated that it is unclear to him why it would be more difficult for someone to identify any adverse effect versus a materially adverse effect. He noted that if the expert is in a position of saying they have not identified any materially adverse impacts on consumers, then they have had to identify all adverse effects and next determine which ones are material. He stated that the UK case law that has evolved around materially adverse is problematic. He stated that in a recent ruling, the initial UK court said consumers were affected by the change from a known insurance company to an unknown company. It noted that the people who bought the insurance, bought it in part because of the company they were buying it from, and now their policies were being transferred to somebody they had no experience with. Mr. Birnbaum said the initial court said that was a material effect, but the appeals court said it was not. He said the case law that has built up around it is something consumer stakeholders find very problematic.

Ms. Marcotte stated that the next principle is the robust regulatory review process. She highlighted that IBTs typically require court approval as the ultimate authority. She stated that corporate divisions have many of the same procedures but do not typically require a court as the ultimate authority; they will often only require the domestic regulator(s) as the final authority.

Ms. Marcotte stated that there was another drafting note, which asks if commenters believe that an independent expert is not needed for a corporate division and whether the department of insurance (DOI) should be required to demonstrate that they have adequate resources and expertise to review and approve a corporate division.

Ms. Marcotte stated that the next principle is that no affected policyholder should have their guaranty fund or secondary market mechanisms protections reduced or eliminated in any way as a result of a transaction. She stated the Restructuring Mechanisms (E) Working Group made a referral to the Receivership and Insolvency (E) Task Force to consider if revisions to the guaranty fund models may be needed.

Ms. Marcotte provided an overview of the remaining foundational principles:

- Use of the NAIC's uniform statutory accounting principles (SAP) valuation and accounting rules in the *Accounting Practices and Procedures Manual* (AP&P Manual) to provide comparability and consistency.
- Use of an independent expert to advise and assist the ultimate reviewing authority—i.e., the state insurance regulator and/or the court—in reviewing proposed transactions.
- Robust due process must be afforded to stakeholders affected by a transaction in advance of any public hearing, along with access to information concerning the transaction.

Ms. Belfi stated that Connecticut would be providing comments on why it believes that an independent expert should not be mandatory for corporate divisions. She indicated that Connecticut's corporate division process was envisioned as operating similar to the Form A process, and an independent expert was not needed. She noted that she is supportive of the state demonstrating expertise to review a transaction.

Mr. Broccoli stated agreement with Ms. Belfi regarding the independent expert and corporate divisions. He stated that if the DOI believes it has the experts to be able to review the transaction, such as actuaries and accountants, then those DOI staff may have more expertise with the entities involved than an independent expert. He noted that Rhode Island would hire reviewing actuaries because of staffing issues. He noted that in Rhode Island, the DOI is the entity that would hire the experts who would be working on behalf of the DOI. However, his understanding is that in the UK, it is the companies that agree to hire an independent expert; it is not the insurance regulator.

Mr. Tsang noted that he would rather see an independent expert be a requirement, unless the state can justify that it is not needed. Mr. Smith stated agreement.

Ms. Malm stated that in her view, an accreditation standard is needed so there is a level playing field. Mr. Smith stated agreement with the need for an accreditation standard, but he stated that how this will become an accreditation standard is not clear at this time. He noted that without developing some type of NAIC legal model, it may be more difficult to make a procedure an accreditation standard. He stated that for the Subgroup's purposes, any type of recommendations can be made, but the Financial Regulation Standards and Accreditation (F) Committee determines what becomes an accreditation standard.

Peter Gallanis (National Organization of Life and Health Insurance Guaranty Associations—NOLHGA) stated that there are references made in both documents to the NOLHGA's counterpart on the property/casualty (P/C) side as being a helpful resource, both in terms of substantive expertise and communication with its members about guaranty association questions that may arise. He recommended that because life and health business can also be involved in these transactions, the NOLHGA should also be referenced as a resource. Mr. Smith agreed and directed NAIC staff to include a reference to the NOLHGA in the draft exposures.

Ms. Marcotte stated that the best practices document is envisioned to be procedures to implement the principles, and she noted it included the following sections:

- Section 1 and 2 – basic filing information.
- Section 3 – the reviewing authority.
- Sections 4 and 5 – include more detail on the robust review.
- Section 6 – reserves and capital.
- Section 7 – analysis of issues affecting policyholders, claimants, and other stakeholders.
- Section 8 – due process communication of transaction to stakeholders.
- Section 9 – maintaining coverage from guaranty funds and secondary market mechanisms.

Ms. Marcotte noted that the last section of the draft document includes procedures for entities in run-off, noting that this section may ultimately reside in a different location than the review procedures. Mr. Tsang noted that not all transactions will result in an entity being in run-off. After discussion, NAIC staff were directed to draft a note in the run-off section regarding this aspect, noting that the proposed run-off procedures may be separate and apart from the best practices procedures for IBTs and corporate divisions.

Ms. Petrellis inquired about Section 8, paragraph 3, which mentions requiring approval or non-objection from affected states. She said the domiciliary regulator approves the transaction, and other states either approve or do not object to the transaction. Ms. Marcotte stated that this provision is an attempt to provide additional detail about coordination with affected state insurance regulators. She stated that there are differences in states' requirements about novation laws, guaranty funds, and secondary market mechanisms. She noted that in the Illinois corporate division, there was coordination with the other states to ensure that the new entities were licensed and that the secondary market mechanisms would still apply to the policyholders.

