

PROJECT HISTORY – 2019

CREDIT FOR REINSURANCE MODEL LAW (#785)

CREDIT FOR REINSURANCE MODEL REGULATION (#786)

(Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance)

1. Description of the Project, Issues Addressed, etc.

On Sept. 22, 2017, the U.S. Department of the Treasury (Treasury Department) and the Office of the U.S. Trade Representative (USTR) signed the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (EU Covered Agreement). The EU Covered Agreement includes requirements on group capital, group supervision and reinsurance collateral. The EU Covered Agreement would eliminate reinsurance collateral requirements for European Union (EU) reinsurers that maintain a minimum amount of own funds equivalent to \$250 million and a solvency capital requirement (SCR) of 100% under Solvency II. Conversely, U.S. reinsurers that maintain capital and surplus equivalent to 226 million euros with a risk-based capital (RBC) of 300% of authorized control level would not be required to maintain a local presence in order to do business in the EU or post collateral in any EU jurisdiction.

On Dec. 11, 2018, the Treasury Department and the USTR announced that the U.S. and the United Kingdom (UK) had reached a final agreement on reinsurance collateral and other insurance regulatory measures outlined in the “Bilateral Agreement Between the United States Of America and the United Kingdom on Prudential Measures Regarding Insurance and Reinsurance” (UK Covered Agreement). A separate Covered Agreement for the UK was necessary due to plans by the UK to exit the EU. The UK Covered Agreement mirrors the language in the prior Covered Agreement between the U.S. and the EU, and, for the purposes of this project history, they will be referred to collectively as the “Covered Agreement.”

While the group capital and group supervision provisions of the Covered Agreement are not expected to require changes to state laws, the Covered Agreement will require the states to take action with respect to the reinsurance collateral provisions within 60 months (five years) of signing or face potential federal preemption by the Federal Insurance Office (FIO) under the federal Dodd-Frank Wall Street Reform and Consumer Protection Act. Specifically, in 2011, the NAIC membership adopted revisions to Section 2E of the *Credit for Reinsurance Model Law* (#785) and Section 8 of the *Credit for Reinsurance Model Regulation* (#786) which will be affected by the Covered Agreement. These revisions served to reduce reinsurance collateral requirements for certified non-U.S. licensed reinsurers that are licensed and domiciled in qualified jurisdictions. Prior to these amendments, in order for domestic U.S. ceding companies to receive reinsurance credit, the reinsurance must either have been ceded to U.S. licensed reinsurers or secured by collateral representing 100% of liabilities for which the credit was recorded.

On Feb. 20, 2018, the NAIC and the Reinsurance (E) Task Force held a Public Hearing in New York to address the reinsurance collateral provisions of the Covered Agreement. On April 17, 2018, based on public comments and testimony received at the Public Hearing, the Executive (EX) Committee agreed to the following actions with respect to the Covered Agreement:

Adopted a Request for NAIC Model Law Development with respect to Model #785 and Model #786. The motion adopted was that these models be revised to: 1) conform to the requirements in the covered agreement with respect to EU reinsurers; and 2) provide reinsurers domiciled in NAIC-qualified jurisdictions other than within the EU (currently, Bermuda, Japan, Switzerland and, after Brexit, the United Kingdom) with similar reinsurance collateral reductions as those to be implemented to comply with the covered

agreement, with provisions regarding group supervision, group capital, information-sharing and enforcement.

On May 15, 2019, the Task Force adopted revisions to Model #785 and Model #786 consistent with these charges during a public conference call, which were then approved by the Financial Condition (E) Committee on May 28, 2019. The revisions would eliminate reinsurance collateral requirements for “reciprocal” reinsurers that have their head office or are domiciled in any of the following:

1. An EU-member country (or any other non-U.S. jurisdiction) that is subject to an in-force covered agreement addressing the elimination of reinsurance collateral requirements with U.S. ceding insurers (Covered Agreement Reciprocal Jurisdictions).
2. A U.S. jurisdiction that meets the requirements for accreditation under the NAIC Financial Regulation Standards and Accreditation Program (Accredited State Reciprocal Jurisdictions).

A non-U.S. jurisdiction recognized as a qualified jurisdiction that meets certain additional requirements consistent with the terms of a covered agreement (Qualified Jurisdiction Reciprocal Jurisdictions).

The requirements for reciprocal reinsurers under the revisions to Model #785 and Model #786 mirror the requirements for reinsurers under the Covered Agreement, and they would place the following additional requirements with respect to reciprocal reinsurers:

- Maintain minimum capital and surplus of no less than \$250 million.
- Maintain a minimum solvency or capital ratio, as applicable, of 100% of the SCR or a risk-based capital (RBC) ratio of 300% of the authorized control level, or such other solvency or capital ratio that the commissioner determines is an effective measure of solvency.
- Provide certain assurances to the state insurance commissioner on a new form (Form RJ-1), which includes providing prompt notice to the state insurance commissioner in the event of noncompliance with the minimum capital and surplus and minimum solvency requirements; or serious noncompliance with applicable law, consent to service of process, consent to payment of final judgments, nonparticipation in solvent schemes; and other assurances.
- Provide annual audited financial statements and other specified financial information for the two years preceding entry into the reinsurance agreement, and file annual audited financial statements and other specified financial information on a semi-annual basis.
- Maintain a practice of prompt payment of claims under reinsurance agreements.

2. Name of Group Responsible for Drafting the Model and States Participating

The Reinsurance (E) Task Force of the Financial Condition (E) Committee was responsible for drafting the revisions to the Model #785 and Model #786:

Chlora Lindley-Myers, Chair	Missouri	Eric A. Cioppa	Maine
Raymond G. Farmer, Vice Chair	South Carolina	Gary Anderson	Massachusetts
Jim L. Ridling	Alabama	Matthew Rosendale	Montana
Lori K. Wing-Heier	Alaska	Bruce R. Ramge	Nebraska
Peter Fuimaono	American Samoa	Barbara D. Richardson	Nevada
Allen W. Kerr	Arkansas	John Elias	New Hampshire
Ricardo Lara	California	Marlene Caride	New Jersey
Michael Conway	Colorado	Linda A. Lacewell	New York
Andrew N. Mais	Connecticut	Mike Causey	North Carolina
Trinidad Navarro	Delaware	Jon Godfread	North Dakota
Stephen C. Taylor	District of Columbia	Jillian Froment	Ohio
David Altmaier	Florida	Glen Mulready	Oklahoma
Jim Beck	Georgia	Elizabeth Kelleher Dwyer	Rhode Island
Dafne M. Shimizu	Guam	Julie Mix McPeak	Tennessee
Dean L. Cameron	Idaho	Kent Sullivan	Texas
Stephen W. Robertson	Indiana	Todd E. Kiser	Utah
Doug Ommen	Iowa	Michael S. Pieciak	Vermont
Vicki Schmidt	Kansas	Scott A. White	Virginia
Nancy G. Atkins	Kentucky	James A. Dodrill	West Virginia
James J. Donelon	Louisiana	Mark Afable	Wisconsin

3. Project Authorized by What Charge and Date First Given to the Group

On April 17, 2018, the Executive (EX) Committee adopted the following charges to the Reinsurance (E) Task Force and a Request for NAIC Model Law Development with respect to these charges, which were reapproved by the Committee for 2019:

- The Task Force is directed to develop revisions to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) to conform to the terms of the Covered Agreement.
- The Task Force is directed to develop revisions to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) to allow reinsurers domiciled in NAIC qualified jurisdictions other than within the EU to realize reinsurance collateral requirements similar to those provided under the Covered Agreement under specified circumstances. In order for an insurer domiciled in a qualified jurisdiction outside of the EU to receive the same collateral requirement treatment as provided to EU-domiciled reinsurers, that non-EU qualified jurisdiction must agree to adhere to all other standards imposed upon the EU in the Covered Agreement, including the requirement that the qualified jurisdiction must agree to recognize the states' approach to group supervision, including group capital. As part of its deliberations, the Task Force should consult with international regulators, in addition to all other interested parties.
- The Task Force is directed to develop revisions to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786) to address the effect of a breach of the Covered Agreement (as determined pursuant to its terms) on a reinsurer's collateral obligations and the effect of a failure of a non-EU qualified jurisdiction to meet the standards imposed by its agreement or

acknowledgment to adhere to the terms of the Covered Agreement and/or the model law and regulation.

