

## REQUEST FOR NAIC MODEL LAW DEVELOPMENT

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

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

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

Reinsurance (E) Task Force

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

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

- *Credit for Reinsurance Model Law (#785)*
- *Credit for Reinsurance Model Regulation (#786)*

On Sept. 22, 2017, the U.S. Department of the Treasury and the Office of the U.S. Trade Representative signed the "Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance" (Covered Agreement). The Covered Agreement includes requirements on group capital, group supervision and reinsurance collateral. The 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 ratio (SCR) of 100% under Solvency II. Conversely, U.S. reinsurers that maintain capital and surplus equivalent to €226 million 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.

On Nov. 6, 2011, the NAIC membership adopted revisions to Section 2E of Model #785 and Section 8 of Model #786, which will be impacted 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, for states that adopted the models or a substantially similar law and/or regulation, in order for their 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 U.S. liabilities for which the credit was recorded.

While the group capital and group supervision provisions of the Covered Agreement are not expected to require changes to the states' laws, the states will need to take action with respect to reinsurance collateral provisions within 60 months (five years) or face potential federal preemption by the Federal Insurance Office (FIO). Specifically, it is recommended that Model #785 and Model #786 be revised to conform to the requirements of the Covered Agreement, and to provide reinsurers domiciled in other NAIC qualified jurisdictions other than within the EU with similar reinsurance collateral requirements as those provided to EU reinsurers under the Covered Agreement. In addition, any revisions to Model #785 and Model #786 should incorporate other standards included in the Covered Agreement, the most noteworthy among such standards being the requirement that the qualified jurisdiction must agree to recognize the states' approach to group supervision, including group capital, as well as provisions for enforcement of these requirements.

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

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

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

If yes, please explain why:

The federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides that a state insurance law or regulation may be subject to preemption upon a determination by the FIO director, in accordance with notice and other procedural requirements set forth in the Dodd-Frank Act, that the state insurance measure is inconsistent with a covered agreement and results in less favorable treatment of non-U.S. insurers subject to the covered agreement than a U.S. insurer domiciled, licensed or otherwise admitted in the state. Under the Covered Agreement, the states have 60 months (five years) from signature of the agreement to enact reinsurance reforms removing collateral requirements for EU reinsurers that meet the prescribed conditions in the Covered Agreement.

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

Yes or  No (Check one)

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

1  2  3  4  5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

As previously noted, the states have 60 months (five years) from signature of the Covered Agreement (Sept. 22, 2017) to conform their reinsurance collateral requirements for applicable EU reinsurers to the terms of the Covered Agreement, or face potential federal preemption through determinations by the FIO director. Under the Covered Agreement, the process for considering potential preemption determinations of state laws that are inconsistent with the Covered Agreement begins 42 months following signature of the agreement, with any preemption determination required to be completed by the end of the 60-month period. In order to meet this rigid time frame, it will be important for the NAIC membership to complete the proposed revisions to Model #785 and Model #786 as soon as is reasonably possible, in order to provide the states with the maximum time to implement the revisions.

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

1  2  3  4  5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary: See previous discussion.

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

1  2  3  4  5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary: See previous discussion.

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

On April 9, 2013, the NAIC 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 is not required to adopt the certified reinsurer revisions to the models, but if it chooses to reduce its reinsurance collateral requirements, the state’s laws and regulations must be substantially similar to the key elements of the revisions. Effective Jan. 1, 2019, the NAIC membership made the current *Reinsurance Ceded to Certified Reinsurers* provisions of Part A: Laws & Regulations—Traditional Insurers a required and uniform accreditation standard applicable to all NAIC-accredited jurisdictions. This new uniform standard continues to require that accredited jurisdictions adopt the provisions of the models in a substantially similar manner.

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

Yes. Under Title V of the Dodd-Frank Act, the U.S. Department of the Treasury and the Office of the U.S. Trade Representative are authorized to jointly negotiate covered agreements, defined under the Dodd-Frank Act as written bilateral or multilateral agreements between the United States and one or more foreign governments, authorities or regulators regarding prudential measures with respect to insurance or reinsurance, on the condition that the prudential measures subject to a covered agreement achieve a level of protection for insurance or reinsurance consumers that is “substantially equivalent” to the level of protection achieved under U.S. state insurance laws. The Covered Agreement was negotiated pursuant to authority included within the Dodd-Frank Act and has been represented to be an agreement consistent with such authority. The Covered Agreement requires the states to eliminate reinsurance collateral requirements for EU reinsurers that maintain a minimum amount of own funds equivalent to \$250 million and a solvency capital ratio (SCR) of 100% under Solvency II. The states will need to take action with respect to reinsurance collateral reforms within 60 months (five years) or face potential federal preemption determinations by the FIO director.

