

2012 Spring National Meeting  
New Orleans, LA

**REINSURANCE (E) TASK FORCE**

Monday, March 5, 2012

12:30 – 2:00 p.m.

Hilton New Orleans Riverside—Grand Ballroom A—1<sup>st</sup> Level

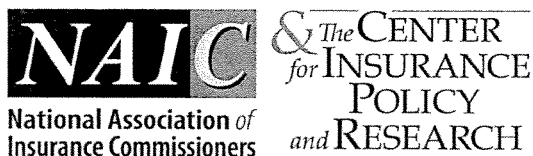
**ROLL CALL**

Michael F. Consedine, Chair	Pennsylvania	Joseph G. Murphy	Massachusetts
John M. Huff, Vice Chair	Missouri	Monica J. Lindeen	Montana
Jim L. Ridling	Alabama	Bruce R. Ramage	Nebraska
Christina Urias	Arizona	Scott J. Kipper	Nevada
Jay Bradford	Arkansas	Roger A. Sevigny	New Hampshire
Dave Jones	California	Kenneth Kobylovski	New Jersey
Thomas B. Leonardi	Connecticut	Benjamin M. Lawskey	New York
Karen Weldin Stewart	Delaware	John D. Doak	Oklahoma
Kevin M. McCarty	Florida	Joseph Torti III	Rhode Island
Gordon I. Ito	Hawaii	Eleanor Kitzman	Texas
Andrew Boron	Illinois	Neal T. Gooch	Utah
Stephen W. Robertson	Indiana	Stephen W. Kimbell	Vermont
Sandy Praeger	Kansas	Jacqueline K. Cunningham	Virginia
James J. Donelon	Louisiana	Mike Kreidler	Washington
Eric A. Cioppa	Maine	Ted Nickel	Wisconsin

**AGENDA**

1. Discuss Implementation of Revised Credit for Reinsurance Models—*Commissioner Michael F. Consedine (PA)* Attachment 1
  - a. Discuss Development of Process for Evaluating Non-U.S. Jurisdictions
  - b. Discuss Establishment of NAIC Group to Provide Advisory Support and Assistance to the States in Review of Reinsurance Collateral Reduction Applications
  - c. Discuss Development of Instructions for Form CR-F and CR-S
2. Discuss and Consider for Exposure Draft Key Elements for Accreditation with Respect to Revised Credit for Reinsurance Models—*Commissioner Michael F. Consedine (PA)* Attachment 2
3. Receive Update on Referral from Financial Condition (E) Committee Regarding Collection of Undisputed Reinsurance Recoverable Balances Held by Ceding Insurers in Receivership—*Ryan Couch (NAIC)*
4. Receive Update Regarding Reinsurance-related Activities of the International Association of Insurance Supervisors—*Ryan Couch (NAIC)*
5. Any Other Matters Brought Before the Task Force—*Commissioner Michael F. Consedine (PA)*
6. Adjournment

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TO: Reinsurance (E) Task Force  
 FROM: Ryan Couch and Daniel Schelp  
 DATE: February 27, 2012  
 RE: Reinsurance Collateral Reduction—Next Steps

## Executive Summary

On November 6, 2011, the NAIC Executive (EX) Committee and Plenary adopted revisions to the *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786). These revisions serve to reduce reinsurance collateral requirements for non-U.S. licensed reinsurers that are licensed and domiciled in qualified jurisdictions. In order to assist the states in implementing these provisions, it will be imperative for the NAIC to put into place certain elements with respect to 1) accreditation standards; 2) the review and approval of qualified jurisdictions; 3) the creation of an NAIC group to provide advisory support and assistance to the states in the review of reinsurance collateral reduction applications; and, 4) develop reporting instructions for Forms CR-F and CR-S applicable to certified reinsurers. The following discussion provides further detail on issues to be addressed as they relate to the 2012 Charges:

## 2012 Charges to the Reinsurance Task Force, Action Items and Issues to be Addressed

- 1) **Provide guidance to the Financial Regulation Standards and Accreditation (F) Committee with respect to key elements of the revised *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786) to be considered for the purposes of the NAIC a Financial Regulation Standards and Accreditation program.**

**Action Items.** The NAIC must determine what provisions from the revised models should be included as critical elements in the accreditation standards. Recommendations should be addressed by the Reinsurance Task Force during the 2012 Spring National Meeting.