- In conjunction with any revisions to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786), the Qualified Jurisdiction (E) Working Group is directed to consider changes to the *Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions* to require that qualified jurisdictions recognize key NAIC solvency initiatives, including group supervision, group capital standards, and as well as require strengthening of the information-sharing requirements between the states and qualified jurisdictions, in order for reinsurers domiciled in qualified jurisdictions to receive similar treatment to EU reinsurers under the Covered Agreement, and processes of removal of qualified jurisdiction status in the event of a breach.
- The Reinsurance Financial Analysis (E) Working Group is directed to consider changes in its current methods of monitoring certified reinsurers domiciled in Qualified Jurisdictions to incorporate changes to state reinsurance collateral requirements caused by the EU Covered Agreement and any changes to the *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786) to provide similar treatment to reinsurers domiciled in Qualified Jurisdictions.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc.). Include any parties outside the members that participated

At the 2017 Fall National Meeting, the NAIC membership tasked a leadership group of commissioners to develop a strategy for proceeding forward with revisions to Model #785 and Model #786. This included the 2018 NAIC officers: President Julie Mix McPeak (TN); President-Elect Eric A. Cioppa (ME); Vice President Raymond G. Farmer (SC); and Secretary-Treasurer Gordon I. Ito (HI). It also included Commissioner David Altmaier (FL), chair of the Financial Condition (E) Committee; then- Superintendent Maria T. Vullo (NY), then-chair of the Reinsurance (E) Task Force; and then-Director Peter L. Hartt (NJ), the state insurance commissioner representative on the Financial Stability Oversight Council (FSOC).

On Feb. 20, 2018, the NAIC and Reinsurance (E) Task Force held a public hearing in New York City to address the reinsurance collateral provisions of the Covered Agreement. The public hearing was presided over by Commissioner Mix McPeak, Commissioner Altmaier and then-Superintendent Vullo. Also in attendance at the public hearing were: then-Commissioner Katharine L. Wade (CT); Superintendent Cioppa; Director Chlora Lindley-Myers represented by John Rehagen (MO); then- Acting Commissioner Marlene Caride and then-Director Hartt (NJ); Superintendent Elizabeth Kelleher Dwyer (RI); Director Farmer; then-Commissioner Ted Nickel (WI); and Commissioner Tom Glause (WY). During the public hearing, the NAIC and the Task Force heard from 18 speakers, including a representative of the Treasury Department, as well as U.S. domestic insurers, U.S. trade associations, international reinsurers and international trade associations. The NAIC also received 20 comment letters from a wide variety of stakeholders and interested parties. There were approximately 160 people in attendance at the public hearing, with another 181 participating via conference call.

On March 14, 2018, a memorandum titled, “Covered Agreement: Proposed Next Steps,” was sent to the Financial Condition (E) Committee by Commissioner Mix McPeak; Commissioner Altmaier, chair of the Committee; and then-Superintendent Vullo, then-chair of the Reinsurance (E) Task Force. This memorandum recommended that the Committee take the following actions with respect to the Covered Agreement, based on public comments and testimony received at the public hearing:

- Adopt a Request for NAIC Model Law Development with respect to the *Credit for Reinsurance Model Law* (#785) and the *Credit for Reinsurance Model Regulation* (#786). Specifically, these models should be revised to (a) conform to the requirements in the Covered Agreement with respect to EU reinsurers, and (b) provide reinsurers domiciled in NAIC qualified jurisdictions other than within the EU (currently, Bermuda, Japan, Switzerland and, after Brexit, the United Kingdom) with similar reinsurance collateral reductions as those to be implemented to comply with the Covered Agreement, with provisions regarding group supervision, group capital, information sharing and enforcement. Adopt charges to the Reinsurance (E) Task Force, and its Qualified Jurisdiction (E) Working Group and Reinsurance Financial Analysis (E) Working Group to make certain revisions to Model #785 and Model #786, and to develop processes to implement the changes to the models.
- Adopt charges to the Capital Adequacy (E) Task Force and the Statutory Accounting Principles (E) Working Group to address related reinsurance collateral issues raised at the Public Hearing.

The Financial Condition (E) Committee adopted the Request for NAIC Model Law Development at the 2018 Spring National Meeting. The Executive (EX) Committee adopted the Request for NAIC Model Law Development for amendments to Model #785 and Model #786, as well as the proposed related charges for various Financial Condition (E) Committee groups, during its April 17, 2018, conference call. These charges were renewed for the 2019 calendar year.

The Reinsurance (E) Task Force adopted draft revisions to Model #785 and Model #786 at the 2018 Fall National Meeting. The Financial Condition (E) Committee adopted the revised models as adopted by the Task Force, but with direction to NAIC staff and the drafting group to consider if any further technical changes were needed that were consistent with the issues raised at the Task Force meeting. The Executive (EX) Committee and Plenary were prepared to consider the draft revisions for adoption during its Dec. 19, 2018, conference call; however, the vote was delayed due to feedback received from the Treasury Department and the USTR. In a memorandum to the Financial Condition (E) Committee dated Feb. 11, 2019, the NAIC leadership group on reinsurance made a recommendation that the Task Force and its drafting group consider making additional revisions to resolve the following issues:

- **Recognition of Reciprocal Jurisdictions.** Whether any additional revisions are necessary with respect to a state insurance commissioner's discretion to make a determination as to whether an EU jurisdiction should be recognized as a Reciprocal Jurisdiction.
- **Determination of Compliance with the Covered Agreement.** Whether any additional revisions are necessary with respect to a state insurance commissioner's discretion to determine whether each EU member state is in compliance with the Covered Agreement.
- **Commissioner Discretion to Impose Additional Requirements.** Whether any additional revisions are necessary with respect to any additional requirements being imposed on EU reinsurers.
- **Effective Date.** Whether any additional revisions are necessary with respect to the effective date provision in the model revisions regarding which reinsurance agreements and policies are covered.
- **Service of Process.** Whether any additional revisions are necessary with respect to requiring assuming reinsurers to submit the confirmation of consent to service of process to each state in which the reinsurer intends to operate.
- **Other Covered Agreement Issues.** Whether any additional technical revisions are necessary to make the draft models more consistent with the Covered Agreement.

- **Additional Requirements for Qualified Jurisdictions.** Whether any additional revisions are necessary and appropriate with respect to requirements that are applicable to Qualified Jurisdictions but are not applicable to EU jurisdictions.
- **Recognition of U.S. State Regulatory System by Qualified Jurisdictions.** Whether any additional revisions are necessary with respect to the requirement for Qualified Jurisdictions to recognize aspects of the U.S. state regulatory system in order to be considered a Reciprocal Jurisdiction.
- **Recognition of NAIC Accredited Jurisdictions as Reciprocal Jurisdictions.** Whether U.S. jurisdictions that meet the requirements for accreditation under the NAIC Financial Standards and Accreditation Program should be recognized as Reciprocal Jurisdictions.

The Financial Condition (E) Committee adopted these recommendations during its Feb. 19, 2019, conference call. At the direction of Director Lindley-Myers, current chair of the Reinsurance (E) Task Force, draft revisions to Model #785 and Model #786 were released May 1, 2019, which were then approved by the Task Force during its May 15, 2019, conference call. The Financial Condition (E) Committee adopted the draft revisions to Model #785 and Model #786 during its May 28, 2019, conference call, with the following revision to Section 2F(7) of Model #785:

Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed ~~on or after the date on which the assuming insurer has satisfied the requirements to assume reinsurance under this subsection~~ on or after the effective date of the statute adding this subsection, and only with respect to losses incurred and reserves reported on or after the later of (i) the date on which the assuming insurer has met all eligibility requirements pursuant to Section 2F(1) herein, and (ii) the effective date of the new reinsurance agreement, amendment, or renewal.