## CREDIT FOR REINSURANCE MODEL LAW

### ~~Preface to Credit for Reinsurance Models~~

~~The amendments to the NAIC Credit for Reinsurance Model Law (#785) & Regulation (#786) are part of a larger effort to modernize reinsurance regulation in the United States. The NAIC initially adopted the Reinsurance Regulatory Modernization Framework Proposal during its 2008 Winter National Meeting. The NAIC recommended that this framework be implemented through federal legislation in order to best preserve and improve state based regulation of reinsurance, ensure timely and uniform implementation throughout all NAIC member jurisdictions, and as a more comprehensive alternative to related federal legislation. In addition to this proposed federal legislation, the framework also provided that changes to state insurance laws should be considered. For example, state laws to establish requirements under which states would regulate qualified reinsurers, and also to consider reinsurance risk diversification and notice requirements for ceding insurers.~~

~~On July 21, 2010, Congress passed and the President signed related federal legislation, the Nonadmitted and Reinsurance Reform Act, which became effective July 21, 2011. While this act does not implement the NAIC framework, it does preempt the extraterritorial application of state credit for reinsurance law and permits states of domicile to proceed forward with reinsurance collateral reforms on an individual basis if they are accredited. This federal legislation also does not prohibit the states from acting together, through the NAIC, to achieve the reinsurance modernization framework goals. In addition to the current work on the credit for reinsurance models, the NAIC will continue its efforts to implement other aspects of the framework. These efforts will continue both through work conducted by the Reinsurance Task Force and through referrals to the appropriate groups within the NAIC. In addition, the NAIC will consider a proposal to form a new group 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. Such an effort would be supported by NAIC staff with substantial expertise to support the functions of such a group.~~

~~Finally, the NAIC will continue to work on requirements for NAIC review and approval of qualified jurisdictions, and will undertake a re-examination of the collateral amounts within two years from the effective date of the revisions to the models.~~

## CREDIT FOR REINSURANCE MODEL LAW

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### Section 2. Credit Allowed a Domestic Ceding Insurer

Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of Subsections A, B, C, D, E, ~~or F~~ or G of this section; provided further, that the commissioner may adopt by regulation pursuant to Section 5B specific additional requirements relating to or setting forth: (1) the valuation of assets or reserve credits; (2) the amount and forms of security supporting reinsurance arrangements described in Section 5B; and/or (3) the circumstances pursuant to which credit will be reduced or eliminated.

**Drafting Note:** This new regulatory authority is being added in response to reinsurance arrangements entered into, directly or indirectly, with life/health insurer-affiliated captives, special purpose vehicles or similar entities that may not have the same statutory accounting requirements or solvency requirements

as US-based multi-state life/health insurers. To assist in achieving national uniformity, commissioners are asked to strongly consider adopting regulations that are substantially similar in all material respects to NAIC adopted model regulations in the handling and treatment of such reinsurance arrangements.

Credit shall be allowed under Subsections A, B or C of this section only as respects cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a U.S. branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under Subsections C or D of this section only if the applicable requirements of Subsection GH have been satisfied.

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F. (1) Credit shall be allowed when the reinsurance is ceded to an assuming insurer meeting each of the conditions set forth below.

(a) The assuming insurer must have its head office or be domiciled in, as applicable, and be licensed in a Reciprocal Jurisdiction. A “Reciprocal Jurisdiction” is a jurisdiction that meets one of the following:

(i) A non-U.S. jurisdiction that is subject to an in-force covered agreement with the United States, each within its legal authority, or, in the case of a covered agreement between the United States and European Union, is a member state of the European Union. For purposes of this subsection, a “covered agreement” is an agreement entered into pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act, 31 U.S.C. §§ 313 and 314, that is currently in effect or in a period of provisional application and addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in this state or for allowing the ceding insurer to recognize credit for reinsurance;

(ii) A U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program; or

(iii) A qualified jurisdiction, as determined by the commissioner pursuant to [Subsection 2E(3) of Credit for Reinsurance Model Law], which is not otherwise described in subparagraph (i) or (ii) above and which meets certain additional requirements, consistent with the terms and conditions of in-force covered agreements, as specified by the commissioner in regulation.

