

(c) * * * When OMB reasonably believes that a requester, or a group of requesters acting in concert, is attempting to divide a single request into a series of requests for the purpose of avoiding fees, OMB may aggregate those requests and charge fees accordingly. * * *

(d) * * *

(1) OMB will not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless OMB estimates or determines that allowable charges that a requester may be required to pay will exceed \$250 or the requester has previously failed to make a payment due within 30 days of billing.

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DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

31 CFR Part 223

[Docket No. FISCAL-2021-0006]

RIN 1530-AA20

Surety Companies Doing Business With the United States

AGENCY: Fiscal Service, Bureau of the Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Department of the Treasury, Bureau of the Fiscal Service (Treasury), regarding the corporate Federal surety bond program (the program). Treasury is amending its regulations to allow for recognition of additional companies as reinsurers. Treasury is also amending its regulations to incorporate requirements, previously published in supplemental guidance documents, for surety companies to submit information that Treasury uses to perform financial analysis of these companies. Treasury is also reorganizing the existing regulations to modernize and improve their structure.

DATES: This final rule is effective August 9, 2024.

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SUPPLEMENTARY INFORMATION:

I. Background

Treasury administers the corporate Federal surety bond program, which issues certificates of authority to authorized surety companies, analyzes the financial statements of applicant and authorized companies to ensure compliance, and publishes lists of companies holding a certificate of authority. Treasury also reviews applications by companies to become admitted reinsurers, *i.e.*, companies permitted by Treasury to provide reinsurance to certified sureties except on excess risks that run to the United States. Treasury administers the program pursuant to 31 CFR part 223 (part 223) and publishes supplemental guidance on its website.

Treasury published a request for information (RFI) on December 30, 2019.¹ The RFI sought public input on a variety of topics relating to Treasury's evaluation of surety companies, as well as the operations of the corporate Federal surety bond program. These topics included, among other things, Treasury's financial analysis methodology, its rules regarding credit for reinsurance, and the documentation it requires to perform its review of companies seeking designation and renewal as certified sureties or admitted reinsurers. The public comments informed, in part, Treasury's development of this rulemaking.

On March 3, 2022, Treasury published a notice of proposed rulemaking (NPRM) at 87 FR 12003 to propose amendments to part 223, which implements the provisions of 31 U.S.C. 9304-9308. The NPRM proposed two main amendments to part 223. First, the NPRM proposed to add two new categories of reinsurance companies that can receive recognition from Treasury: complementary reinsurers and alien reinsurers. The proposed amendments would allow Treasury-certified surety companies to receive credit for reinsurance ceded to these companies with reduced or zero collateral, and would also allow complementary or alien reinsurers to reinsure excess risks of certified surety companies not running to the United States. Second, Treasury proposed amending 31 CFR 223.9 to describe in greater detail the financial analysis it performs related to companies applying for a certificate of authority or renewal of a certificate of authority and to incorporate certain requirements previously published in

the program's annual and supplemental guidance. Additionally, Treasury proposed various amendments to part 223 to reorganize and modernize the structure of the regulations.

Treasury received 13 comment letters from a cross-section of entities associated with the surety industry and other stakeholders. Seven of the comment letters were from surety companies or reinsurers, three were from surety or insurance trade associations, one was from a law firm that represents surety companies, one was from a coalition of environmental groups, and one was from an anonymous individual. Treasury has considered the comments and addresses them below.

II. Analysis of Comments

The public comments were generally supportive of the NPRM's proposed changes to add new categories of reinsurers eligible for Treasury recognition, to add more detailed information regarding Treasury's financial analysis, and to update and modernize the structure of the surety regulations. Treasury did not receive any comments expressing disagreement with the key objectives described above. Several of the favorable comments regarding Treasury's proposal to add new categories of reinsurers eligible for Treasury recognition noted that these changes would benefit the surety industry as a whole by lowering the regulatory burden on surety companies and increasing the reinsurance capacity available to Treasury-certified surety companies. Commenters also concurred with the NPRM that these changes would not increase the risk to the Federal Government of surety companies being unable to carry out their obligations.