Drafting Group. At the 2018 Summer National Meeting, then-Superintendent Vullo (NY), then-chair of the Reinsurance (E) Task Force, directed NAIC staff to create an informal drafting group composed of members of the Task Force tasked with developing the initial draft revisions to Model #785 and Model #786 incorporating the provisions of the Covered Agreement for discussion and consideration by the Task Force. The members of the drafting group were composed of state insurance regulators from the following states: California, Colorado, Connecticut, Florida, Maine, Missouri, Nebraska, New Jersey, New York and Texas. The drafting group met Aug. 16, Aug. 23, Sept. 5, Sept. 7, Oct. 22, Nov. 2 and Nov. 29, 2018, via conference call in regulator-to-regulator session. The drafting group also met Feb. 20, Feb. 22, Feb. 27, April 16 and April 30, 2019, via conference call in regulator-to-regulator session. The drafting group discussed and drafted multiple proposed revisions to Model #785 and Model #786, which were presented to the Task Force for consideration of adoption.

Federal and International Regulators. NAIC staff met via conference call with representatives of the European Commission on Oct. 29, 2018 and May 13, 2019, and received comment letters from the European Commission—dated Oct. 16, Nov. 16 and Dec. 18, 2018; and March 28 and May 13, 2019—in which the European Commission expressed concerns about the consistency of the draft revisions with the EU Covered Agreement. State insurance regulators and NAIC staff also met via conference call with representatives of the Treasury Department and the USTR on Nov. 16, Nov. 30 and Dec. 4, 2018, and on March 8, April 25 and May 23, 2019, to discuss their concerns regarding the consistency of the draft revisions with the Covered Agreement. During these conference calls, Director Steven Seitz (FIO) advised that any past or future discussion of Model #785 and Model #786 would be without prejudice to any future preemption analysis of state law the FIO may conduct. The Task Force and its drafting group took into account the concerns expressed by both the European Commission and the U.S. federal regulators, and the Task Force and its drafting group are of the opinion that the final revisions to Model #785 and Model #786 are entirely consistent with the provisions of the Covered Agreement.

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)

Feb. 20, 2018, Public Hearing. On Feb. 20, 2018, the NAIC held a public hearing in New York City to address the reinsurance collateral provisions of the Covered Agreement. A detailed discussion of the public hearing and the actions taken by the Financial Condition (E) Committee and Executive (EX) Committee with respect to the results of the public hearing can be found under Section 4—General Description of the Drafting Process of this project history.

June 21, 2018, Exposure. On June 13, 2018, the Reinsurance (E) Task Force met in regulator-to-regulator session pursuant to paragraph 6 (consultations with NAIC staff) and paragraph 8 (consideration of strategic planning issues) of the NAIC Policy Statement on Open Meetings. During the conference call, the Task Force agreed to expose proposed revisions to Model #785 and Model #786 dated June 21, 2018, for a public comment period ending July 23, 2018. The Task Force received 18 comment letters, which included 16 from international and domestic insurance companies and industry groups, as well as two from state insurance regulators. The Task Force discussed the comment letters at the 2018 Summer National Meeting and directed a newly formed drafting group to work with NAIC staff to consider the comments and determine whether to incorporate them into the models and create updated drafts.

Sept. 25, 2018, Exposure. The drafting group considered the comment letters received at the 2018 Summer National Meeting and prepared draft revisions for the consideration of the Reinsurance (E) Task Force, which met Sept. 25, 2018, in regulator- to-regulator session pursuant to paragraph 6 (consultations with NAIC staff) and paragraph 8 (consideration of strategic planning issues) of the NAIC Policy Statement on Open Meetings. The Task Force agreed to expose the proposed revisions to Model #785 and Model #786 for a 21-day public comment period ending Oct. 16, 2018. The Task Force received 14 comment letters on the Sept. 25, 2018, exposure documents, which were posted to the Task Force’s page on the NAIC website for public viewing.

Nov. 9, 2018, Exposure. The drafting group considered the comment letters received on the Sept. 25, 2018, exposure and again prepared draft revisions for the consideration of the Reinsurance (E) Task Force. The Task Force met Nov. 9, 2018, in regulator- to-regulator session, pursuant to paragraph 6 (consultations with NAIC staff) and paragraph 8 (consideration of strategic planning issues) of the NAIC Policy Statement on Open Meetings, and agreed to release proposed revisions to Model #785 and Model #786 for discussion by the Task Force at the 2018 Fall National Meeting. The Task Force received 16 comment letters, which were discussed during its Nov. 17, 2018, meeting. At that meeting, the Task Force adopted the draft revisions to Model #785 and Model #786, and the Financial Condition (E) Committee adopted the revised models as adopted by the Task Force, but with direction to NAIC staff and the drafting group to consider if any further technical changes were needed consistent with the issues raised by the Task Force. A detailed discussion of the action taken by the Executive (EX) Committee and Plenary and the Financial Condition (E) Committee with respect to these draft revisions can be found under Section 4—General Description of the Drafting Process of this project history.

March 7, 2019, Exposure. The drafting group again considered the comment letters and public discussion, as well as recommendations made by the Financial Condition (E) Committee in its memorandum dated Feb. 11, 2019. The drafting group again prepared draft revisions to Model #785 and Model #786 for discussion by the Task Force. The Task Force met March 7, 2019, in regulator-to-regulator session, pursuant to paragraph 6 (consultations with NAIC staff) of the NAIC Policy Statement on Open Meetings, and agreed to release proposed revisions to Model #785 and Model #786 on March 7, 2019, for a 25-day public comment period ending April 1, 2019. The Task Force received 10 comment letters on the March 7, 2019, exposure, which were discussed by the Task Force at the 2019 Spring National Meeting. The Task Force did not take a vote on the proposed revisions at this meeting, but it directed the drafting group to consider the comments heard and the comment letters received to update the draft revisions, which will not require a separate formal exposure period.

May 1, 2019, Exposure. The drafting group again considered the comment letters and public discussion, and it prepared draft revisions to Model #785 and Model #786 dated May 1, 2019, for discussion by the Reinsurance (E) Task Force during its May 15, 2019, conference call. During this conference call, the Task Force adopted the revisions and agreed to refer the proposed revisions to the Financial Condition (E) Committee for consideration of adoption.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response)

The following significant issues were discussed extensively with state insurance regulators and interested parties during the drafting process:

- **NAIC Compliance with the Covered Agreement.** The NAIC initially opposed the EU Covered Agreement, primarily for failing to provide for formal recognition of the U.S. by the EU as a fully “equivalent” regulatory jurisdiction for Solvency II purposes. Following the signing of the EU Covered Agreement, the NAIC released a statement that it was pleased that the Treasury Department and the USTR clarified its interpretation in key areas and appreciated their affirmation of the primacy of state-based insurance regulation. On April 17, 2018, the Executive (EX) Committee adopted a charge to the Reinsurance (E) Task Force to develop revisions to Model #785 and Model #786 to conform to the terms of the Covered Agreement.
- **Similar Treatment for Qualified Jurisdictions.** In the NAIC “Notice of Public Hearing and Request for Comments,” the Reinsurance (E) Task Force requested specific comments on providing reinsurers domiciled in NAIC qualified jurisdictions with similar reinsurance collateral requirements as those provided under the Covered Agreement. On April 17, 2018, the Executive (EX) Committee adopted a charge to the Task Force to develop revisions to Model #785 and Model #786 to allow reinsurers domiciled in NAIC qualified jurisdictions other than within the EU to realize reinsurance collateral requirements similar to those provided under the Covered Agreement under specified circumstances. In order for an insurer domiciled in a qualified jurisdiction outside of the EU to receive the same collateral requirement treatment as provided to EU-domiciled reinsurers, the non-EU qualified jurisdiction must agree to adhere to all other standards imposed under the Covered Agreement, including the requirement that the qualified jurisdiction must agree to recognize the states’ approach to group supervision, including group capital.
- **Breach of the Covered Agreement.** On April 17, 2018, the Executive (EX) Committee adopted a charge to the Reinsurance (E) Task Force to develop revisions to Model #785 and Model #786 to address the effect of a breach of the Covered Agreement on a reinsurer’s collateral obligations and the effect of a failure of a non-EU qualified jurisdiction to meet the standards imposed by its agreement or acknowledgment to adhere to the terms of the Covered Agreement and/or Model #785 and Model #786. The Sept. 25, 2018, exposure draft of Model #785 contained a requirement that the reciprocal jurisdiction “is a member state of the European Union, and has been determined by the Commissioner to be in compliance with all material terms of the agreement.” In its comment letters, the European Commission argued that this section provides the commissioner with the power to determine if each individual EU member state complies with the terms of the Covered Agreement, which appears to be inconsistent with the terms of the Covered Agreement. The drafting group deleted this provision from the May 1, 2019, draft of Model #785, and substituted “is subject to an in-force covered agreement.”