(b) The assuming insurer must have and maintain on an ongoing basis minimum capital and surplus, or its equivalent, calculated according to the methodology of its domiciliary jurisdiction, in an amount to be set forth in regulation. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis minimum capital and surplus equivalents (net of liabilities), calculated according to the methodology applicable in its domiciliary jurisdiction, and a central fund containing a balance in amounts to be set forth in regulation.

(c) The assuming insurer must have and maintain on an ongoing basis a minimum solvency or capital ratio, as applicable, which will be set forth in regulation. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain on an ongoing basis a minimum solvency or capital ratio in the Reciprocal Jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed.

(d) The assuming insurer must agree and provide adequate assurance to the commissioner, in a form specified by the commissioner pursuant to regulation, as follows:

(i) The assuming insurer must provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in

subparagraphs (b) or (c), or if any regulatory action is taken against it for serious noncompliance with applicable law;

- (ii) 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. Nothing in this provision shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;
- (iii) The assuming insurer must consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;
- (iv) Each reinsurance agreement must include a provision requiring the assuming insurer to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate; and
- (v) The assuming insurer must confirm that it is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agrees to notify the ceding insurer and the commissioner and to provide security in an amount equal to one hundred percent (100%) of the assuming insurer's liabilities to the ceding insurer should the assuming insurer enter into such a solvent scheme of arrangement. Such security shall be in a form consistent with the provisions of Section 2E and Section 3 and as specified by the commissioner in regulation.

**Drafting Note:** Section 9C(4)(e) of the *Credit for Reinsurance Model Regulation* (#786) sets forth the acceptable forms of security under this subparagraph by specifically referencing Sections 12, 13 and 14 of Model #786.

- (e) The assuming insurer or its legal successor must provide, if requested by the commissioner, on behalf of itself and any legal predecessors, certain documentation to the commissioner as specified by the commissioner in regulation.
  - (f) The assuming insurer must maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth in regulation.
  - (g) The assuming insurer's supervisory authority must confirm to the commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the Reciprocal Jurisdiction, that the assuming insurer complies with the requirements set forth in subparagraphs (b) and (c).
  - (h) Nothing in this provision precludes an assuming insurer from providing the commissioner with information on a voluntary basis.
- (2) The commissioner shall timely create and publish a list of Reciprocal Jurisdictions.
- (a) A list of Reciprocal Jurisdictions is published through the NAIC Committee Process. The commissioner's list shall include any Reciprocal Jurisdiction as defined under Section 2F(1)(a)(i) and (ii), and shall consider any other Reciprocal Jurisdiction included on the NAIC list. The commissioner may approve a jurisdiction that does not appear on the NAIC

list of Reciprocal Jurisdictions in accordance with criteria to be developed under regulations issued by the commissioner.

- (b) The commissioner may remove a jurisdiction from the list of Reciprocal Jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a Reciprocal Jurisdiction in accordance with a process set forth in regulations issued by the commissioner, except that the commissioner shall not remove from the list a Reciprocal Jurisdiction as defined under Section 2F(1)(a)(i) and (ii). Upon removal of a Reciprocal Jurisdiction from this list credit for reinsurance ceded to an assuming insurer which has its home office or is domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to [cite to state law equivalent to Credit for Reinsurance Model Law].
- (3) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions set forth in this subsection and to which cessions shall be granted credit in accordance with this subsection. The commissioner may add an assuming insurer to such list if an NAIC accredited jurisdiction has added such assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under Paragraph (1)(d) of this subsection and complies with any additional requirements that the commissioner may impose by regulation, except to the extent that they conflict with an applicable covered agreement.
- (4) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this subsection, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this subsection in accordance with procedures set forth in regulation.

  - (a) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with Section 3.
  - (b) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of Section 3.
- (5) If subject to a legal process of rehabilitation, liquidation or conservation, as applicable, the ceding insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.
- (6) Nothing in this subsection shall limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by this [cite to state law equivalent to Credit for Reinsurance Model Law] or other applicable law or regulation.
- (7) Credit may be taken under this subsection only for reinsurance agreements entered into, amended, or renewed 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.

  - (a) This paragraph does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this subsection, as long as the reinsurance qualifies for credit under any other applicable provision of [cite to state law equivalent to Credit for Reinsurance Model Law].