Mr. Smith noted that there are differences in state laws about the ability to transfer policyholders. He stated that if there is any involvement with Virginia policyholders, Virginia has taken the position that it would not defer to another state jurisdiction on IBTs. He noted that Virginia has a provision in its statute that requires approval of that transaction, and Virginia has already taken this position on an IBT transaction.

Mr. Stolte stated that his concern is uniformity, similar to the comments from Ms. Malm. He noted that several states are putting different IBT and corporate division laws on their books. He said absent an accreditation mandated model law or regulation, he does not know how to achieve uniformity. He stated that Virginia has an anti-novation statute that requires policyholder consent for the business to be transferred, and the Virginia State Corporation Commission (SCC) can step into the shoes of the policyholder if a company is in a hazardous financial condition or otherwise. He said the Virginia standard is in the best interest of the policyholders. He noted that it would be difficult to recommend to commissioners or the legislature change the law absent an accreditation model law or regulation that has adequate safeguards.

Mr. Smith stated that Virginia has always pushed the idea of a model law. Ms. Belfi asked Mr. Stolte if Virginia viewed Form A filings as different than IBTs or corporate divisions. Mr. Stolte replied yes and noted that Virginia has separate procedures. Ms. Belfi said she is not sure if the Form A procedures and the procedures for corporate divisions would be all that different for a lot of states. She noted that Connecticut agrees with the need for the accreditation standards, and she noted that it is important to get as much uniformity as possible.

Al Bottalico (Locke Lord) noted that uniformity is important to the accreditation standards, and a consistent review would provide confidence to the other states. He said it may not reach all the goals, but putting the best practices in the *Financial Analysis Handbook* would help, because the use of the *Financial Analysis Handbook* is an accreditation standard, and it might be easier and faster than trying to develop a model law.

Mr. Stolte said that would be incorporation by reference, and since Virginia has a specific state statute, the statutes cannot be ignored. He said that would be problematic, and the industry has been quite vocal over the years about incorporation by reference.

Ms. Belfi made a motion, seconded by Mr. Broccoli, to expose the foundational principles and the best practices documents (Attachments One and Two) as discussed during the call for a 45-day public comment period ending June 20. The motion passed unanimously. Mr. Smith noted that comments should be addressed to the chairs and submitted to Ms. Marcotte.

2. Received and Exposed a Response from the Property and Casualty Risk-Based Capital (E) Working Group

Mr. Smith stated that the Subgroup previously requested that the Working Group take the lead in addressing the charge to "consider the need to make changes to the RBC formula to better assess the minimum surplus requirements for companies in run-off."

Mr. Botsko stated that the Property and Casualty Risk-Based Capital (E) Working Group formed a small ad hoc group to discuss the Subgroup's request. He stated that after several discussions about what adjustments should be made to the RBC formula, the ad hoc group concluded that the best course of action is to monitor these companies through the state analysis and exam team functions. He stated that the characteristics and financial conditions of these run-off companies are diverse, and it would be difficult to incorporate these varied characteristics into one adjusted formula. He said many countries monitor these companies through the analysis and exam processes and do not have a separate RBC formula.

Mr. Botsko stated that of the 2020 RBC filers, the ad hoc group identified 111 companies out of 2,477 that have the characteristics of a run-off company. He stated that most of these companies have an RBC ratio greater than 300%; however, five companies are below a 200% RBC ratio.

Mr. Botsko stated that the ad hoc group agreed that a run-off company, voluntary or involuntary, should include the following characteristics:

1) No renewing of policies for at least 12 months.
2) No new direct or new assumed business.
3) No additional run-off blocks of business.
4) The amount of renewal premium to reserves has also been identified as a characteristic of these types of companies when this ratio is de minimis.

Mr. Botsko stated that the ad hoc group also recommends that a general and RBC interrogatory be added for the purpose of identifying a run-off company. He said the domiciliary state shall have the ability to verify the interrogatory response during the annual company financial analysis process.

Mr. Botsko stated that when the ad hoc group considered several types and conditions of run-off companies, it became apparent that while many of these companies share the characteristic of very long tail liabilities, there are other characteristics of these companies that are so diverse that it made it difficult to summarize them into their own RBC formula.

Mr. Botsko stated the ad hoc group reviewed several international perspectives on run-off companies. The international treatment of run-off companies is overseen through the analysis and exam teams. The ad hoc group agrees that a similar treatment of run-off companies is warranted.

Mr. Botsko stated the ad hoc group has some recommendations for the Working Group regarding the RBC instructions, specifically to the run-off companies. These include the following:

- Remove the Trend Test from the RBC calculation. These are run-off companies, and the possible retrospective premium should not complicate the already diverse situation.
- Remove the charge for premium growth if the company is no longer writing business.
- Remove R_{cat} from the formula. Because one of the characteristics of a run-off company is to not have written any new business for at least 12 months, this short-term liability risk is not warranted.

Mr. Botsko stated that as the ad hoc group shares its findings with the Life Risk-Based Capital (E) Working Group and the Health Risk-Based Capital (E) Working Group, it expects to hear other perspectives regarding the unique conditions of run-off companies from these working groups.