- a. **Prior Accreditation Recommendations.** In December 2010, the NAIC adopted the Recommendations Regarding Key Elements of the Reinsurance Framework for Accreditation Purposes as interim guidance to the Financial Regulation Standards and Accreditation (F) Committee when reviewing any individual state reforms to reduce reinsurance collateral that were enacted prior to NAIC adoption of amendments to the models (attachment). These Recommendations are a logical starting point for the development of a final accreditation standard for ceded reinsurance. Certain changes were made to the final revisions to the models (e.g., a new A- tier was created), and these changes will need to be considered for incorporation into the final standard.
- b. **Voluntary Standard.** It should be noted that any proposed changes to the accreditation standards would not require a state to reduce its reinsurance collateral requirements. Under the Accreditation Interlineations, it is only required that a state demonstrate that its laws and administrative practices result in solvency regulation that is similar in force and no less effective than the standard. This has been interpreted to mean that a state may comply by demonstrating that its laws result in solvency regulation that is more effective than the standard.
- c. **Expedited Modification of Standard.** A determination should be made as to whether any proposed modification to the Part A Standards be considered through the normal process (3 years), or on an expedited basis (requires 3/4 vote of FRSAC).

- 2) **Develop an NAIC process to evaluate the reinsurance supervisory systems of non-U.S. jurisdictions, for the purposes of developing and maintaining a list that includes any such jurisdiction that is recommended by the NAIC for recognition by the states as a qualified jurisdiction in accordance with the revised Model #785 and Model #786, under which an assuming insurer licensed and domiciled in a qualified jurisdiction is eligible to be considered for certification by a state as a certified reinsurer.**

**Action Items.** Consider the establishment of a drafting group to develop a process to (1) review non-U.S. jurisdictions (including budgetary and resource requirements), (2) determine which jurisdictions will be initially reviewed, and (3) develop a timeline for implementation.

- a. **Process to Review Non-U.S. Jurisdictions.** When developing the Reinsurance Framework, the Reinsurance Task Force contemplated establishing an accreditation-like process to review the reinsurance supervisory systems of non-U.S. jurisdictions. Under the revisions to the reinsurance models, the approval of Qualified Jurisdictions will be done by the states; however, the models provide that a list of qualified jurisdictions will be created through the NAIC committee process, and individual states must consider this list when approving jurisdictions. Both the NAIC committee process for approving qualified jurisdictions, and internal NAIC processes (including accompanying budgetary considerations) must be established. Determinations must also be made with respect to communication of evaluation results to the states and applicable non-U.S. jurisdictions, and any subsequent re-evaluation efforts.
- b. **Identification of Jurisdictions for Review.** The NAIC must develop a process for identifying non-U.S. jurisdictions for evaluation. Consideration may be given as to whether the NAIC should concentrate its initial efforts by identifying several non-U.S. jurisdictions for evaluation, with other jurisdictions to be evaluated subsequently.
- c. **Resource and Budgetary Considerations.** It will be necessary to utilize additional resources in order to perform the evaluation of non-U.S. jurisdictions. Additional resources may include involvement of additional NAIC staff, state regulators and/or outside consultants in the review process. No specific analysis has been performed to estimate the costs associated with these evaluations at this time.
- d. **Federal Insurance Office.** It should be noted that the FIO has the following authority under the Dodd-Frank Act, which could potentially pertain to reinsurance collateral requirements for non-U.S. reinsurers:
- coordinate Federal efforts and develop Federal policy on prudential aspects of international insurance matters;
  - assist the Secretary in negotiating covered agreements (as defined in the Dodd-Frank Act);
  - determine whether State insurance measures are preempted by covered agreements; and,
  - consult with the States (including State insurance regulators) regarding insurance matters of national importance and prudential insurance matters of international importance.

Further, the Dodd-Frank Act authorizes the U.S. Treasury Secretary and U.S. Trade Representative, jointly, to negotiate and enter into covered agreements on behalf of the United States.

