2013 Report on the Impact of Part II of the Nonadmitted and Reinsurance Reform Act

FEDERAL INSURANCE OFFICE, DEPARTMENT OF THE TREASURY

Completed pursuant to Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act

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Background

Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) created the Federal Insurance Office (FIO) through the Federal Insurance Office Act of 2010 (FIO Act).[1] Title V of the Dodd-Frank Act also included the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), Part II of which addresses the regulation of reinsurance.

The purpose of the NRRA is to enhance uniformity in the state-based solvency regulation of insurers by increasing deference to the authorities of the domiciliary state (*i.e.*, the state that is the home regulator of the reinsurer). As it relates to this report, Part II of the NRRA prohibits a non-domiciliary state regulator from requiring a reinsurer to provide financial information other than financial information provided to the regulator in the domiciliary state.

As a means of monitoring the impact of this provision, the statute instructs the Director of FIO to submit a report to Congress "describing the impact of [P]art II of the [NRRA] on the ability of State regulators to access reinsurance information for regulated entities in their jurisdictions."[2] For purposes of this section, a "regulated entity" is a licensed reinsurer. The statute requires an updated report not later than January 1, 2015.

This report (Report) responds to Congress's foregoing instruction. In preparing the Report, FIO consulted with all state regulators, through the National Association of Insurance Commissioners (NAIC), and with the Reinsurance Association of America (RAA).

NRRA, Part II – Reinsurance

The reinsurance provisions of the NRRA seek to introduce greater uniformity in the treatment of reinsurance across the states by increasing deference to the authorities of the regulator in the reinsurer's domiciliary state. Thus, the NRRA provides that if a reinsurer is domiciled in an NAIC-accredited state, then "such [s]tate shall be solely responsible for regulating the financial solvency of the reinsurer."[3]

In this regard, Part II of the NRRA addresses the issue of credit for reinsurance, and it provides that if the state of domicile[4] of a ceding insurer (*i.e.*, the primary insurer that purchases reinsurance, thereby "ceding" its risk to a reinsurer) is a qualifying state (such that it is either NAIC-accredited[5] or that the state has financial solvency requirements similar to that of an

[1] Pub. L. 111-203.
[2] 31 U.S.C. § 313(o)(2).
[3] 15 U.S.C. § 8222(a).
[4] The NRRA defines the terms "State of domicile" and "domiciliary state," with respect to an insurer or reinsurer, as "the State in which the insurer or reinsurer is incorporated or entered through, and licensed." 15 U.S.C. § 8223(2).
[5] Part II of the NRRA places conditions on the state of domicile of the ceding insurer, namely, that the state must be an "an NAIC-accredited state[] or has financial solvency requirements substantially similar to the requirements for NAIC accreditation." 15 U.S.C. § 8221(a). Arising from the failure of several large insurers in the 1980's, the NAIC's Financial Regulation Standards and Accreditation Program is a peer review exercise through which state regulators assess whether a state regulatory agency meets a set of legal, financial and organizational standards. A state insurance regulatory department is "accredited" if it meets these standards. As of March 2013, all fifty states, the District of Columbia and Puerto Rico are accredited. NAIC, *Financial Regulation Standards and Accreditation Program*, April 2013.

NAIC-accredited state) and the state "recognizes credit for reinsurance for the insurer's ceded risk, then no other State may deny such credit for reinsurance."[6] In addition, subject to certain exceptions relating to taxes and assessments, the NRRA preempts any state law provision that would seek to nullify the deference to the reinsurer's domiciliary state regulator. Specifically, the laws, regulations, or other actions of a state that is not the domiciliary state of a ceding insurer are preempted to the extent that the law, regulation, or other action:

> (1) restricts or eliminates the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration;
> (2) requires that state law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;
> (3) attempts to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract; or
> (4) otherwise applies the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State.[7]

Finally, as part of the broader design to protect the regulatory authority of the domiciliary, the NRRA provides that a non-domiciliary state may not "require [a] reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary [s]tate."[8]

Findings

A regulated insurer must file statutory financial statements with the regulator in its domiciliary state. These financial statements contain information regularly sought by regulators and are available to non-domiciliary state regulators.

Prior to enactment of the NRRA, regulators in a small number of states had required additional financial information from reinsurers domiciled in other states. Due to the preemption provision in Part II of the NRRA, a non-domiciliary state regulator may not require a reinsurer to provide "additional information other than the information the reinsurer is required to file with its domiciliary [s]tate."[9]

Although Part II of the NRRA assigns the responsibility for regulating the financial solvency of a reinsurer to the domiciliary state and generally bars other states from requiring the reinsurer to provide additional financial information,[10] the NRRA does not prohibit a non-domiciliary state regulator from continuing to obtain a copy of financial statements reinsurers' file with their domiciliary state regulators.[11]

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[6] 15 U.S.C. § 8221(a).
[7] 15 U.S.C. § 8221(b).
[8] 15 U.S.C. § 8222(b).
[9] 15 U.S.C. § 8222(b)(1).
[10] 15 U.S.C. §§ 8222(a), 8222(b)(1).
[11] 15 U.S.C. § 8222(b)(2).

Perhaps due to this availability of an insurer's financial statements to regulators in non-domiciliary states, the RAA indicated that, as of July 1, 2013, its members are unaware of any situation in which a state regulator has been unable to obtain information in which it had an interest.

Through the same period, and perhaps for the same reasons, state regulators did not express any concern with respect to the impact of the provisions in Part II of the NRRA and the ability promptly to receive from another state regulator needed financial information with respect to a reinsurer. Only a few state regulators mentioned any concern about the potential impact of Part II of the NRRA, but that concern was articulated in terms of speculation that in some cases information may not be made available in the future. No currently known factually bases were advanced for this potential future concern.

Conclusion

FIO concludes that Part II of the NRRA has not had an adverse impact on the ability of state regulators to access reinsurance information for regulated companies. FIO will continue to monitor this matter and any potential issues that may arise. As required by the Dodd-Frank Act, FIO will provide an updated report in 2015 on the ability of State regulators to access reinsurance information for regulated companies.