Ms. Belfi asked if the ad hoc group considered the operational challenges a run-off entity faced, including expenses and retaining staff. She asked if the ad hoc group considered an additional operational risk charge. Mr. Botsko stated that the ad hoc group discussed operational charges, but that discussion was not documented in the response because there were so few companies that had RBC ratios below 200%; therefore, the ad hoc group believes that is something that could be addressed through this process, and he wants to wait and hear what the Life Risk-Based Capital (E) Working Group and the Health Risk-Based Capital (E) Working Group have to say. He said that is something the ad hoc group could consider and add to the comments, or it could be overseen through the exam and/or analysis team. Ms. Belfi stated that she fears the RBC could be too high on some of these companies if the trend test is removed and the RBC formula was not updated to address some of the appropriate operational risks.

Tom Finnell (America's Health Insurance Plans—AHIP) asked about the scope of the companies reviewed. Mr. Botsko noted that the ad hoc group only looked at the property casualty companies, and there were 111 that fell into the categories of, or the characteristics of, run-off, and most of those were well above the 300% RBC ratio level. He said only five were below the 200% RBC ratio level.

Mr. Tsang stated that RBC is just a tool to identify weekly capitalized companies. He stated that RBC for a company in run-off can be less useful. He asked what kind of benefit would result for the insurer or the state insurance regulators by removing all three of the requirements. Mr. Botsko stated it was a minimal benefit because all those should be zero anyway. Mr. Botsko noted that the ad hoc group identified that an entity will sometimes receive some retroactive premium so the entity is below a 300% RBC ratio; it will trigger the trend test, and that is unnecessary.

Ms. Belfi stated that her earlier point is that state insurance regulators need to concentrate on some of the unique risks that these run-off companies may have. Ms. Belfi noted that state insurance regulators still need to measure capital even though liquidity is obviously extremely important, but capital still needs to be measured in adjusting the RBC approach so that it more appropriately measures risk within these companies.

Mr. Botsko noted that the analysis and exam teams from the given state are so familiar with the company that they are going to be better versed as to what to look for in that specific situation. Mr. Smith noted that the run-off procedures also go along with the charge to "consider the need to make changes to the RBC formula to better assess the minimum surplus requirements for companies in run-off." The ad hoc group also recommended that a general interrogatory be added to help identify run-off companies and that three items be considered for removal from the RBC instructions for companies in run-off.

Mr. Smith thanked Mr. Botsko and summarized that the Property and Casualty Risk-Based Capital (E) Working Group response had several components:

1) It identified characteristics of a run-off company.
2) It recommended that a general and RBC interrogatory be added to help identify run-off companies.
3) It recommended that three items be removed from the RBC instructions for run-off companies.

Mr. Botsko noted that the Property and Casualty Risk-Based Capital (E) Working Group will solicit input from the Health Risk-Based Capital (E) Working Group and the Life Risk-Based Capital (E) Working Group.

Mr. Tsang made a motion, seconded by Ms. Belfi, to expose the response from the Property and Casualty Risk-Based Capital (E) Working Group for a 45-day public comment period ending June 20, requesting specific feedback on the key points in the response. The motion passed unanimously.

Having no further business, the Restructuring Mechanisms (E) Subgroup adjourned.

https://naiconline-my.sharepoint.com/personal/rmarcotte_naic_org/Documents/Documents/admin 2022/restructure/Calls/5-4-22 Public/5-4-22 Restructure SG.docx

NAIC NATIONAL MEETING
FALL 2022

Virtual Meeting
(in lieu of meeting at the 2022 Fall National Meeting)

RISK-FOCUSED SURVEILLANCE (E) WORKING GROUP
Tuesday, November 1, 2022
11:00 a.m. – 12:00 p.m. ET / 10:00 – 11:00 a.m. CT / 9:00 – 10:00 a.m. MT / 8:00 – 9:00 a.m. PT

Meeting Summary Report

The Risk-Focused Surveillance (E) Working Group met Nov. 1, 2022. During this meeting, the Working Group:

1. Received an update on the progress of its Affiliated Services Drafting Group. The Drafting Group continues its efforts to develop proposed revisions to NAIC handbooks to clarify expectations around regulator review of affiliated service agreements. The Drafting Group plans to present updated guidance to the full Working Group for review in early 2023.

2. Received a referral from the Macroprudential (E) Working Group on activities related to private equity (PE)-owned insurers. The activities referred to the Working Group for further consideration relate to the ongoing work of the Affiliated Services Drafting Group. As such, the Working Group plans to wait until the Drafting Group has completed its efforts before moving forward in addressing the referral.

3. Adopted updated per-diem examiner salary rates for publication in the NAIC's *Financial Condition Examiners Handbook*, which constitute an 8.5% increase that is generally in line with movements in the Consumer Price Index (CPI) over the past year.

4. Discussed updated job descriptions for financial analysis and examiners that broaden background and experience requirements and include updated responsibilities for the review of new regulatory filings. The updated job descriptions were exposed for a public comment period ending Nov. 18.

5. Discussed recently completed peer review sessions and plans for peer review sessions in 2023.

The Risk-Focused Surveillance (E) Working Group subsequently conducted an e-vote on Nov. 28, 2022, to adopt the updated financial analyst and examiner job descriptions following no comments being received during the exposure period.