A surety company commented that smaller and medium-sized surety companies, which typically have a lower underwriting limit than larger firms, might particularly benefit from greater access to international reinsurance without the posting of collateral under the proposal to recognize additional reinsurers. The same commenter also noted that these changes could lower the price of surety bonds in the marketplace, which could not only benefit smaller and medium-sized surety companies but also benefit smaller and minority-owned contractors who frequently obtain surety bonds from smaller or mid-sized surety companies. Thus, in the view of the commenter, the proposed changes could make it easier for small, minority-owned contractors to bid on construction projects for the Federal Government.

¹ 84 FR 72138.

Some commenters, while expressing support for the NPRM generally, suggested changes or clarifications, as discussed below.

A. Categories of Reinsurers

Two commenters suggested that the NPRM's definition of the two new categories of reinsurers—complementary reinsurers and alien reinsurers—should be expanded to include additional reinsurers that are recognized under state laws that are based on the National Association of Insurance Commissioners' (NAIC) Credit for Reinsurance Model Law (Model 785) and Model Regulation (Model 786). Under the NPRM, to be recognized as a complementary reinsurer, a company must be from a non-U.S. jurisdiction that is subject to an in-force Covered Agreement, among other requirements. A "Covered Agreement" is an agreement, as described in § 223.12(i), regarding prudential matters with respect to the business of insurance or reinsurance between the United States and one or more foreign authorities, entered into pursuant to 31 U.S.C. 313–314.

Per the NPRM, the company must also be recognized by at least one U.S. state as a Reciprocal Jurisdiction Reinsurer. A "Reciprocal Jurisdiction" is a jurisdiction that meets one of the following: (1) a non-U.S. jurisdiction that is subject to an in-force Covered Agreement with the United States, (2) a U.S. jurisdiction that meets the requirements for accreditation under the NAIC financial standards and accreditation program, or (3) a Qualified Jurisdiction, as defined by state law that is based on the NAIC Credit for Reinsurance Model Law (Model 785) and Model Regulation (Model 786), which meets certain additional requirements. A "Reciprocal Jurisdiction Reinsurer" is a reinsurer with its head office in or domicile in a Reciprocal Jurisdiction and which meets all capital and surplus, solvency, and market conduct requirements under state law based on the 2019 Amendments to the NAIC Credit for Reinsurance Model Law and Model Regulation.

To be recognized by Treasury as an alien reinsurer, the NPRM provided that a company must be from a non-U.S. jurisdiction that is recognized by state law and the NAIC as a Qualified Jurisdiction or as a Reciprocal Jurisdiction, provided the Reciprocal Jurisdiction is not party to an in-force Covered Agreement, among other requirements. A "Qualified Jurisdiction" is a jurisdiction determined by a state insurance

supervisor to have appropriate and effective supervision of reinsurance and which meets other requirements defined in state law. The NAIC also publishes a list of Qualified Jurisdictions. The NPRM also required the company to be recognized by at least one state as a Certified Reinsurer or Reciprocal Jurisdiction Reinsurer. A "Certified Reinsurer" is a reinsurer from a Qualified Jurisdiction that meets the requirements of the state insurance laws and regulations based on the NAIC models.

The two commenters pointed out that these definitions of complementary reinsurer and alien reinsurer excluded some reinsurers eligible for recognition at the state level, namely reinsurers referred to as Accredited Reinsurers under the NAIC Credit for Reinsurance Model Law and Model Regulation. Under state law based on these models, an "Accredited Reinsurer" is a reinsurer meeting specific conditions, which allow it to receive accreditation from the state and to assume reinsurance from U.S. reinsurers. The commenters suggested that Treasury clarify whether the definitions of the new categories of reinsurers include Accredited Reinsurers and, if not, consider expanding the definitions to include such companies.

