NALC

NATIONAL ALLIANCE OF LIFE COMPANIES

An Association of Life and Health Insurance Companies

August 8, 2024

National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Attn: Rodney Good & Ralph Villegas

Re: Financial Analysis Solvency Tools Working Group (E) – Complex Ownership Structures – Comment Letter -

Dear Mr. Good and Mr. Villegas:

Thank you for the opportunity to provide feedback on the Financial Analysis Solvency Tools Working Group's ("FASTWG") proposed revisions to the Financial Analysis Handbook ("Handbook") applicable to Form A Procedures.

I serve as Executive Director of the National Alliance of Life Companies (the "NALC"), a trade group of more than fifty (50) life and health insurers and associates. We represent our members on issues of interest to small and mid-sized life and health insurers across the United States.

The NALC fully supports a well-regulated insurance industry. This includes quantifiable and measurable standards that ensure a level playing field for all insurance companies while adhering to our primary goal of protecting policyholders and insurance consumers. A rigorous solvency framework that is consistently applied across all states and all companies benefits both the regulated industry and its policyholders.

Since the 1970's, the NAIC's Insurance Holding Company System Regulatory Act (#440) (Model Act) has been the foundation of insurance group supervision in the U.S. The Model Act establishes objective, measurable and quantitative standards that enable insurers to understand regulator expectations, and to plan and operate their business accordingly. The consistent application of those standards across every state was considered so vital to the state system of insurance regulation that adoption by every state is mandatory under the NAIC Accreditation Program.

The Handbook is a valuable tool that provides regulators and carriers with interpretive guidance regarding the Model Act. The Handbook, however, cannot amend or otherwise change the Model Act (as adopted by the states). This limitation on the use of the Handbook is clearly stated in the Special Note to section V.B. Domestic and/or Non-Lead State Analysis – Form A Procedures: "[t}he following procedures do not supersede state regulation but are merely additional guidance analysts may consider useful."

NALC is supportive of the majority of the proposed revisions to the Handbook, though we respectfully express significant concerns regarding new language that would replace the objective standards of review established by the Model Act with a subjective standard. As an example of this new language is as follows:

> "Consideration should be given to situations where a disclaiming party *may exert influence or control over the insurer* such as: over management decisions, or the operations of the insurer; where there is a minority owner; where lending agreements may result in ownership of the insurer in the event of default; where non-voting shareholders have protective rights affording them the opportunity to acquire control in certain circumstances; any non-voting arrangement or contract that may convey an element of control (e.g., investment management, reinsurance, administrative service, employment); or passive investment companies with more than 10% ownership of voting shares within funds they manage, where the actions and activities do not support the investment company's assertion that it does not exert control.
>
> These are only a few examples of situations that may require additional inquiry and a deeper review of the disclaimer application to determine if control exists, if the disclaimer should be approved or denied, or if any conditions or stipulations should be placed on the approval. The burden of proof is on the applicant to demonstrate they do not have control or affiliation." *Emphasis added.*

Our concerns with this approach are as follows:

1. Permitting consideration of whether a disclaiming party "may exert influence or control over the insurer …" conflicts with the definition of Control stated in the Model Act. The handbook is an interpretive tool, efforts to use the Handbook to amend this or any other Model Act are inappropriate. This limitation is acknowledged in the Special Notes to V.B. Domestic and/or Non-Lead State Analysis – Form A Procedures: "The following procedures do not supersede state regulation but are merely additional guidance analysts may consider useful."
2. This new standard eliminates one of the most valuable elements of the Model Act definition of Control: predictability. The standard is vague and entirely subjective, providing no guidance with respect to how the standard for Control should be applied to a particular set of circumstances. Uniformity and consistency in analysis is essential to our regulatory system; both to prevent regulatory disparities and to ensure that all insurers operate under the same standards.
3. Injecting amorphous standards into the analysis will ensure uneven application of the standard, from company to company and state to state. The Model Act was carefully specifically designed to ensure uniform treatment from company to company and from state to state.
4. This standard will also result in unlevel playing fields, the pursuit of competitive advantages, or conversely, disadvantages for insurers in different states. It is also easy to foresee companies engaging in forum shopping seeking the most favorable jurisdiction for interpretation of the Handbook.

5. A vague standard could potentially harm policyholders due to differing interpretations; increasing costs for carriers as well as hindering their ability to attract new capital into the industry. Further, the industry may face a potential stall in new entrants into the market or product innovation due to the uncertainty created by the proposed regulations. Increasing costs, especially upon smaller carriers, will likely have a larger impact on the policyholders of those smaller companies due to lesser ability to absorb the costs, necessitating they be passed on to consumers. Competition in the market drives companies to create better products for consumers.

As stated earlier, the NALC is supportive of a measurable and quantitative standard application that allows insurers to evaluate and prepare accordingly for the rules under which they operate. The NALC believes a strong regulatory system is built upon consistency in the application of rules to insurers. We also believe the proposed changes to the Handbook, in general, are effective and beneficial to policyholders, however, we would urge the FASTWG to consider objective standards of examination to provide predictability and a clear understanding of the rules across the industry regardless of where an insurer may be engaging in business.

Thank you for the opportunity to comment on the proposed revisions to the Handbook. The NALC is committed to working in conjunction with NAIC and state regulators to continue strengthening the robust system of regulation currently in place. Please feel free to contact me if you have any questions.

Regards,

Jim Hodges

Jim Hodges
Executive Director
NALC