Considering for Adoption by the Financial Condition (E) Committee, Dec. 15, 2022
Considering for Adoption by the Receivership and Insolvency (E) Task Force, Dec. 14, 2022

REQUEST FOR NAIC MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective Parent Committee and the NAIC's Executive Committee is required. The NAIC's Executive Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail as necessary to help in this determination.

Please check whether this is: ☐ **New Model Law** **or** ☒ **Amendment to Existing Model**

1. **Name of group to be responsible for drafting the model:**

   Receivership Law (E) Working Group of the Receivership and Insolvency (E) Task Force to complete the drafting.

   Note that Model #540 is currently being amended to address restructuring mechanisms, per the request for model law development adopted by NAIC Executive (EX) Committee on August 11, 2022. The Task Force hopes to consider the adoption of further amendments for this request within a similar timeframe.

2. **NAIC staff support contact information:**

   Jane Koenigsman
   jkoenigsman@naic.org
   816-783-8145

3. **Please provide a brief description of the proposed new model or the amendment(s) to the existing model. If you are proposing a new model, please also provide a proposed title. If an existing model law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.**

   - ***Property and Casualty Insurance Guaranty Association Model Act (#540)***

   As presented by the National Conference of Insurance Guaranty Funds (NCIGF), cyber security insurance coverage is trending into the admitted market. Consequently, NCIGF anticipates the insurance insolvency resolution system will be presented with claims and other issues related to this coverage. These policy obligations may flow both from standalone cyber policies, endorsements, or from coverages that may be found to exist in commercial general liability and other lines of business typically written for business entities. For this reason, policymakers need to determine how such coverages will be handled should an insurer writing this business become insolvent. While each jurisdiction will need to decide whether, and within what parameters, cyber claims will be covered, we offer for consideration and guidance recommended amendments to the NAIC Property and Casualty Insurance Guaranty Association Act (NAIC Model 540). Policy makers should also consider how such claims will be handled before guaranty funds and associations (hereinafter "guaranty funds") are triggered – for example in a rehabilitation proceeding. Likewise, current insolvency processes and transition to the guaranty funds will need to be changed and enhanced to deal with this unique line of business and especially its demanding claims administration standards.

4. **Does the model law meet the Model Law Criteria?** ☒ **Yes** **or** ☐ **No** **(Check one)**

   (If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).

   a. **Does the subject of the model law necessitate a national standard and require uniformity amongst all states?** ☒ **Yes** **or** ☐ **No** **(Check one)**

      If yes, please explain why:

      This proposed change is needed to ensure cyber insurance policyholders in all states are provided with guaranty fund coverage for this trending line of business.

b. **Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law?**

☒ **Yes** **or** ☐ **No** **(Check one)**

5. **What is the likelihood that your Committee will be able to draft and adopt the model law within one year from the date of Executive Committee approval?**

☒ **1** ☐ **2** ☐ **3** ☐ **4** ☐ **5** **(Check one)**

High Likelihood **Low Likelihood**

Explanation, if necessary:
NCIGF has provided a proposal of suggested amendments for consideration. Proposed amendments include a definition of cyber insurance, coverage limitations and updates to other references.

6. **What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law?**

☒ **1** ☐ **2** ☐ **3** ☐ **4** ☐ **5** **(Check one)**

High Likelihood **Low Likelihood**

Explanation, if necessary: See previous discussion.

7. **What is the likelihood that state legislatures will adopt the model law in a uniform manner within three years of adoption by the NAIC?**

☒ **1** ☐ **2** ☐ **3** ☐ **4** ☐ **5** **(Check one)**

High Likelihood **Low Likelihood**

Explanation, if necessary:

At this juncture, the amendments being considered are simple and because they have the potential to address future policyholder protection for this line of business, we believe such changes will be widely supported by all parties.

8. **Is this model law referenced in the NAIC Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?**

No reference in Accreditation Standards.

9. **Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.**

No.

NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

TO: Robert Wake (ME), Chair
Mutual Recognition of Jurisdictions (E) Working Group

FROM: Jake Stultz, Manager II – Accounting Policy
Daniel Schelp, Chief Counsel, Regulatory Affairs

RE: 2022 Due Diligence Review of Qualified Jurisdictions & Reciprocal Jurisdictions

DATE: November 7, 2022

Executive Summary & Recommendation

The Mutual Recognition of Jurisdictions (E) Working Group will perform a yearly 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. The Working Group will also perform a yearly review with respect to non-Covered Agreement Reciprocal Jurisdictions. In this regard, NAIC legal and financial regulatory services staff has performed a due diligence review of these jurisdictions, and has the following recommendations for the Working Group's consideration:

1. The following Qualified Jurisdictions should retain their status on the *NAIC List of Qualified Jurisdictions*:

   - Bermuda, Bermuda Monetary Authority (BMA)
   - France, Autorité de Contrôle Prudentiel et de Résolution (ACPR)
   - Germany, Federal Financial Supervisory Authority (BaFin)
   - Ireland, Central Bank of Ireland (Central Bank)
   - Japan, Financial Services Agency (FSA)
   - Switzerland, Financial Market Supervisory Authority (FINMA)
   - United Kingdom, Prudential Regulation Authority of the Bank of England (PRA)

2. The following non-Covered Agreement Reciprocal Jurisdictions should retain their status on the *NAIC List of Reciprocal Jurisdictions*:

   - Bermuda, Bermuda Monetary Authority (BMA)
   - Japan, Financial Services Agency (FSA)
   - Switzerland, Financial Market Supervisory Authority (FINMA)

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Process for Periodic Evaluation after Initial Approval

The *Process for Evaluating Qualified and Reciprocal Jurisdictions* (“Process”) provides a process for evaluating both Qualified and Reciprocal Jurisdictions after their initial approval. Pursuant to NAIC policy and procedure, the Working Group, with the assistance of NAIC staff, will perform a yearly review of Qualified Jurisdictions to assess whether there have been any significant changes over the prior year that might affect their status as Qualified Jurisdictions, and that this yearly review shall follow such abbreviated process as may be determined by the Working Group to be appropriate.