(b) Nothing in this subsection shall authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement.

(c) Nothing in this subsection shall limit or in any way alter the capacity of parties to any reinsurance agreement to renegotiate the agreement.

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## Section 5. Rules and Regulations

- A. The commissioner may adopt rules and regulations implementing the provisions of this law.

**Drafting Note:** It is recognized that credit for reinsurance also can be affected by other sections of the enacting state's code, e.g., a statutory insolvency clause or an intermediary clause. It is recommended that states that do not have a statutory insolvency clause or an intermediary clause consider incorporating such clauses in their legislation.

- B. The commissioner is further authorized to adopt rules and regulations applicable to reinsurance arrangements described in Paragraph (1) of this Section 5B.

**Drafting Note:** This new regulatory authority is being added in response to reinsurance arrangements entered into, directly or indirectly, with life/health insurer-affiliated captives, special purpose vehicles or similar entities that may not have the same statutory accounting requirements or solvency requirements as US-based multi-state life/health insurers. To assist in achieving national uniformity, commissioners are asked to strongly consider adopting regulations that are substantially similar in all material respects to NAIC adopted model regulations in the handling and treatment of such policies and reinsurance arrangements.

- (1) A regulation adopted pursuant to this Section 5B, may apply only to reinsurance relating to:
- (a) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;
  - (b) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;
  - (c) Variable annuities with guaranteed death or living benefits;
  - (d) Long-term care insurance policies; or
  - (e) Such other life and health insurance and annuity products as to which the NAIC adopts model regulatory requirements with respect to credit for reinsurance.
- (2) A regulation adopted pursuant to Paragraph 1(a) or 1(b) of this Section 5B, may apply to any treaty containing (i) policies issued on or after January 1, 2015, and/or (ii) policies issued prior to January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.

**Drafting Note:** The NAIC's Actuarial Guideline XLVIII (AG 48) became effective January 1, 2015, and covers policies ceded on or after this date unless they were ceded as part of a reserve financing arrangement as of December 31, 2014. One regulation contemplated by this revision to the NAIC Credit for Reinsurance Model Law is intended to substantially replicate the requirements for the amounts and forms of security held under the rules provided in AG 48. AG 48 was written to sunset upon a state's adoption (pursuant to the enabling authority of the preceding paragraph) of a regulation with terms substantially similar to AG 48. The preceding paragraph is intended to provide continuity of rules applicable to those policies and reinsurance arrangements, including continuity as to the policies covered by such rules. The preceding paragraph is not intended to change the scope of, or collateral requirements for policies and treaties covered under AG 48.

- (3) A regulation adopted pursuant to this Section 5B may require the ceding insurer, in calculating the amounts or forms of security required to be held under regulations promulgated under this authority, to use the Valuation Manual adopted by the NAIC under Section 11B(1) of the NAIC Standard Valuation Law, including all amendments adopted by the NAIC and in effect on the date as of which the calculation is made, to the extent applicable.
- (4) A regulation adopted pursuant to this Section 5B shall not apply to cessions to an assuming insurer that:

- (a) Meets the conditions set forth in Section 2F of the Credit for Reinsurance Model Law in this state or, if this state has not adopted provisions substantially equivalent to Section 2F of the Credit for Reinsurance Model Law, the assuming insurer is operating in accordance with provisions substantially equivalent to Section 2F of the Credit for Reinsurance Model Law in a minimum of five (5) other states; or
  - ~~(a)~~(b) Is certified in this state or, if this state has not adopted provisions substantially equivalent to Section 2E of the Credit for Reinsurance Model Law, certified in a minimum of five (5) other states; or
  - ~~(b)~~(c) Maintains at least \$250 million in capital and surplus when determined in accordance with the NAIC *Accounting Practices and Procedures Manual*, including all amendments thereto adopted by the NAIC, excluding the impact of any permitted or prescribed practices; and is
    - (i) licensed in at least 26 states; or
    - (ii) licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.
- (5) The authority to adopt regulations pursuant to this Section 5B does not limit the commissioner's general authority to adopt regulations pursuant to Section 5A of this law.

## PROJECT HISTORY

### **REVISIONS TO *CREDIT FOR REINSURANCE MODEL LAW (#785)* AND *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***

#### ***Bilateral Agreement Between the United States of America and the United Kingdom 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).
3. 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. Laceywell	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.