2015 Report on the Impact of Part II of the Nonadmitted and Reinsurance Reform Act

FEDERAL INSURANCE OFFICE, U.S. DEPARTMENT OF THE TREASURY

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Background

The Nonadmitted and Reinsurance Reform Act of 2010 (NRRA) was enacted in Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The purpose of the NRRA is to enhance uniformity in the state-based solvency regulation of reinsurers by increasing deference to the authorities of the domiciliary state (i.e., the state in which the reinsurer is incorporated or entered through, and licensed). Part II of the NRRA, in relevant part, prohibits a non-domiciliary state regulator from requiring a reinsurer to provide financial information other than financial information which the reinsurer provides to its qualifying domiciliary state regulator.

Title V of the Dodd-Frank Act also created the Federal Insurance Office (FIO) within the Department of the Treasury. The Dodd-Frank Act instructs the Director of FIO to submit a report to Congress in 2013 "describing the impact of [P]art II of the [NRRA] on the ability of [s]tate regulators to access reinsurance information for regulated companies in their jurisdictions," and to update that report in 2015.[1] For purposes of this section, a "regulated entity" is a licensed reinsurer.

FIO submitted its first report regarding the impact of Part II of the NRRA in 2013 (2013 Report). This 2015 Report constitutes FIO's update, as required by the Dodd-Frank Act. In preparing the 2015 Report, FIO consulted with all state insurance regulators, through the National Association of Insurance Commissioners (NAIC), and consulted directly with some of those state regulators. In addition, FIO consulted 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 establishing deference to the authority of the regulator in the reinsurer's domiciliary state. Thus, the NRRA provides that if a reinsurer is domiciled in a state that is an NAIC-accredited state or meets certain financial solvency requirements,[2] then "such [s]tate shall be solely responsible for regulating the financial solvency of the reinsurer."[3]

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

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[1] 31 U.S.C. § 313(o)(2).

[2] 15 U.S.C. § 8222(a). More specifically, this section of Part II of the NRRA provides that the state must be an "an NAIC-accredited state or has financial solvency requirements substantially similar to the requirements for NAIC accreditation." *Id*. 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 2015, all fifty states, the District of Columbia and Puerto Rico are accredited. NAIC, *Financial Regulation Standards and Accreditation Program*, April 2015.

[3] 15 U.S.C. § 8222(a).

[4] 15 U.S.C. § 8223(2). 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."

and the state "recognizes credit for reinsurance for the insurer's ceded risk, then no other State may deny such credit for reinsurance."[5] In addition, subject to certain exceptions relating to taxes and assessments, the NRRA preempts any state law provision to the extent that the state-law provision would seek to nullify such 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.[6]

Finally, as part of the broader design to protect the regulatory authority of the domiciliary state, 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."[7]

Findings of the 2013 Report

In the 2013 Report, FIO concluded that Part II of the NRRA did not have an adverse impact on the ability of state regulators to access reinsurance information for regulated companies.

A regulated insurer (or reinsurer) must file statutory financial statements with the regulator of 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 required additional financial information from reinsurers domiciled in other states (i.e., beyond the information called for by the state insurance regulator of the domiciliary state). Due to the preemption provision in Part II of the NRRA, a non-domiciliary state regulator 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]

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,[9] the NRRA does not prohibit a non-domiciliary state

[5] 15 U.S.C. § 8221(a).
[6] 15 U.S.C. § 8221(b).
[7] 15 U.S.C. § 8222(b).
[8] 15 U.S.C. § 8222(b)(1).
[9] 15 U.S.C. §§ 8222(a), 8222(b)(1).

regulator from continuing to obtain a copy of any financial statement the reinsurer filed with its domiciliary state regulator.[10]

The RAA indicated that, as of July, 2013, its members were unaware of any situation in which a state regulator had been unable to obtain information in which it had an interest.

Through the same period, state regulators also did not express any concern with respect to the impact of Part II of the NRRA on the actual ability to promptly receive from another state regulator needed financial information with respect to a reinsurer. A few state regulators mentioned concerns about the potential impact of Part II of the NRRA which were articulated in terms of speculation that in some cases information may not be made available in the future. At that time, no known factual bases were advanced for that potential future concern.

Updated Findings

Based on FIO's renewed consultations with the RAA and with all state insurance regulators (through the NAIC), as well as direct consultation with some state regulators, FIO continues to find that Part II of the NRRA has not had any adverse impact on the ability of state regulators to access reinsurance information for regulated companies.

The RAA reiterated that, as of March, 2015, its members continue to be unaware of any instances when state regulators were unable to obtain requested reinsurance information.

No state regulators identified any instance in which Part II of the NRRA had an actual adverse impact on the ability of the regulator to promptly receive from another state regulator needed financial information with respect to a reinsurer. As before, several regulators mentioned concerns about the potential impact of Part II of the NRRA which were articulated in terms of speculation that in some cases information may not be made available in the future.

Conclusion

After continued monitoring of the implementation and enforcement of the NRRA, and following consultation with the RAA and with state insurance regulators, through the NAIC and directly in some cases, FIO concludes that Part II of the NRRA has not had any adverse impact on the ability of state regulators to access reinsurance information for regulated companies.

[10] 15 U.S.C. § 8222(b)(2).