For this review, NAIC legal and financial regulatory services (NAIC staff) staff searched for any publicly available information that would potentially impact the jurisdictions’ status as a Qualified Jurisdiction or as a Reciprocal Jurisdiction, including any changes to existing insurance and reinsurance laws and regulations in the jurisdictions. Next, NAIC staff researched whether a new Financial Sector Assessment Program (FSAP) Report prepared by the International Monetary Fund (IMF), or any other externally produced documentation was available, including the Technical Note on Insurance Sector Supervision, and any other information regarding the laws, regulations, practices, and procedures applicable to the jurisdiction’s reinsurance supervisory system. This research also included any public reports from ratings agencies and any other public information that was deemed to be relevant.

It is important to note that during this process, NAIC staff did not engage directly with the Qualified Jurisdictions or Reciprocal Jurisdictions and relied solely on publicly available information. Additionally, NAIC staff considered any information received (if any had been received) directly from state insurance regulators, interested parties or affected U.S. insurance companies that could potentially impact the status of the Qualified Jurisdictions or Reciprocal Jurisdictions. NAIC staff also consulted with the Federal Insurance Office and United States Trade Representative pursuant to NAIC policy and procedures.

Life Reinsurance Placed with Qualified or Reciprocal Jurisdictions

During the past year, there have been several regulator-only discussions regarding the regulatory practices of insurance supervisors and systems from jurisdictions outside of the U.S. focusing on private equity owned life insurers’ offshore reinsurance. On September 8th, the U.S. Senate Committee on Banking, Housing, and Urban Affairs, chaired by Sen. Sherrod Brown (D-OH), held a public hearing on current issues in insurance, including the growth in private equity owned life insurers and the use of off-shore reinsurance. There have been ongoing discussions at the Macroprudential (E) Working Group regarding the use of offshore reinsurance, but the Working Group is in the preliminary stages of their work and have not provided any feedback to the Mutual Recognition of Jurisdictions (E) Working Group at this time. At this time, NAIC staff do not believe that these activities rise to a level that would impact the status of any Qualified or Reciprocal Jurisdictions, but that it is appropriate that this issue be included in this discussion. NAIC staff will continue to closely monitor this issue and will provide any added information to the Working Group, as appropriate.

NAIC Staff Overall Findings

Upon review of all publicly available information, NAIC staff has reached the conclusion that the reinsurance supervisory systems of the 7 Qualified Jurisdictions listed above continue to achieve a level of effectiveness in financial solvency and reinsurance regulation for purposes of reinsurance collateral reduction, that their demonstrated practices and procedures with respect to reinsurance supervision continue to be consistent with their respective reinsurance supervisory systems, and that their laws and practices satisfy the criteria required of Qualified Jurisdictions as set forth in the Credit for Reinsurance Models. NAIC staff have reached similar conclusions with respect to the 3 Reciprocal Jurisdictions listed above that are not subject to an in-force Covered Agreement.

Therefore, it is the recommendation of NAIC staff that the above listed jurisdictions continue to qualify for inclusion on the *NAIC List of Qualified Jurisdictions* and the *NAIC List of Reciprocal Jurisdictions*.

ACLI
Financial Security for Life

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October 31, 2022

Mr. Dale Bruggeman, Chairman
Statutory Accounting Principles Working Group
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Dear Mr. Bruggeman:

Re: Proposal for the NAIC to Fulfil the Original Intent of the Interest Maintenance Reserve

The American Council of Life Insurers (ACLI) would like to request urgent action on an issue that was never fully resolved by the NAIC and has become a pressing matter for the industry due to the rapid rise in interest rates – the allowance of a net negative Interest Maintenance Reserve (IMR) balance.

The ACLI proposes the allowance of a negative IMR balance in statutory accounting. Negative IMR balances are expected to become more prevalent in a higher interest rate environment and their continued disallowance will only serve to project misleading optics on insurers' financial strength (e.g. inappropriate perception of decreased financial strength through lower surplus and risk-based capital even though higher rates are favorable to an insurer's financial health) while creating uneconomic incentives for asset-liability management (e.g. discourage prudent investment transactions that are necessary to avoid mismatches between assets and liabilities just to avoid negative IMR).

ACLI believes the necessary changes can be implemented quickly and with minimal changes to the annual statement reporting instructions.

The remainder of this letter expands upon these points.

Historical Context and Background

The IMR, first effective in statutory accounting in 1992, requires that a realized fixed income gain or loss, attributable to changes in interest rates (but not gains or losses that are credit related), be amortized into income over the remaining term to maturity of the fixed income investments (and related hedging programs) sold rather than being reflected in income immediately.