- 3) **Form a new NAIC group to provide advisory support and assistance to the states in the review of reinsurance collateral reduction applications. Such a process with respect to the review of applications for reinsurance collateral reduction and qualified jurisdictions should strengthen state regulation and prevent regulatory arbitrage. Such an effort will be supported by NAIC staff with substantial expertise to support the functions of such a group.**

**Action Items.** The Preface to the Credit for Reinsurance Models provides that the NAIC will form a new group (during 2012) to provide advisory support and assistance to states in the review of reinsurance collateral reduction applications. Such a process with respect to the review of applications for reinsurance collateral reduction and qualified jurisdictions should strengthen state regulation and prevent regulatory arbitrage. Consideration should be given to the establishment of a drafting group to implement this process.

- a. **Reinsurance FAWG.** A subgroup of the Reinsurance Task Force should be appointed with primary responsibility for this NAIC function. The Financial Analysis (E) Working Group (FAWG) was frequently discussed by the Reinsurance Task Force as a model for this group. It will be necessary to establish a specific mission statement for this new group, as well as specific charges outlining its tasks. The purpose of this group initially would be to serve as a forum for state regulators to review and discuss specific application of the reinsurance collateral requirements to individual state actions with respect to assuming insurers and jurisdictions. It will also serve as a forum to facilitate uniform state action concerning credit for reinsurance issues, and establish processes to facilitate multi-state recognition of individual state certification of assuming insurers.
  - b. **Consultative Process in Approval of Qualified Jurisdictions and Certified Reinsurers.** Determination of the specific NAIC-processes by which the Reinsurance FAWG subgroup will assist the states in the review of certified reinsurers (both pre- and post- certification) and the qualification of non-U.S. jurisdictions. The Task Force should also consider whether these functions should be consolidated in a single group, or assigned to multiple NAIC groups.
  - c. **Centralized Reporting Process.** The Credit for Reinsurance Models now contain reporting requirements for certified reinsurers. Consideration should be given to the establishment of a centralized NAIC process for collection and storage of financial information submitted by certified reinsurers, and access by the states to this information.
- 4) **Develop reporting instructions for forms CR-F and CR-S applicable to certified reinsurers under the revised Model #785 and Model #786.**

**Action Items.** The revised Credit for Reinsurance Model Regulation provides that Forms CR-F (property/casualty) or CR-S (life/health), as applicable, must be filed annually with the domiciliary state. It further provides that instructions to these forms are to be developed as an exhibit to this model. Completion of these instructions is necessary in order for assuming insurers to meet information filing requirements.

- a. This issue was included within PCI/RAA compromise proposal (adopted on September 19<sup>th</sup>).
- b. Consideration should be given to any further explanation or definitions required for columns in the forms (i.e., an explanation for what information is required in each column).

- c. Consideration should also be given as to whether further detail is necessary with respect to categorization of information contained in the reports (e.g., separation of affiliated and non-affiliated, U.S. vs. non-U.S., etc.).

**5) Consider any other issues related to the revised Model #785 and Model #786.**

**Action Items.** The Task Force will consider any other issues that arise with respect to implementation of the revised models.

- a. States moving forward with adoption of the models have advised NAIC staff that interested parties have raised issues with specific provisions in the adopted models. These types of issues should be communicated among regulators to ensure uniform adoption of the models throughout the states.
- b. In both the Framework and the Preface to Reinsurance Models, the NAIC has committed to undertake a re-examination of the collateral amounts within two years from the effective date of the revisions to the models.
- c. Any other issues as they arise.

## 10. Reinsurance Ceded

Cross Reference to Models

State law should contain the NAIC Credit for Reinsurance Model Law (#785), the NAIC's Credit for Reinsurance Model Regulation (#786) and the NAIC Life and Health Reinsurance Agreements Model Regulation (#791) or substantially similar laws.

## Credit for Reinsurance Model Law (#785)

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

Former Law § 2B(2) was moved and incorporated into Law § 2I.

\*Law § 2D(3)(a & b)  
\*Reg. § 7B(2)

\*Note: Asterisk indicates that F-Committee will be advised of changes in law and regulation.

g. Credit allowed for reinsurance ceded to an insurer not meeting the requirements of a., b., c., or d. above, or with respect to a certified reinsurer described below, in an amount not exceeding the liabilities carried by the ceding insurer and only in the amount of funds held by or on behalf of the ceding insurer in the form of cash, securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets, clean, irrevocable, unconditional letters of credit, and other forms of security acceptable to the commissioner?