- **Recognition of Qualified Jurisdictions.** On April 17, 2018, the Executive (EX) Committee adopted a charge to the Qualified Jurisdiction (E) Working Group to consider changes to the *Process for Developing and Maintaining the NAIC List of Qualified Jurisdictions* to require that qualified jurisdictions recognize key NAIC solvency initiatives, including group supervision and group capital standards, as well as require the strengthening of the information- sharing requirements between the states and qualified jurisdictions, in order for reinsurers domiciled in qualified jurisdictions to receive similar treatment to EU reinsurers under the Covered Agreement, and processes of removal of qualified jurisdiction status in the event of a breach. The Nov. 9, 2018, exposure draft of Model #786 contained a provision that it “[r]ecognizes the U.S. state regulatory system, including its approach to group supervision and group capital, by providing through statute, regulation or the equivalent, including but not limited to confirmation by a competent regulatory authority, in such qualified jurisdiction....” Interested parties requested clarification on the process of recognition, and Section 9B(3)(c) of the March 7, 2019, exposure draft of Model #786 was revised to provide, as follows: “Recognizes the U.S. state regulatory approach to group supervision and group capital, by providing written confirmation by a competent regulatory authority, in such qualified jurisdiction....”
- **Recognition of Group-wide Supervision.** Due to concerns expressed by interested parties that Section 9B(3)(c) of Model #786 might act to change the group supervisor of a U.S.-domiciled affiliate, the drafting group clarified in a drafting note in the March 7, 2019, exposure that nothing in this provision is intended to enhance or limit the authority of U.S. state insurance regulation with respect to the group-wide supervision of insurance holding company systems pursuant to state law.
- **Recognition of NAIC-Accredited Jurisdictions as Reciprocal Jurisdictions.** The initial June 21, 2018, exposure drafts did not include U.S. jurisdictions that meet the requirements for accreditation under the NAIC Financial Regulation Standards and Accreditation Program as reciprocal jurisdictions. Interested parties commented that this was not consistent with the current qualified jurisdiction provisions of Model #785 and Model #786, noting that U.S. reinsurers domiciled in accredited states should receive similar treatment to EU reinsurers and other reinsurers domiciled in qualified jurisdictions. The Reinsurance (E) Task Force added U.S. jurisdictions that meet the requirements for accreditation under the NAIC Financial Regulation Standards and Accreditation Program as reciprocal jurisdictions in the March 7, 2019, exposure drafts.
- **Memorandum of Understanding.** At the suggestion of interested parties, the memorandum of understanding required for qualified jurisdictions and reciprocal jurisdictions under Section 9B of Model #786 was clarified to include the International Association of Insurance Supervisors’ (IAIS) Multilateral Memorandum of Understanding (MMoU) or other multilateral memoranda of understanding coordinated by the NAIC in the Sept. 25, 2018, exposure.
- **Annual Reduction in Collateral by 20%.** Article 9(3)(a) of the Covered Agreement provides that “the United States shall encourage each U.S. State to promptly adopt the following measures: (a) the reduction, in each year following the date of entry into force or provisional application of this Agreement, of the amount of collateral required by each State to allow full credit for reinsurance by 20 percent of the collateral that the U.S. State required as of the January 1 before signature of this Agreement.” The Task Force determined that it was not consistent with the current Model #785 and Model #786 to meet this requirement. Instead, the Task Force determined that the best course of action was to work in an expeditious manner to amend Model #785 and Model #786 for enactment by the states to eliminate collateral for assuming insurers domiciled in Covered Agreement jurisdictions.

- **Commissioner Discretion: EU Jurisdictions.** The European Commission’s comment letters argued that the draft revisions to Model #785 and Model #786 contained additional requirements on EU reinsurers that were not provided in the Covered Agreement. For example, the European Commission argued that a state insurance commissioner does not have the discretion to determine whether an individual EU jurisdiction is in compliance with the Covered Agreement, and Section 9C(8) of Model #786 provided in its initial drafts that “the assuming insurer must satisfy any other requirements deemed relevant by the commissioner.” The May 1, 2019, exposure drafts removed all elements of commissioner discretion with respect to reinsurers domiciled in Covered Agreement reciprocal jurisdictions.
- **Commissioner Discretion: Qualified Jurisdictions.** The original draft revisions to Model #785 and Model #786 contained additional requirements that were applicable to assuming insurers domiciled in qualified jurisdictions, but they were not applicable to those reinsurers domiciled in jurisdictions subject to a Covered Agreement. For example, Section 2F(1)(h) of Model #785 required the assuming insurer to “satisfy any other requirement deemed relevant by the commissioner” for its cedant to receive the benefit of the credit for reinsurance provisions. In addition, the definition of “reciprocal jurisdiction” in Model #786 included “[s]uch additional factors as may be considered in the discretion of the commissioner.” Interested parties representing qualified jurisdictions argued that the NAIC should work toward a framework that treats EU and non-EU jurisdictions equivalently and provide additional clarity regarding the standards imposed on non-EU jurisdictions. The May 1, 2019, exposure drafts have removed the remaining distinctions between EU and non-EU jurisdictions, and they treat qualified jurisdictions similarly to EU jurisdictions.
- **Effective Date.** The original June 21, 2018, draft of Section 2F(7) of Model #785 contains the following provision: “This subsection shall not apply to reinsurance agreements entered into before the subsection’s application, or to losses incurred or to reserves posted before the subsection’s application.” This was to clarify that these revisions would not eliminate reinsurance collateral that is currently in place, similar to the current certified reinsurer provisions of Model #785 and Model #786. This provision was included in the *Statement of the United States on the Covered Agreement with the European Union* issued Sept. 22, 2017. There were concerns expressed by interested parties, including the European Commission, that this sentence was not consistent with Article 3(8) of the Covered Agreement. The Task Force removed this provision in the March 7, 2019, exposure draft.

In its comment letter dated March 28, 2019, the European Commission also argued that Section 2F(7) was not consistent with Article 3(8) of the Covered Agreement, which provides that the Covered Agreement takes effect “only to reinsurance agreements entered into, amended, or renewed on or after the date on which a measure that reduces collateral pursuant to this Article takes effect...” The Task Force disagreed with this interpretation, noting that there are additional requirements contained in Article 3 of the Covered Agreement that also must be met before an EU reinsurer is permitted to eliminate reinsurance collateral, including meeting minimum capital and surplus requirements of \$250 million, 100% SCR, consent to the jurisdiction of the courts, service of process requirements, filing of audited financial statements, actuarial opinions, list of all disputed and overdue claims, information on prompt payment of claims, etc. Therefore, the Task Force made the determination that Section 2F(7) should remain, as follows: “Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed on or after the date on which the assuming insurer has satisfied the requirements to assume reinsurance under this subsection, and only with respect to losses incurred and reserves reported on or after the later of (i) **the date on which the assuming insurer has met all eligibility requirements pursuant to Section 2F(1) herein** [emphasis added], and (ii) the effective date of the new reinsurance agreement, amendment, or renewal.”