Since statutory accounting practices for life insurance companies are the primary determinant of obtaining an accurate picture for assessing solvency, it was imperative that the accounting practices be consistent for assets, liabilities, and income and that they be reported on a financially consistent basis. If assets and liabilities were not reported on a financially consistent basis, then the financial statements would not be useful in determining an accurate assessment of solvency or whether there were sufficient assets to pay contractual obligations when they become due.

Amortized cost valuation of fixed income investments reflects the outlook at the time of purchase and amortization reflects the yields available at time of purchase. Policy reserve liabilities are established at the same time, and the interest rate assumptions are consistent with the yields at that time. But if fixed income investments are sold, with the proceeds reinvested in new fixed income investments, a new amortization schedule is established which may be based on an entirely different yield environment, which may be inconsistent with the reserve liabilities when they were established.

IMR was created to prevent the timing of the realization of gains or losses on fixed income investments, related to interest rates changes, to affect the immediate financial performance of the insurance company. This recognized that the gains and losses were transitory without any true economic substance since the proceeds would be reinvested at offsetting lower or higher interest rates.

For example, without the IMR, if a company sold all bonds in a declining interest environment (e.g., from 4% to 2%), and reinvested in new bonds, surplus would increase through significant realized gains. The increased surplus would inappropriately reflect increased financial strength that is illusory, due to a now lower yielding portfolio, as there would be no change to the income needed to support the liabilities.

Likewise, if a company sold all bonds in an increasing interest rate environment (e.g., from 2% to 4%), and reinvested in new bonds, surplus would decrease through significant realized losses. The decreased surplus would inappropriately reflect decreased financial strength that is similarly illusory due to the reinvestment at higher yields relative to when the bonds were originally purchased.

A net negative IMR is currently disallowed in statutory accounting. This handling is contrary to its original intent which recognized that interest related gains and losses are both transitory without any true economic substance since the proceeds would be reinvested at offsetting lower or higher interest rates, respectively. See attachment I to this letter that illustrates the financially consistent treatment of assets, liabilities, and income and how IMR is needed to achieve that objective for both realized gains and losses.

That IMR should conceptually apply to both realized gains and losses was recognized by the NAIC during and after IMR development. The below is a quote from a 2002 report by the NAIC AVR/IMR Working Group to the E-Committee:

> *"The basic rationale for the IMR would conclude that neither a maximum nor a minimum is appropriate. If the liability values are based on the assumption that the assets were purchased at about the same time as the liabilities were established, then there should be no bounds to the reserve which corrects for departures from that assumption;* ***if a company has to set up a large reserve because of trading gains, it is in no worse position that if it had held the original assets. As for negative values of the IMR, the same rationale applies.*** **However, the concept of a negative reserve in the aggregate has not been adopted."**

While realized losses can offset realized gains in IMR, the IMR instructions require the disallowance of a net negative IMR balance (e.g., as noted in the last sentence of the aforementioned quote). See attachment II to this letter, which includes the pertinent IMR instructions where negative IMR balances are currently disallowed and in need of amendment.

When IMR was originally developed, it was intended to achieve its purpose in both a declining and rising interest rate environment. The originally adopted disallowed status of a negative IMR was expected to be addressed in subsequent years. However, over time with the persistent declining interest rates, the issue lost urgency since a negative IMR would not have been a significant issue for any company. The NAIC AVR/IMR Working Group ultimately disbanded without ever addressing this longstanding item on their agenda.

With a rising interest rate environment, it is important that the allowance of a negative IMR be addressed to fulfill its original purpose. In general, rising interest rates are favorable to the financial health of the insurance industry as well as for policyowners.

Without a change, the rising interest rate environment will give the inappropriate perception of decreased financial strength through lower surplus and risk-based capital and worse, create incentives for insurance companies to take action, or not take actions, to prevent uneconomic surplus impacts where the actions (or lack thereof) themselves may be economically detrimental.

Symmetrical treatment of a negative IMR (i.e., the allowance of a negative IMR balance) would appropriately not change surplus as a sale and reinvestment would not affect the underlying insurance company liquidity, solvency, or claims paying ability, just like with a positive IMR. See attachment III to this letter that illustrates that the sale of a fixed income investment, and reinvestment in a new fixed income investment, has no bearing on a life insurance company's liquidity, solvency, or claims paying ability.

As it was initially recognized by the NAIC that IMR should apply to both gains and losses, adequate safeguards were already built into the IMR instructions for asset adequacy, risk-based capital, and troubled companies.

Negative IMR – Reserve Adequacy and Risk-Based Capital

When IMR was developed, it was anticipated that a negative IMR balance would be reflected in asset adequacy analysis. This inclusion ensures that the assets, with the appropriate allocation from the IMR (whether negative or positive), would be adequate to fund future benefit obligations and related expenses of the company.

From the standpoint of reserve adequacy, the inclusion of a negative IMR balance appropriately reduces the investment income in asset adequacy testing. Without the inclusion of negative IMR, reserve inadequacies would potentially not be recognized.

Further, with the inclusion of a negative IMR balance in asset adequacy testing, the disallowance of a negative IMR can result in double counting of losses (i.e., through the disallowance on the balance sheet and the potential AAT-related reserve deficiency). The Actuarial Opinion that covers asset adequacy analysis requires the appropriate assessment of negative IMR in its analysis.

