

2019 Revisions to the *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786) Talking Points

Summary

In June 2019, the NAIC adopted revisions to the *Credit for Reinsurance Model Law* (#785) and *Credit for Reinsurance Model Regulation* (#786) incorporating relevant provisions of the “Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance” (Covered Agreement), which was signed on Sept. 22, 2017. The Covered Agreement would eliminate reinsurance collateral and local presence 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. 18, 2018, a similar Covered Agreement was signed with the United Kingdom (UK). In addition, the 2019 revisions to Models #785 and #786 extend similar treatment to Qualified Jurisdictions, that meet certain additional requirements consistent with the Covered Agreement, and to accredited NAIC jurisdictions.

State Implementation

- The *Dodd-Frank Wall Street Reform and Consumer Protection Act* (Dodd-Frank Act) provides state insurance laws can be preempted to the extent the Director of the Federal Office of Insurance (FIO) determines the law is inconsistent with a “covered agreement” or results in less favorable treatment to reinsurers from covered agreement jurisdictions.
- In an effort to comply with the requirements of the Covered Agreement, the 2019 revisions to Model #785 and Model #786 provide countries or jurisdictions, subject to an “in-force covered agreement,” will be considered as Reciprocal Jurisdictions whose reinsurers are not required to post reinsurance collateral.
- In order to avoid potential federal preemption determinations by FIO, each state should adopt the 2019 revisions to Models #785 and #786 in a timely manner and in the form adopted by the full NAIC membership.

Federal Preemption

- Since the Dodd-Frank Act requires state insurance laws to be “consistent” with the Covered Agreement, the NAIC Reinsurance (E) Task Force recommends states adopt the 2019 revisions in close to identical form to the Credit for Reinsurance models.
- FIO may begin evaluating potential preemption determinations 42 months after the signature of the Covered Agreement, or March 1, 2021.
- FIO must complete any necessary preemption determinations 60 months after signature of the Covered Agreement, which FIO defines as September 1, 2022.

Accreditation

- The NAIC Accreditation Program defines baseline standards deemed essential to effective solvency regulation in each state while fostering accountability and uniformity. Accreditation is granted to those states in line with these baseline standards. All 50 states, the District of Columbia and Puerto Rico are NAIC accredited jurisdictions.
- The Reinsurance (E) Task Force will recommend to the Financial Regulation Standards and Accreditation (F) Committee the 2019 revisions to Model #785 and Model #786 be adopted as a new accreditation standard outlining the significant elements for *Reciprocal Jurisdictions*.
- The Task Force will also recommend the accreditation standard become effective at the end of the 60-month period when federal preemption determination must be completed, which FIO defines as September 1, 2022. Enforcement of the accreditation standard would commence Jan. 1, 2023.