- **Foreign Currency Exchange.** Section 9C(2)(c), Section 9C(6)(b) and Section 9C(6)(c) of Model #786 in the initial June 21, 2018, exposure draft contained a reference to foreign currency exchange rates to calculate the \$250 million capital and surplus requirement for EU reinsurers under Article 3(4)(a) of the Covered Agreement. The European Commission commented that a reference to foreign currency exchange rates was not necessary with respect to EU reinsurers, because the Covered Agreement made 226 million euros equivalent to \$250 million for these purposes. The drafting group disagreed with this interpretation, but it removed the reference in the May 1, 2019, exposure draft of Model #786, because commissioners are already utilizing foreign currency exchange rates in the calculation of minimum capital and surplus with respect to certified reinsurers licensed and domiciled in qualified jurisdictions.
- **Service of Process.** Section 2F(1)(d)(ii) of the Sept. 25, 2018, draft to Model #785 provided: “The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process. Either by law, regulation or request of the commissioner, such consent shall be included in each reinsurance agreement.” The European Commission commented that Article 3(4)(e) of the Covered Agreement provides that “where applicable for ‘service of process’ purposes, the assuming reinsurer provides written confirmation to the Host supervisory authority of consent to the appointment of that supervisory authority as agent for service of process. The Host supervisory authority may require that such consent be provided to it and included in each reinsurance agreement under its jurisdiction.” This section was amended in the March 7, 2019, exposure draft to be consistent with the Covered Agreement: “The assuming insurer must consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process. The commissioner may require that consent for service of process be provided to the commissioner and included in each reinsurance agreement.”
- **Insolvency of U.S. Ceding Insurer.** The June 21, 2018, exposure of Model #785 contained the following provision: “The **commissioner shall require** [emphasis added] an assuming insurer under this subsection to post one hundred percent (100%) security, for the benefit of the ceding insurer or its estate, upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.” Interested parties noted that Article 3(4)(k) of the Covered Agreement instead provides: “if subject to a legal process of resolution, receivership, or winding-up proceedings as applicable, **the ceding insurer, or its representative,** [emphasis added] may seek and, if determined appropriate by the court in which the resolution, receivership, or winding-up proceedings is pending, **may obtain an order** [emphasis added] requiring that the assuming reinsurer post collateral for all outstanding ceded liabilities.” The Task Force agreed that the Covered Agreement required the ceding insurer or its representative to seek such an order from the court, not the insurance commissioner, and amended Section 9H of Model #786 in the March 7, 2019, exposure draft accordingly.
- **Audited Financial Statements for Certified Reinsurers.** At the request of the European Commission, the drafting group and Reinsurance (E) Task Force amended Section 8B(4)(h) and Section 8B(7)(d) of Model #786 to require the filing of annual financial statements for certified reinsurers consistent with the requirements of Article 3(4)(h) of the Covered Agreement; i.e., two years of audited financial statements filed with the assuming insurer’s supervisor. This makes the certified reinsurer provisions consistent with Article 3(4)(h)(i) of the Covered Agreement.
- **Passporting Process.** Section 9C(5) of the June 21, 2018, draft of Model #786 provided that the assuming insurer “must provide the following documentation to the commissioner.” The European Commission noted that Article 3(4)(h) of the Covered Agreement provides that this information must only be provided “if requested by that supervisory authority.” The Task Force amended Section 9C(5) in the March 7, 2019, exposure draft to be consistent with the language of the Covered Agreement, but it

added a drafting note encouraging the states to utilize the “passporting” process under which the commissioner has the discretion to defer to another state’s determination with respect to compliance. In order to facilitate the passporting process, the states will uniformly require assuming insurers to provide the documentation described in Section 9C(5) so that other states may rely on the lead state’s determination.

- **Serious Noncompliance.** Section 9C(4)(a) of the Sept. 25, 2018, draft of Model #786 provided a definition for “serious noncompliance with applicable law” in order to promote uniformity among the states and provide guidance to reciprocal jurisdiction reinsurers. Interested parties noted that Article 3(4)(c)(ii) of the Covered Agreement does not contain a definition of “serious noncompliance,” and, as such, the drafting group and the Reinsurance (E) Task Force deleted this definition in the March 7, 2019, exposure draft due to perceived inconsistency with the Covered Agreement.
- **Solvent Schemes of Arrangement.** The Nov. 9, 2018, exposure draft of Model #785 deleted the definition of “solvent scheme of arrangement” from Section 2F(1)(d)(v), but it retained it in Section 9C(4)(e) of Model #786. Interested parties recommended that the Reinsurance (E) Task Force should clarify that the requirements with respect to solvent schemes also apply to Part VII-like transfers under UK law, and U.S. state insurance regulators should treat Part VII transfers the same as solvent schemes of arrangement. Interested parties argued that Part VII transfers should not be treated differently than a solvent scheme for the purposes of triggering the posting of 100% collateral because a Part VII transfer typically produces the same result to ceding insurers as a commutation in that a Part VII transfer typically involves a transfer of assumed business by an assuming reinsurer to another reinsurer that: 1) does not write new business; 2) does not have access to additional capital; and 3) does not have the intent or ability to raise additional capital, if necessary, to satisfy all remaining assumed obligations. The drafting group and the Task Force determined not to make this clarification, and Part VII-like transfers are not intended to be solvent schemes of arrangement for the purposes of this provision.
- **Reciprocal Jurisdiction Process.** The Reinsurance (E) Task Force added a drafting note after Section 9D of Model #786 at the request of interested parties to address the process with respect to the revocation or suspension of the status of a reciprocal jurisdiction. Interested parties requested that the process specifically be included in either Model #785 or Model #786, but the drafting group determined that this process should be developed after adoption of the revisions to the models. The drafting group also added a provision to the drafting note in the March 7, 2019, exposure draft that “such process would not conflict with the terms of an in-force covered agreement” to clarify that such jurisdictions are automatically included on the NAIC List of Reciprocal Jurisdictions.
- **Other Inconsistencies with the Covered Agreement.** Throughout the exposure process, interested parties made numerous comments about perceived inconsistencies between the language of the Covered Agreement and the exposure drafts of Model #785 and Model #786. The drafting group and the Reinsurance (E) Task Force have made every attempt to conform the language of Model #785 and Model #786 to the specific language utilized by the Covered Agreement.
- **Material Adverse Development Coverage.** Interested parties commented that Section 2F(7) of Model #785 (Effective Date) does not account for certain agreements entered into in contemplation of some long-tail losses, such as adverse development covers that are signed after losses occur, but before the reserves have developed to be within the limits of the adverse development cover. This could have the unintended consequence of excluding adverse development coverage contracts from application of the reciprocal jurisdiction provisions. Tying the application of reciprocal status requirements to only those “losses incurred” after reciprocal status may negatively impact loss portfolio transfers and adverse development covers. The drafting group recognized the value of such reinsurance as a useful regulatory and commercial tool to facilitate the transfer of blocks of business and rehabilitate financially distressed

companies, and discussed various options in addressing this issue, but ultimately it was unable to agree upon specific language satisfactory to everyone. In addition, there were some concerns expressed with providing the commissioner additional discretion in this area. Therefore, the Task Force does not take a position on whether material adverse development coverage agreements are or should be subject to reduced collateral authorized by the changes to the model law.

- **Kroll Bond Rating Agency.** On Dec. 3, 2017, the Reinsurance (E) Task Force adopted the recommendation that the states may consider Kroll Bond Rating Agency as an acceptable rating agency for certified reinsurer purposes, and the Task Force adopted the *Uniform Application Checklist for Certified Reinsurers* with the additional language, stating that it be “recognized by the SEC to provide financial strength ratings on insurance companies” and included the proposed matrix of ratings and collateral levels for use with Kroll Bond Rating Agency. However, the Task Force could not agree on language to amend the ratings matrix found in Section 8B of Model #786 to include Kroll Bond Rating Agency.