If a negative IMR balance is used in the asset adequacy analysis, its allowance is appropriate. Likewise, if only a portion of a company's negative IMR balance is reflected in the asset adequacy analysis, only the allowance for that portion of the negative IMR balance reflected is appropriate. If a negative IMR balance is disallowed, it would be inappropriate to include in asset adequacy analysis. It is imperative there is symmetry between both reserving and accounting considerations, and there is already precedent in the asset adequacy analyses for inclusion of IMR.

Below are the current references to IMR in the valuation manual and risk-based capital calculations.

Regulation	Use	IMR references
Actuarial Opinion and Memorandum Regulation (VM-30)	Asset adequacy analysis for annual reserve opinion	An appropriate allocation of assets in the amount of the IMR, whether positive or negative, shall be used in any asset adequacy analysis.
Life principle-based reserves (VM-20)	Calculation of deterministic reserve	Calculate the deterministic reserve equal to the actuarial present value of benefits, expenses, and related amounts less the actuarial present value of premiums and related amounts, less the positive or negative pre-tax IMR balance at the valuation date allocated to the group of one or more policies being modeled
Life principle-based reserves (VM-20)	Calculation of stochastic reserve	Add the CTE amount (D) plus any additional amount (E) less the positive or negative pre-tax IMR balance allocated to the group of one or more policies being modeled
Variable annuities principle-based reserves (VM-21)	Reserving for variable annuities	The IMR shall be handled consistently with the treatment in the company's cash-flow testing, and the amounts should be adjusted to a pre-tax basis.
C3 Phase 1 (Interest rate risk capital)	RBC for fixed annuities and single premium life	IMR assets should be used for C3 modeling.

Additional IMR Safeguards

The IMR instructions do provide additional safeguards in situations where it would be appropriate to recognize interest-rate related gains and losses immediately rather than be included in the IMR.

They were established to prevent situations where the liability the IMR supports, no longer exists. Examples noted in the annual statement instructions include:

- Major book-value withdrawals or increases in policy loans occurring at a time of elevated interest rates.

- Major book value withdrawals resulting from a "run on the bank" due to adverse publicity.

As a result, the IMR instructions include an IMR Exclusion whereby all gains or losses which arise from the sale of investments related to "Excess Withdrawal Activity" are to be excluded from IMR and reflected in net income. In short, Excess Withdrawal Activity is defined as 150% of the product of the lower of the withdrawal rate in the preceding or in the next preceding year calendar year times the withdrawal reserves at the beginning of the year.

Summary

With a rising interest rate environment, it is important that the allowance of a negative IMR be addressed to fulfill its original purpose. In general, rising interest rates are favorable to the financial health of the insurance industry as well as for policyowners. Without a change, the rising interest rate environment will give the inappropriate perception of decreased financial strength through lower surplus and risk-based capital.

The inability to recognize negative IMR could also impact the rating agency view of the industry, or worse, incentivize companies to avoid prudent investment transactions that are necessary to avoid mismatches between assets and liabilities. Furthermore, there are adequate safeguards in place to ensure that allowing a negative IMR does not cause any unrecognized reserve or capital inadequacies or any overstatement of claims paying ability.

Current statutory accounting guidance creates two equally objectionable alternatives for insurers and their policyowners. Following the current statutory guidance will improperly reflect financial strength through understating surplus, so additional surplus may need to be retained. Alternatively, one could take steps to manage the current situation by limiting trading of fixed income investments and related hedging programs, which would diminish significant economic value for policyowners, as well as create a mismatch between assets and liabilities.

Both scenarios encourage short-term non-economic activity not in the best long-term interest of the insurance company's financial health or its policyowners. For insurers with diminishing IMR balances due to the rapid increase in interest rates, this dilemma is either here or fast approaching and can only be resolved now with certainty of the appropriate treatment of IMR by the NAIC.

The ACLI looks forward to urgently working with the NAIC toward fulfilling the original intent of IMR. It is imperative that insurers receive relief for year-end 2022.

If you have any questions regarding this letter, please do not hesitate to contact us.

Sincerely,

Mike Monahan
Senior Director, Accounting Policy

Paul Graham
Senior Vice President, Chief Actuary

<u>Simplified Example – Need for Reporting Assets, Liabilities, and Income on a Consistent Basis:</u>

- This example shows the appropriate interrelationship of IMR on assets, reserve liabilities, and income.
- Assume a bond is held with the following characteristics:
  - Par Value: $1,000
  - Coupon: 3%
  - Term-to-maturity: 10 years
- Assume the bond is then sold at "time zero" and the proceeds are immediately reinvested in a bond with the same characteristics (e.g., term-to maturity, credit quality, coupon equivalent to market rate, etc.).
- Assume a simplified example with no existing IMR balance, where the bond supports a fixed insurance liability with the same duration as the original bond, as well as a present value of $1,000.

Table 1: Market Interest Rate Scenario

	Same	Lower	Higher
Market interest rate	3%	2%	4%
Bond's market value	$1,000	$1,090	$919
Realized gain/(loss) if sold	$0	$90	($81)*

Realized gain/(loss) deferred to balance sheet IMR and amortized into income over remaining life of bond sold (i.e., 10 years).

Table 2: Statutory Investment Income

IMR amortization	$0	$9	($8)
Interest income on new bond	$30	$21	$38
Total annual stat income	$30	$30	$30

On average, future income is approximately the same in each interest rate scenario as the IMR gets reduced through amortization to income.