Law § 3B  
Reg. § 10A(2)

h. Ceding insurers subject to notification requirements with respect to reinsurance concentration risk similar to those in Section 2J of the model law?

Law § 2J

Life and Health Reinsurance Agreements Model Regulation (#791)

h*j*. Scope similar to Section 3?

i*j*. No insurer, for reinsurance ceded establishes any asset or reduces any liability due to the terms of the reinsurance agreement, in substance or effect if any of the conditions in Section 4A exist?

j*k*. Agreements entered into after the effective date of this regulation which involve the reinsurance of business issued prior to the effective date of agreements, along with subsequent amendments shall be filed by the ceding company with the commissioner within 30 days from the execution date along with attachments noted in Section 4C(1)?

k*l*. Any increase in surplus net of federal income tax resulting from arrangements described in Section 4C(1) to be reported as described in Section 4C(2)?

l*m*. Written agreements with provisions similar to Section 5?

m*n*. Insurers required to reduce to zero any reserve credits or assets established with respect to existing reinsurance agreements entered into prior to the effective date of this regulation which would not be recognized under the provisions of this regulation?

Credit for Reinsurance Model Regulation (#786)

n*o*. Credit for reinsurance allowed for reinsurance ceded by domestic reinsurers to assuming insurers that were licensed in the state as of the last date of the ceding insurers' statutory financial statement?

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

\*Reg. § 5A(4)  
\*Reg. § 5B

pp. Credit for reinsurance provisions for reinsurers licensed and domiciled in other states similar to Section 6?

qr. Credit for reinsurance provisions for reinsurers maintaining trust funds similar to Section 7?

\*Reg. § 7B(2)

rs. Credit for reinsurance required by law similar to Section 8?

st. Reduction from liability for reinsurance ceded to an unauthorized assuming insurer similar to Section 9?

tu. Provisions for trust agreements similar to Section 10?

\*Reg. § 11B(13) & 11D(1)(b)

uv. Provisions for letters of credit similar to Section 11?

\*Reg. § 12E  
\*Former Reg. § 12G deleted /  
New 12G

vw. Provisions for unencumbered funds similar to Section 12?

wx. Provisions for reinsurance contracts similar to Section 13?

Reg. § 14A & C

xy. The adoption of Form AR-1—Certificate of Assuming Insurer.

#### Reinsurance Ceded to Certified Reinsurers

z. Although not required for accreditation, a state's laws and regulations may allow credit for reinsurance ceded to a certified reinsurer, including affiliated reinsurance transactions. For such cases, its laws and regulations shall contain provisions which are substantially similar to those applicable to certified reinsurers contained in Section 2E of Model #785 and Section 8A of Model #786.

Reg. § 8A(2) (affiliated)

Law § 2E  
Reg. § 8A

i. The credit allowed is based upon the security held by or on behalf of the ceding insurer in accordance with the rating assigned to the certified reinsurer by the commissioner? The amount of security required in order for full credit to be allowed shall not be less than that required under Section 8A(1) of Model #786.

Law § 2E(5)  
Reg. § 8A

Reg. § 8A(1)

i.ii. The security provided by the certified reinsurer is in a form consistent with the provisions of Section 2E(5) of Model #785 and Section 8A of Model #786?

Law § 2E(5)  
Reg. § 8A



iii. The commissioner requires the certified reinsurer to post 100% security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer?

Reg. § 8A(3)

iv. Although not required for accreditation, a state's laws or regulations may allow a deferral period to a certified reinsurer for posting security applicable to catastrophe recoverables, similar to Section 8A(4) of Model #786. In such cases, the deferral period shall not exceed one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence as recognized by the commissioner, and shall not apply to lines of business other than those provided in Section 8A(4) of Model #786.

Reg. § 8A(4)

v. Credit for reinsurance ceded to a certified reinsurer shall apply only to reinsurance contracts meeting requirements similar to Section 8A(5) of Model #786?