7. Any Other Important Information (e.g., amending an accreditation standard)

The Reinsurance (E) Task Force has not had formal discussions with respect to whether the current *Reinsurance Ceded* accreditation standard under the NAIC Financial Regulation Standards and Accreditation Program should be amended to include the current revisions to Model #785 and/or Model #786. However, these revisions would have the effect of eliminating reinsurance collateral with respect to reinsurers domiciled in reciprocal jurisdictions, so, at a minimum, it will be necessary to amend the accreditation standards to reflect these revisions with respect to *Reinsurance Ceded to Certified Reinsurers*, which reduce but do not completely eliminate reinsurance collateral. In addition, it is further the recommendation of the Task Force that it is necessary to expeditiously modify these standards in accordance with the *Procedure for the Adoption of Additional Model Laws, Regulations or Standards for Accreditation*. This waiver in procedure is necessary because the states are expected to immediately begin considering these revisions for enactment into state law and regulation due to the 60-month (five-year) period in which the states are required to enact the revisions to in order to be consistent with the Covered Agreement or face potential federal preemption.

The Task Force has not determined whether these revisions should result in an “optional” accreditation standard or a “uniform” accreditation standard. The NAIC originally adopted the significant elements of the 2011 revisions to Model #785 and Model #786 as an “optional” accreditation standard. Specifically, under this optional standard, a state was not required to enact the certified reinsurer revisions to the models, but if it chose to reduce its reinsurance collateral requirements, the state’s laws and regulations must be substantially similar to the key elements of the revisions. Upon further review and consultation with state insurance regulators and interested parties, the Financial Regulation Standards and Accreditation (F) Committee determined that the certified reinsurer provisions result in increased financial solvency regulation and increased consumer protection to policyholders, and they should be adopted as a “uniform” standard applicable to all NAIC-accredited jurisdictions under the “substantially similar” definition. The 2019 revisions to Model #785 and Model #786 could be considered under either an “optional” or a “uniform” accreditation standard.

Finally, the Task Force should consider whether to make the “passporting” process subject to the *Part B: Regulatory Practices and Procedures* accreditation standards. Generally, models are incorporated into the *Part A: Laws and Regulations* accreditation standards, but the NAIC’s passporting process is not specifically required in Model #785 and/or Model #786. Model #786 does contain the following drafting note found after Section 9C(5):

Drafting Note: In order to facilitate multi-state recognition of assuming insurers and to encourage uniformity among the states, the NAIC has initiated a process called “passporting” under which the commissioner has the discretion to defer to another state’s determination with respect to compliance

with this Section. Passporting is based upon individual state regulatory authority, and states are encouraged to act in a uniform manner in order to facilitate the passporting process. States are also encouraged to utilize the passporting process to reduce the amount of documentation filed with the states and reduce duplicate filings. It is anticipated that “lead” states will uniformly require assuming insurers to provide the documentation described in Section 9C(5) of this regulation, so that other states may rely upon the lead state’s determination.

The Task Force should consider whether the passporting process should become part of the Part B accreditation requirements and require states to participate in passporting consistent with the guidance provided in the drafting note.

PROJECT HISTORY - 2011

CREDIT FOR REINSURANCE MODEL LAW (#785)

CREDIT OF REINSURANCE MODEL REGULATION (#786)

1. Description of the Project, Issues Addressed, etc.

Under the current NAIC Credit for Reinsurance Model Law & Regulation, in order for U.S. ceding companies to receive reinsurance credit, the reinsurance must either be ceded to U.S. licensed reinsurers or secured by collateral representing 100% of U.S. liabilities for which the credit is recorded. The collateral requirements for non-U.S. licensed reinsurers have been a frequent subject of debate over the past decade, with various groups calling for the elimination of the collateral requirement for reinsurers licensed in well-regulated jurisdictions. On September 19, 2011, both the Reinsurance (E) Task Force and Financial Condition (E) Committee adopted revisions to the *Credit for Reinsurance Model Law (#785) and Regulation (#786)* at a meeting held in Jersey City, New Jersey. These amendments will act to reduce reinsurance collateral requirements for non-U.S. reinsurers domiciled in qualified jurisdictions, and will be up for consideration by NAIC Executive (EX) Committee and Plenary at the Fall National Meeting in Washington, D.C.

2. Name of Group Responsible for Drafting the Model and States Participating

The Reinsurance Task Force of the Financial Condition (E) Committee was responsible for drafting the revisions to the Credit for Reinsurance Models:

Thomas B. Considine, Chair	New Jersey	John M. Huff	Missouri
James J. Wrynn, Vice Chair	New York	Bruce R. Ramge	Nebraska
Jim L. Ridling	Alabama	Amy Parks	Nevada
Christina Urias	Arizona	Roger A. Sevigny	New Hampshire
Jay Bradford	Arkansas	John G. Franchini	New Mexico
Dave Jones	California	John D. Doak	Oklahoma
Thomas B. Leonardi	Connecticut	Michael F. Considine	Pennsylvania
Karen Weldin Stewart	Delaware	Ramón Cruz-Colón	Puerto Rico
Kevin M. McCarty	Florida	Joseph Torti III	Rhode Island
Gordon I. Ito	Hawaii	David Black	South Carolina
Jack Messmore	Illinois	Neal T. Gooch	Utah
Stephen W. Robertson	Indiana	Stephen W. Kimbell	Vermont
James J. Donelon	Louisiana	Jacqueline K. Cunningham	Virginia
Eric A. Cioppa	Maine	Mike Kreidler	Washington
Mike Rothman	Minnesota	Ted Nickel	Wisconsin

3. Project Authorized by What Charge and Date First Given to the Group

This Project History supplements the Project History for the Reinsurance Regulatory Modernization Framework, which is attached hereto and incorporated by reference. The Task Force received charges in both 2009 and 2010 to “promote and facilitate the implementation of the adopted Reinsurance Regulatory Modernization Framework.” The project was specifically authorized in 2011 when the Task Force received the following charge: “Consider amendments to the *Credit for Reinsurance Model Law (#785) and Credit for Reinsurance Model Regulation (#786)* to incorporate key elements of the Reinsurance Regulatory Modernization Framework.” The Executive (EX) Committee approved the model law request for revising the Model #785 and Model #786 at the 2010 Fall National Meeting.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated

The NAIC adopted the Reinsurance Regulatory Modernization Framework ("Framework") at its Winter 2008 National Meeting as the first step in an effort to facilitate cross-border reinsurance transactions and enhance competition within the U.S. market, while ensuring that U.S. insurers and policyholders are adequately protected against the risk of insolvency. The Framework recommended implementation through federal legislation in order to best preserve and improve state-based regulation of reinsurance, ensure timely and uniform implementation of this legislation throughout all NAIC member jurisdictions, and as a more comprehensive alternative to related federal legislation.

On September 15, 2009, the Reinsurance Task Force adopted the Reinsurance Regulatory Modernization Act of 2009, which was approved on September 23, 2009, by the NAIC Government Relations Leadership Council. This proposed federal legislation was based on the Framework, and underwent an extensive review process. The Task Force released drafts of the proposed federal legislation to the public on March 24, July 27 & September 3, 2009, and the legislation was extensively revised based upon comments received from regulators and interested parties. The Task Force also held an open forum in New York on May 6-7, 2009, to receive public comments on the legislation, in addition to the numerous opportunities for public comment that were afforded during the drafting of the Framework.

The NAIC was unable to find a sponsor for the federal legislation in Congress, and it did not receive passage. Instead, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which was signed into law on July 21, 2010. This act includes the Nonadmitted and Reinsurance Reform Act ("NRRA"), as well as creates the Federal Insurance Office ("FIO"). The NRRA prohibits a state from denying credit for reinsurance if the domiciliary state of the ceding insurer recognizes such credit and is either (1) an NAIC-accredited state; or (2) has financial solvency requirements substantially similar to NAIC accreditation requirements. This permitted the NAIC to move forward with individual state-based reinsurance collateral reduction reforms.