Table 3: Statutory Balance Sheet

Balance Sheet Bonds	$1,000	$1,090	$919
IMR	$0	($90)	$0*
Stat assets net of IMR	$1,000	$1,000	$919*
Reserves	$1,000	$1,000	$1,000
Surplus	$0	$0	($81)*

Even though the sale of the bond (and subsequent reinvestment) is non-economic, and the same income is being produced to support the liability, a negative surplus position makes it appear there is now a deficiency. Allowing the negative IMR appropriately would show no surplus impact, as is shown when a gain occurs, as there is no change in reported reserve liabilities. Appropriately consistent financial results require the allowance of negative IMR

***The negative IMR balance is currently disallowed and directly reduces surplus. This treatment is not supported by theoretical rationale and gives a distorted view of solvency.**

Pertinent Annual Statement Instructions

Line 6 – Reserve as of December 31, Current Year

Record any positive or allowable negative balance in the liability line captioned "Interest Maintenance Reserve" on Page 3, Line 9.4 of the General Account Statement and Line 3 of the Separate Accounts Statement. A negative IMR balance may be recorded as a negative liability in either the General Account or the Separate Accounts Statement of a company only to the extent that it is covered or offset by a positive IMR liability in the other statement.

If there is any disallowed negative IMR balance in the General Account Statement, include the change in the disallowed portion in Page 4, Line 41 so that the change will be appropriately charged or credited to the Capital and Surplus Account on Page 4. If there is any disallowed negative IMR balance in the Separate Accounts Statement, determine the change in the disallowed portion (prior year less current year disallowed portions), and make a direct charge or credit to the surplus account for the "Change in Disallowed Interest Maintenance Reserve" in the write-in line, in the Surplus Account on Page 4 of the Separate Accounts Statement.

The following information is presented to assist in determining the proper accounting:

General Account IMR Balance	Separate Account IMR Balance	Net IMR Balance
Positive	Positive	Positive (see rule a)
Negative	Negative	Negative (see rule b)
Positive	Negative	Positive (see rule c)
Positive	Negative	Negative (see rule d)
Negative	Positive	Positive (see rule e)
Negative	Positive	Negative (see rule f)

Rules:

a. If both balances are positive, then report each as aa liability in its respective statement.

b. If both balances are negative, then no portion of the negative balances is allowable as a negative liability in either statement. Report a zero for the IMR liability in each statement and follow the above instructions for handling disallowed negative IMR balances in each statement.

c. If the general account balance is positive, the separate accounts balance is negative and the combined net balance is positive, then all of the negative IMR balance is allowable as a negative liability in the Separate Accounts Statement.

d. If the general account balance is positive, the separate account balance is negative, and the combined net balance is negative, then the negative amount not covered by the positive amount is not allowable. Report only the allowable portion as a negative liability in the Separate Accounts Statement and follow the above instructions for handling the disallowed portion of negative IMR balances in the Separate Accounts Statement.

e. If the general account balance is negative, the separate account balance is positive, and the combined net balance is positive, then all of the negative IMR balance is allowable as a negative liability in the General Account Statement.

f. If the general account balance is negative, the separate account balance is positive, and the combined net balance is negative, then the negative amount not covered by the positive amount is not allowable. Report only the allowable portion as a negative liability in the General Account Statement and follow the above instructions for handling the disallowed portion of negative IMR balances in the General Account Statement.

IMR Illustration – Liquidity, Solvency and Claims Paying Ability

Essentially, a negative IMR balance from an individual trade represents the present value of the future positive interest rate differential, from the new investment compared to the old investment, that puts one in the same economic position, when compared to before the trade, including total liquid assets available to pay claims.

This phenomenon can be illustrated in the following table where a 10-year bond is sold, one year after purchase, and immediately reinvested in another 10-year bond with equivalent credit quality in an interest rate environment where market interest rates increased from 2% to 4% in the intervening year.

	Coupon Rate of Bond	Market Interest Rate @ Purchase	Par Value of Bond	Fair Value @ Purchase	Fair Value @ Time of Sale	Loss on Sale	Claims Paying Liquidity
Old Bond	2%	2%	100	100	85.13	14.87	85.13
New Bond	4%	4%	85.13	85.13	85.13	N/A	85.13

The short-term acceleration of negative IMR to surplus (e.g., its disallowance) is strictly a timing issue and not a true loss of financial strength or claims paying liquidity, but it does present a temporary and inappropriate optics issue in surplus/financial strength until the IMR is fully amortized.

This phenomenon can further be illustrated by comparing two separate hypothetical companies. Assume Company A and B both have the exact same balance sheets. Then assume Company A keeps the old bond and Company B affects the trade mentioned above.

With the disallowance of a negative IMR balance, Company B now has a balance sheet that shows a relative decline of financial strength of $14.87. This weakened balance sheet contrasts with both the principle behind the development of IMR, the relative actual economic financial strength, and claims paying ability of the two entities.

There is no difference in balance sheet economics of the two entities. The negative IMR balance for Company B essentially represents the difference between cost and fair value of the investment sold, that is already embedded on Company A's balance sheet based on the existing interest rate environment. The negative IMR balance should be recognized as there is no change in economics pre and post trade (or in this instance between Company A and Company B) which is consistent with the overall principle behind IMR.