



AMERICAN ACADEMY of ACTUARIES

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February 26, 2020

Director Chlora Lindley-Myers
Chair, Reinsurance (E) Task Force
Attn: John Rehagen
National Association of Insurance Commissioners (NAIC)

Dear Director Lindley-Myers,

The Life Reinsurance Work Group (“the Work Group”) of the American Academy of Actuaries¹ appreciates the opportunity to comment on the NAIC’s Model #787 Exposure Memorandum, requesting comments on whether compliance with Actuarial Guideline XLVIII (AG 48) should be considered to be “substantially similar” to Model #787 under the NAIC Financial Standards and Accreditation Program.

In the Work Group’s view, Model #787 and AG 48 differ in significant ways, and a sunset of AG 48 and its replacement by Model #787, wherever possible, is important to achieve, for reasons described below.

Model #787 and AG 48 differ principally in the means by which they require or incentivize companies to conform their captive reinsurer arrangements (if they have them) to certain standards. For business within its scope, Model #787 defines the standards in order for the cedent to receive full reserve credit for reinsurance. Further, Model #787 directly requires the ceding insurer to establish an additional liability if there is an uncorrected shortfall in amounts of Primary Security or Other Security, as defined in the model. AG 48 sets out similar standards and definitions of required amounts of Primary Security and Other Security for a captive arrangement and requires the cedent’s Appointed Actuary to issue a “Qualified Actuarial Opinion” on the cedent reserves in cases where the AG 48 standards are not met. The Qualified Actuarial Opinion, along with adverse risk-based capital (RBC) consequences for any shortfall in amount of Primary Security, together constitute the enforcement means for AG 48.

Throughout the development of AG 48 in 2014, the Academy’s Life Practice Council expressed concerns several times with the NAIC’s proposed forced use of a Qualified Actuarial Opinion to achieve the goals of the new captive regulatory framework. We stated these concerns in our June 25, 2014, [letter](#) to the PBR Implementation (EX) Task Force; our Sept. 17, 2014, [letter](#) to the Life Actuarial Task Force (LATF); and our Oct. 30, 2014, [letter](#) to the PBR Implementation (EX) Task Force.

In the Work Group’s view, a forced Qualified Actuarial Opinion is inconsistent with the purpose and intent of the Actuarial Opinion and Memorandum Requirements (AOMR) in VM-30, which places responsibility on the appointed actuary to issue an opinion as to the overall adequacy of reserves.

¹ The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

Codifying circumstances when an appointed actuary must qualify his/her opinion reduces the independence given to the appointed actuary in the AOMR in forming his/her opinion.

The AOMR is designed to ensure the overall adequacy of an insurer's reserves based on asset adequacy analysis and is not designed or intended to implement new transaction-specific calculation requirements. Section 1(A)(3) of the VM-30 provides (emphasis added):

The AOM requirements shall be applied in a manner that allows the appointed actuary to use his or her professional judgment in performing the actuarial analysis and developing the actuarial opinion and supporting actuarial memoranda, conforming to relevant ASOPs. *However, a state commissioner has the authority to specify methods of analysis and assumptions* when, in the commissioner's judgment, these specifications are necessary for the actuary to render *an acceptable opinion relative to the adequacy of reserves and related actuarial items*. For purposes of VM-30, the requirements of Actuarial Guideline XLVIII—Actuarial Opinion and Memorandum Requirements for the Reinsurance of Policies Required to be Valued Under Sections 6 and 7 of the NAIC Valuation of Life Insurance Policies Model Regulation (AG 48), of the AP&P Manual, shall be applicable.

The reference to actuarial methods and assumptions in Section 1(A)(3) supports our view that the AOMR is focused on reserve adequacy with an independent, professional actuarial opinion as its cornerstone.

Although the Work Group acknowledges that the NAIC took steps in 2015 to distinguish the RBC consequences of an actuarial opinion deemed as qualified solely on account of AG 48, we still have strong concerns with the approach taken in AG 48 requiring that the Appointed Actuary issue a qualified opinion in a specific circumstance. We continue to believe it is anomalous for regulators to mandate a Qualified Actuarial Opinion via AG 48, the AOMR, or otherwise. In our view, the Appointed Actuary's Opinion should be preserved as just that—a professional opinion rendered by the Appointed Actuary.

In 2014, the NAIC implemented its new captive regulatory framework via actuarial guideline (namely, AG 48) principally to expedite implementation of the new framework, recognizing that implementation through model law, model regulation, and NAIC adoption as an accreditation standard would take years. The expressed plan, explicit in AG 48 itself, was to sunset AG 48 once the equivalent model law and regulation was adopted at NAIC and by the states. The Work Group believes that if AG 48 is deemed substantially similar to Model #787, then its replacement by Model #787 could be deferred indefinitely by some states, and deferral would maintain the use of a forced Qualified Actuarial Opinion, which we believe is undesirable.

Should you have questions regarding these suggestions, please contact Ian Trepanier, the Academy's life policy analyst, at trepanier@actuary.org.

Sincerely,

Richard Daillak, MAAA, FSA
Chairperson, Life Reinsurance Work Group
American Academy of Actuaries