The revisions to the Credit for Reinsurance Models were drafted by the Task Force through a deliberate process that included two exposure periods and consideration of voluminous comments submitted by interested parties representing U.S. ceding insurers, non-U.S. reinsurers and regulators. Much of the actual drafting of the language within the proposal was undertaken during regulator-to-regulator sessions due to discussion of company specific information and consultation with NAIC staff. The Task Force considered comments from interested parties related to each of these exposure drafts in order to further develop and refine the revisions. In many cases, specific concepts or specific language recommended by interested parties has been included within the revisions, as deemed appropriate by the Task Force. In addition, the Task Force considered information that it received from various international regulators.

The Reinsurance Task Force further adopted a Preface to the Credit for Reinsurance Models on September 19, 2011. The Preface is a statement by the Task Force of the next steps to be taken after the adoption of the revised models, including (1) a proposal to form a new group to provide high quality review of reinsurance collateral reduction applications and assistance to the states; (2) consider reinsurance diversification and notification requirements for ceding insurers; (3) requirements for NAIC review and approval of qualified jurisdiction; and (4) a re-examination of the collateral requirements within two years after the effective date of the revised Credit for Reinsurance Models.

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)

On February 22, 2011, the Task Force released exposure drafts of revisions to Model #785 and Model #786 for a 30-day comment period. The Task Force received several comment letters from interested parties and discussed these drafts on March 26 during the Spring National Meeting in Austin, Texas. The Task Force then held an interim meeting in Jersey City, New Jersey on July 11 and took public testimony from interested parties on the proposed amendments. On July 26, the Task Force released a second set of proposed amendments to the Credit for Reinsurance Models, which were exposed for a 30-day public comment period ending on August 24. The Task Force and Financial Condition (E) Committee adopted these drafts at a meeting in Jersey City, New Jersey on September 19, with additional amendments made during each meeting (discussion following). Some of the major revisions to the models include:

- Each state will have the authority to certify reinsurers, or a commissioner has the authority to recognize the certification issued by another NAIC-accredited state. This eliminates the need for a reinsurer to be evaluated by each and every state, but preserves a commissioner's right to do so.
- Reinsurers are subject to certain criteria in order to be eligible for certification, as well as ongoing requirements in order to maintain certification. Examples of evaluation criteria include, but are not limited to, financial strength, timely claims payment history, and the requirement that a reinsurer be domiciled and licensed in a "qualified jurisdiction."
- Each state may evaluate a non-U.S. jurisdiction in order to determine if it is a "qualified jurisdiction." The state may also defer to an NAIC list of recommended qualified jurisdictions.
- A certified reinsurer will be eligible for collateral reduction with respect to contracts entered into or renewed subsequent to certification [Note: clarification added in September 19 amendments]. A state will evaluate a reinsurer that applies for certification, and will assign a rating based on the evaluation. A certified reinsurer will be required to post collateral in an amount that corresponds with its assigned rating (0%, 10%, 20%, 50%, 75% or 100%), in order for a U.S. ceding insurer to be allowed full credit for the reinsurance ceded. Note: in the July 26 revisions, the collateral/rating matrix was changed with regard to companies with A- financial strength ratings, and a new Secure 4 tier was added for A- rating at 50% collateral.
- A certified reinsurer is allowed to utilize a multiple-beneficiary trust account for the purposes of securing its obligations to U.S. ceding insurers, but it must be separate from any existing multiple-beneficiary trust account.
- Proportional credit will still be permitted if there is insufficient security provided by a certified reinsurer. Specific provisions are also included to address a change in, or revocation of, the certified reinsurer's status.
- Contracts entered into by certified reinsurers are subject to certain mandatory contract clauses in order for a U.S. ceding insurer to be allowed credit for the reinsurance ceded.
- Certified reinsurers are subject to additional filing requirements, including but not limited to new forms CR-1, CR-F and CR-S.

- The revised models also include proposed changes with respect to the trustee surplus requirement for a multiple-beneficiary trust account maintained by an assuming insurer in run-off (Tawa proposal).
- Finally, technical amendments were incorporated into the models revising language that had grown outdated and needed updating.

On September 19, 2011, both the Task Force and Financial Condition (E) Committee adopted additional revisions to the Credit for Reinsurance Models, but the amendments made during this meeting were not exposed for a public comment period. However, each of the revisions addressed issues that had been substantively debated by both the Task Force and interested parties over the previous years during discussions regarding the Framework and proposed federal legislation, as well as the revisions to the models. These revisions can be summarized as follows:

- Prospective Application. The Task Force adopted an amendment intended for clarification and to close a perceived loophole with respect to the effective date of the revised reinsurance collateral requirements, and to confirm that any potential collateral reductions would be phased-in as any future reductions would be done on a prospective basis and any prior liabilities would remain secured at 100% collateral.
- PCI/RAA Compromise. The Task Force adopted amendments related to a compromise proposal submitted by the Property Casualty Insurers Association of America (“PCI”) and the Reinsurance Association of America (“RAA”) regarding 4 important issues: (1) 30-day comment period on application for certified reinsurer status; (2) slow payment analysis of reinsurers; (3) financial statement reporting requirements for certified reinsurers and applicants for certification; and (4) disclosure of reinsurance counterparty information on new forms CR-S and CR-F. The specific amendments adopted as part of the PCI/RAA compromise include.
 1. Information will be provided with respect to how interested parties may specifically respond/comment on applications for certified reinsurers during a 30-day notice period. However, this should not trigger any Administrative Procedures Act requirements;
 2. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements will now be based specifically on an analysis of cedents’ Schedule F reporting of overdue reinsurance recoverables, and may increase collateral requirements in certain specified situations;
 3. Certified Reinsurers must submit audited financial statements, and, with the permission of the state insurance commissioner, audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company are acceptable;
 4. Certified reinsurers must submit Forms CR-S or CR-F, at a level of detail in accordance with instructions to be developed by the NAIC.

6. **A Discussion of the Significant Issues (items of some controversy raised during the due process and the group’s response)**

- Federal v. State Implementation. The Framework recommended implementation through federal legislation in order to best preserve and improve state-based regulation of reinsurance, ensure timely and uniform implementation of this legislation throughout all NAIC member jurisdictions, and as a more comprehensive alternative to related federal legislation. The NAIC was unable to find congressional sponsorship for this proposed federal legislation. The Nonadmitted and Reinsurance Reform Act, which became effective July 21, 2011, preempts the

extraterritorial application of state credit for reinsurance law, and now permits states to proceed forward with reinsurance collateral reforms on an individual basis if they are accredited.