Reg. § 8A(5)

aa. In order to be a certified reinsurer, an assuming insurer must be certified by the commissioner in accordance with the process similar to Section 8B of Model #786?

i. The commissioner is required to post notice upon receipt of any application for certification similar to the requirements of Section 8B(1) of Model #786?

Reg. § 8B(1)

ii. The commissioner is required to publish a list of all certified reinsurers and their ratings similar to the requirements in Section 2E(4) of Model #785 and Section 8B(2) of Model #786?

Law § 2E(4)

Reg. § 8B(2)

iii. A certified reinsurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner?

Law § 2E(1)(a)

Reg. § 8B(3)(a)

iv. A certified reinsurer must maintain capital and surplus, or its equivalent, of no less than \$250,000,000, calculated in accordance with Section 8B(4)(h) of Model #786? This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least \$250,000,000 and a central fund containing a balance of at least \$250,000,000.

Reg. § 8B(3)(b)

Reg. § 8B(4)(h)

Law § 2E(1)(b)

Law § 2E(2) (association)

- v. A certified reinsurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner, and the maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as set forth in Section 8B(4)(a) of Model #786? These ratings must be based on interactive communication between the rating agency and the assuming insurer and not based solely on publicly available information.
- Law § 2E(1)(c)  
Reg. § 8B(3)(c)
- Reg. § 8B(4)(a) (table)
- Reg. § 8B(3)(c) (interactive)
- vi. A certified reinsurer is rated by the commissioner on a legal entity basis, with consideration given to the group rating where appropriate (an association including incorporated and individual unincorporated underwriters that have been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating)? Factors may be considered in the evaluation process similar to those provided under Section 8B(4) & (5) of Model #786.
- Reg. § 8B(4)
- Law § 2E(2)(a) (association)
- Reg. § 8B(4)(b-k)
- Reg. § 8B(5)(a & b)
- vii. A certified reinsurer must submit a properly executed Form CR-1 as evidence of its submission to the jurisdiction of the state, appointment of the commissioner as an agent for service of process in the state, and agreement to provide security for one hundred percent (100%) of its liabilities attributable to reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S. judgment? The commissioner must not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final U.S. judgments or arbitration awards.
- Law § 2E(1)(d)  
Reg. § 8B(6)
- Reg. § 8B(6)
- Law § 2E(3)(a) (jurisdiction)
- viii. A certified reinsurer must agree to meet applicable information filing requirements similar to those provided under Section 8B(7) of Model #786, both with respect to an initial application for certification and on an ongoing basis?
- Law § 2E(1)(e)  
Reg. § 8B(7)
- ix. Changes in rating or revocation of certification of a certified reinsurer are applied by the commissioner in a manner similar to the provisions of Section 2I of Model #785 and Section 8B(8) of Model #786?
- Reg. § 8B(8)
- Law § 2I

bb. The commissioner is required to create and publish a list of qualified jurisdictions, under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer?

Law § 2E(3)  
Reg. § 8C(1)

i. In determining whether the domiciliary jurisdiction of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner evaluates the reinsurance supervisory system of the non-U.S. jurisdiction, both initially and on an ongoing basis, under criteria similar to those provided under Section 8C(2) of the model regulation?

Law § 2E(3)(a)  
Reg. § 8C(2)

ii. The commissioner shall consider the list of qualified jurisdictions published by the NAIC in determining qualified jurisdictions? If the commissioner approves a jurisdiction as qualified that does not appear on the NAIC list of qualified jurisdictions, the commissioner must provide thoroughly documented justification with respect to criteria similar to that provided under Section 8C(2) of Model #786.

Law § 2E(3)(b)  
Reg. § 8C(3)

iii. U.S. jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program are recognized as qualified jurisdictions?

Law § 2E(3)(c)  
Reg. § 8C(4)

cc. Although not required for accreditation, a state's laws and regulations may allow a commissioner to defer to the certification and rating of a certified reinsurer issued by another NAIC accredited jurisdiction. For such cases, recognition of certification is made in accordance with provisions similar to Section 8D of Model #786?

Law § 2E(6)  
Reg. § 8D

dd. Reinsurance contracts entered into or renewed with a certified reinsurer must include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer for reinsurance ceded to the certified reinsurer?

Reg. § 8E