November 12, 2026

Commissioner Nathan Houdek (WI)
Chair, Financial Condition (E) Committee
National Association of Insurance Commissioners

Re: Reinsurance Recapture Risk for Non-Reciprocal Jurisdictions Memo

Dear Commissioner Houdek:

On behalf of the American Academy of Actuaries'[1] Reinsurance Work Group (RWG), we appreciate the opportunity to provide comments to the Financial Condition on the Oct. 26, 2026, memorandum (the memorandum) from Commissioner Nathan Houdek, Chair of the Financial Condition (E) Committee (the Committee), to Ben Slutsker, Chair of the Life Risk-Based Capital (E) Working Group (the Working Group). The memorandum explains the basis for the Committee's referral and directs the Working Group to implement an RBC requirement that approximates the capital that would be required if a ceding company had to recapture reserves ceded to non-reciprocal jurisdictions, "without regard to the probability of recapture."

This letter builds on, and is distinct from, the RWG's Sept. 28, 2026, letter to the Working Group on the same referral. That letter responded to the Working Group's exposure draft. Because the Working Group has said it could not change directives from its parent committee, it focused on implementation: It recommended specific approaches (a hybrid or tiered design, or a stress- or scenario-based charge) and raised a range of design and timing questions. The present letter responds to the Committee Chair's memorandum, which explains the basis for the referral itself, and it therefore addresses the premise of the referral.

The scope of the proposed charge also warrants clarification. The approach focuses on the capital shortfall that could follow recapture, without explicitly modeling potential shortfalls in the recovery of assets supporting the ceded reserves. These are distinct concerns and should be evaluated separately. Existing collateral requirements, together with other developments such as AG 55, may address potential reserve recovery shortfalls, but their adequacy for the transactions of concern must be assessed rather than assumed. We recommend that the Committee identify the residual risk that remains after these measures and clarify which component a supplemental RBC charge is intended to address.

The memorandum describes a "serious and urgent solvency concern that requires immediate, direct

[1] The American Academy of Actuaries is a 20,000-member professional association whose mission is to serve the public and the U.S. actuarial profession. For 60 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.

action." An RBC change cannot be immediate. It requires development, calibration, exposure, adoption, and a filing cycle, and the stated objective is year-end 2027. RBC also works through action levels triggered by a company's ratio, so it is not designed to address a specific transaction promptly.

While a forward-looking approach is necessary to address emerging risks, the historical record also does not point to a widespread, unaddressed failure. Bridgeway Analytics (Bridgeway) identified only five life reinsurance failures over the last 10 years. Four involved alleged or established fraud in which assets were misrepresented, and one involved investment losses during the global financial crisis combined with underpriced reinsurance and adverse insurance experience. Bridgeway identified no policyholder losses directly attributable to reinsurer default. This reinforces the RWG's September 28 observation that forced recapture has been very rare. It also suggests that the drivers in those cases, such as asset misrepresentation, collateral misuse, related-party concentration, and governance and disclosure failures, are better addressed by examination, asset and collateral review, and governance tools than by a uniform capital factor.

Bridgeway's modeling of hypothetical industry-wide recaptures illustrates the consequences of an assumed recapture event; it does not, by itself, establish a risk-sensitive basis for the proposed charge. Such modeling can inform an assessment of severity and contribute to the stress- or scenario-based approach discussed in the RWG's September 28 letter. Measuring the capital shortfall conditional on recapture, however, is not the same as measuring the risk of that shortfall. An approach that translates those consequences into a charge without regard to the probability of recapture does not align with the risk-based principles underlying RBC. The analysis therefore needs a risk-sensitive calibration framework before it can support an appropriately calibrated RBC requirement.

A supplemental RBC factor, if warranted, should be developed on facts and based on a quantified risk. The RWG does not rule out that an RBC factor may be needed to supplement the current tools. But the potential for unintended harm from adopting a factor in a rushed fashion, on the schedule now planned, could be significant. It includes reduced reinsurance capacity, higher costs for consumers, restructuring that does not reduce risk, according to Bridgeway, potential insolvencies, and a charge that is miscalibrated and difficult to correct. Any solution should be based on facts, not impressions: observed data on transactions, resources, and shortfalls. It should also be risk-based, like other RBC factors, reflecting the likelihood and severity of loss and the characteristics of each transaction, and not a uniform charge that assumes recapture is certain.

The use of jurisdictional classification to define the charge raises a separate concern. Reciprocal versus non-reciprocal designation principally governs credit for reinsurance and associated collateral requirements, rather than the capital needed to support recaptured business. That capital need depends on the risks and characteristics of the recaptured business, not on jurisdictional designation alone. The purpose of the classification therefore does not, by itself, establish its suitability as a measure of the risk the proposed charge seeks to address. Any supplemental requirement should be tied to the underlying risk, with non-reciprocal status used as a proxy only if the analysis demonstrates a meaningful relationship to that risk.

Domiciliary regulators already have the authority to act promptly on issues of concern through targeted supervisory tools, including:

- examinations and financial surveillance of the specific companies and treaties of concern;
- hazardous financial condition authority under state law;
- AG 55 and asset adequacy analysis follow-up on the transactions flagged by VAWG; and
- company-specific requirements, such as conditions on treaty approvals, collateral or other protections, and enhanced reporting.

If the concern requires immediate action, these tools are the natural primary response, because they can reach the affected transactions now and be tailored to each. Their availability does not establish that they eliminate all residual risk; their effectiveness and any remaining exposure must be assessed. RBC may still have a role as a longer-term structural backstop, giving a consistent formulaic signal once the nature, size, and calibration of the residual risk are understood. Immediate supervisory action and development of that backstop are complementary, not alternatives. RBC should not be the primary response to an urgent solvency concern, and the timing of the RBC work should not be taken as a substitute for supervisory action in the interim.

The RWG appreciates the E Committee's and the Life RBC Working Group's attention to a significant policyholder protection issue. Any approach will involve trade-offs between simplicity and risk sensitivity, and between speed and thorough analysis. We ask the Committee to reconsider the premise and scope of the referral and to encourage domiciliary regulators to use their existing supervisory tools promptly to address urgent issues. Any potential RBC solution should adopt a forward-looking approach that distinguishes capital needs following recapture from reserve-recovery shortfalls, reflects the likelihood and severity of residual loss under future stress scenarios, and uses jurisdictional classification only to the extent it is supported as an indicator of the risk being measured. A clear statement of intended consequences, calibration, and impact testing, and phased implementation would provide a stronger basis for evaluating and implementing any approach. Academy members would be pleased to assist the Committee and the Working Group, including through discussion of options for calibration, measurement, and impact testing.

We appreciate the opportunity to share these comments and look forward to the continued collaborative conversations between the E Committee and interested stakeholders. If you have any questions or would like to discuss these comments further, please contact Will Behnke, the Academy's policy project manager, risk management and financial reporting (behnke@actuary.org).

Sincerely,

Jeremy Starr, MAAA, FSA
Chairperson, Reinsurance Working Group
Risk Management and Financial Reporting Council