- Federal Insurance Office. The Dodd-Frank Act established the FIO to receive information on the insurance sector from the NAIC and enter into binding “covered agreements” with international bodies. It is widely understood that reinsurance collateral may be an initial subject of these agreements. The Dodd Frank Act allows the office in Treasury to preempt a state insurance measure to the extent that it (1) results in less favorable treatment of a non-U.S. insurer domiciled in a foreign jurisdiction that is subject to a covered agreement than a U.S. insurer domiciled, licensed, admitted, or otherwise authorized in that state; and (2) is inconsistent with such covered agreement.
- Individual State Initiatives. Some states have begun moving forward with individual state-based reinsurance collateral reforms. Florida adopted changes to its credit for reinsurance laws and regulations in 2007 and 2008 respectively, New York adopted similar changes in November 2010, and New Jersey and Indiana recently enacted similar legislation as well. In addition, bills have been discussed in Illinois, Texas and Louisiana, as well as other states. In response, the NAIC Plenary approved the Recommendations Regarding Key Elements of the Reinsurance Framework for Accreditation Purposes in December 2010.
- Requirements for Certified Reinsurers. The Task Force addressed what requirements an assuming insurer must meet in order to be approved as a certified reinsurer, and the specific information that certified reinsurers should be required to file, including questions regarding proposed schedules CR-F and CR-S as well as financial statements.
- Reciprocity. The NAIC Reinsurance Supervision Review Department (RSRD) Proposal in 2007 proposed a mutual recognition framework that would take into consideration the reciprocal treatment of non-U.S. jurisdictions. At the request of interested parties, the NAIC Legal Division issued a memorandum addressing the constitutional issues of the mutual recognition framework on July 15, 2008. The Framework adopted in December of 2008 provided that the reciprocal treatment of non-U.S. reinsurers would be a factor to be considered in the review of non-U.S. jurisdictions. The model regulation considers mutual recognition to be a factor in reviewing non-U.S. jurisdictions.
- Concentration of Risk. The Task Force considered restrictions to limit concentration risk by a ceding insurer to any reinsurer or group of reinsurers. The Task Force will make a referral to E Committee to address this issue.
- Life Reinsurance & Other Long Tail Contracts. The Task Force considered whether special limitations should be placed on life insurance and other longer tail-types of reinsurance agreements. The Reinsurance Framework Proposal originally included a 2-year moratorium on collateral reduction to life contracts, but the revised models no longer include this distinction.
- Reconciliation to U.S. GAAP. The Task Force considered the accounting and reporting basis that would be applicable to financial statements filed by certified reinsurers. Earlier versions of the models required financial statements to be filed on an audited U.S. GAAP basis, or on an IFRS basis with an audited reconciliation to U.S. GAAP for equity and net income. At the September 19 meetings, an amendment was adopted to allow audited IFRS statements with reconciliation to U.S. GAAP certified by an officer of the company, with the permission of the state insurance commissioner.

- Prospective Application of Revisions. During the course of drafting the Framework and model revisions, the Task Force has consistently taken the position that any potential collateral reductions would be phased- in as any future reductions would be done on a prospective basis and any prior liabilities would remain secured at 100% collateral. Property and Casualty ceding insurers were strongly opposed to permitting reinsurance collateral under existing reinsurance agreements to be reduced or eliminated. Reinsurers and some ceding insurers would like to be able to amend existing agreements to reduce collateral requirements. At the September 19, 2011 meetings the Task Force adopted an amendment intended for clarification and to close a perceived loophole with respect to the effective date of the revised reinsurance collateral requirements.

7. Any Other Important Information (e.g., amending an accreditation standard).

In December 2010, the NAIC Plenary approved the Recommendations Regarding Key Elements of the Reinsurance Framework for Accreditation Purposes (Accreditation Recommendations), which are the key elements of the Reinsurance Regulatory Modernization Framework that should be considered in reviewing any individual state initiatives with respect to reinsurance collateral reduction reforms. The Accreditation Recommendations were intended as an interim solution to guide the Financial Regulation Standards and Accreditation (F) Committee and the NAIC during the transition period between adoption of the Framework and proposed revisions to the reinsurance models.

The revisions, if adopted, would become part of the Credit for Reinsurance Models, and would be considered by the Financial Regulation Standards and Accreditation (F) Committee as an amendment to the existing standard for Reinsurance Ceded. It should also be noted that the proposed revisions to the models would not require a state to reduce its reinsurance collateral requirements. It is further the recommendation of the Task Force that it is necessary to expeditiously modify these standards in accordance with the Procedure for the Adoption of Additional Model Laws, Regulations or Standards for Accreditation.

PROJECT HISTORY - 2006

CREDIT FOR REINSURANCE MODEL REGULATION (#786)

1. Project Description

Prior to changes made to the U.S. Bankruptcy Code §304, there existed a tension between McCarran-Ferguson and the Bankruptcy Code, and which would prevail in the event of a direct challenge on point.

The Task Force adopted certain revisions to the model regulation, which was considered unnecessary and potentially inconsistent with Section 304 of the U.S. Bankruptcy Code. The revision relates to Section 10(b)(14), which governs the procedure for administering the assets of a single beneficiary trust.

In the 1990's, amendments were made to the Credit for Reinsurance Model Act and Regulation aimed at addressing concerns adopting parallel language for single beneficiary trusts (SBTs) versus multiple beneficiary trusts (MBTs). However, with the following amendment to the Bankruptcy code, that language is no longer required.

Bankruptcy Code Amendments

Congress recently adopted amendments to the Bankruptcy Code, including the following which can be found in a new Chapter 15 to U.S.C. Title II, §1501(d):

The court may not grant relief under this chapter with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.

This language is broad enough to apply to all security devices, whether MBTs or SBTs. This section makes clear and summarizes the treatment of trusts, the requirement that they be maintained in the U.S. and that assets be distributed in accordance with the laws of the state in which the trust is domiciled.

The Task Force also referred the issue to the Financial Regulation Standards and Accreditation (F) Committee so that for accreditation purposes, both the current model law and regulation as well as any amended version(s) arising from changes relating to this issue, be considered acceptable.

2. Group Responsible for the Report

The project was assigned to the Reinsurance (G) Task Force. The members of the task force at the time were: Julie Bowler (MA), Chair; John Oxendine (GA), Vice-Chair; Walter Bell (AL); John Garamendi (CA); Susan Cogswell (CT); Matthew Denn (DE); Thomas Hampton (DC); Kevin McCarty (FL); Michael McRaith (IL); Martin Koettters (KY); Alessandro Iuppa (ME); Glenn Wilson (MN); Alice Molasky-Arman (NV); Roger Sevigny (NH); Steven Goldman (NJ); Howard Mills (NY); Jim Poolman (ND); Diane Koken (PA); Dorelisse Juarbe Jimenez (PR); Mike Geeslin (TX); Alfred Gross (VA); Mike Kriedler (WA) and Jorge Gomez (WI).

3. Charge Authorizing the Project

As part of the NAIC 2006 Model Law Review, changes were proposed to the Credit for Reinsurance Model Regulation.

4. General Description of the Drafting Process and Discussion of Key Issues

The issue was proposed while changes to the U.S. bankruptcy code were in the process of being amended. After the changes were reviewed, it was determined that Section 10(b)(14) was unnecessary. The proposed amendment to the Model Regulation was exposed for a 60-day comment period where no opposition came from either interested parties or regulators. Receiving no additional comments or disagreement with the proposal, the task force adopted amendments during the NAIC 2006 Spring National Meeting.

PROJECT HISTORY – 2001

CREDIT FOR REINSURANCE MODEL REGULATION (#786)

1. Project Description

The Reinsurance (G) Task Force was charged with reviewing the Credit for Reinsurance Model Regulation to allow multi- beneficiary trust funds to be funded, in whole or in part, with clean, irrevocable, unconditional “evergreen” letters of credit. The charge was proposed by the Task Force at the NAIC 2000 Spring National Meeting.

2. Group Responsible for the Report

The project was assigned to the Reinsurance (G) Task Force. The members of the task force at that time were: John Oxendine (GA), Chair; Alessandro Iuppa (ME), Harry Low (CA), Donna Lee Williams (DE), Nathaniel Shapo (IL), Neil Levin (NY), Diane Koken (PA), and Jose Montemayor (TX). New members of the Task Force during the NAIC 2001 Spring National Meeting were Elisara Togiai (AS) and David Parsons (AL) replacing Pennsylvania.

3. Charge Authorizing the Project

The following charge was given to the Reinsurance (G) Task Force on March 12, 2000:

The Reinsurance (G) Task Force shall consider the adequacy and appropriateness of currently applicable collateralization requirement regarding alien insurers.

4. General Description of the Drafting Process and Discussion of Key Issues

A draft of revisions to the Credit for Reinsurance Model Regulation was prepared in November 2000 by the task force, with input from interested parties. The task force accepted these amendments and proposed additional revisions from a January 25, 2001, conference call. The new additions give the trustee the right and the obligation to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire before being renewed or replaced. Also, the failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct. The Regulation was presented and adopted by the Task Force and the Special Insurance Issues (G) Committee at the NAIC 2001 Spring National Meeting.