The NPRM's goal in expanding the types of reinsurers eligible for recognition was to ease the administrative burden on surety companies by allowing them to use additional reinsurers that meet Treasury's financial strength and market conduct requirements and that are from jurisdictions with sufficient regulatory regimes, as well as by incorporating greater harmony with state regulation. Treasury agrees with the commenters that allowing recognition of Accredited Reinsurers would further this goal, provided that they meet Treasury's other requirements. The final rule therefore includes revisions in § 223.12(d) and (j) to clarify that a company recognized as an Accredited Reinsurer by a U.S. state is eligible to be recognized by Treasury as an alien reinsurer. Note that under § 223.11(b)(2), that if a company, including an Accredited Reinsurer, seeking recognition as an alien reinsurer is required by its U.S. state of domicile to provide 100 percent collateral in order for its ceding insurers to obtain full credit for reinsurance, then that company is not eligible to reinsure a surety company's excess risk pursuant to § 223.11(b). Such a company may only be used by a surety company to receive credit for reinsurance pursuant to § 223.9(c) and must provide the same

level of collateral as called for under state law. This change is being made to highlight and codify Treasury's existing policy that companies cannot rely on collateral for both credit for reinsurance and limitations of excess risks.

B. Admitted Assets

One commenter suggested that the NPRM adopt an approach towards "admitted assets" set forth in the NAIC's Accounting Practices and Procedures Manual, which all 50 states have adopted. However, Treasury does not intend to adopt the approach utilized by the NAIC. Adoption of that approach would limit Treasury's discretionary authority to reject an asset in the limited circumstances where it determines that such a rejection may be warranted. The NPRM codifies into the surety regulations, in 31 CFR 223.9, several provisions regarding Treasury's admissibility and valuation of assets that previously were only contained in the program's annual guidance, while also retaining the ability for Treasury to value a company's assets and liabilities in its discretion.

C. Letters of Credit

One commenter suggested that Treasury update the NPRM to allow for irrevocable, unconditional, evergreen letters of credit to be used to protect risks underwritten in excess of a surety company's underwriting limit. Treasury has had a longstanding policy, which the NPRM proposed to codify at § 223.9(e)(2), of allowing surety companies to use letters of credit to obtain credit for reinsurance, under certain circumstances. Treasury has reservations, however, about allowing letters of credit to be used to protect excess risks (*i.e.*, those risk that exceed the company's underwriting limit). Historically, companies attempting to rely on letters of credit for such a purpose have not been able to demonstrate to Treasury that the assets referred to in the letter of credit are set aside by the issuer solely for the exclusive use of protecting the particular excess risk. This means that Treasury has been unable to verify that the companies could actually rely on the assets referred to in the letter of credit if the companies need to pay a claim on the excess risk. Accordingly, Treasury declines to amend § 223.11 to allow for the blanket usage of irrevocable, unconditional, evergreen letters of credit to protect excess risks. However, Treasury may consider, on a case-by-case basis, allowing a surety company to use a letter of credit for such purpose if Treasury can verify that the assets referenced in the letter are

pledged exclusively to secure the excess risk—that is, if the assets referenced in the letter of credit cannot be drawn upon for any other purpose—and if the letter of credit meets other requirements Treasury might prescribe. A modification to § 223.11(c)(1) has been made reflecting this clarification.

D. Underwriting Limitation

Another commenter recommended that Treasury alter the way it calculates the underwriting limitation for certified surety companies. The commenter stated that Treasury's current method, which sets the limit at 10 percent of a company's surplus as determined by Treasury, is outdated and may adversely impact monoline surety companies. The letter proposes that Treasury adopt an approach that would set a surety company's underwriting limit based on its risk-based capital. The existing underwriting limitation is one of Treasury's most important tools in ensuring that the sureties it certifies are able to carry out their contracts, and Treasury's longstanding method of determining the underwriting limitation has worked well in accomplishing this goal. A national association of surety companies responded to the RFI that Treasury published on December 31, 2019, strongly encouraging Treasury not to change its method of calculating the underwriting limitation because of the strong safeguard it provides to the Federal Government. While the NPRM relies on certain risk-based approaches, Treasury believes the existing limitation is appropriate and beneficial.

E. Eligibility

One commenter requested that Treasury reconsider a provision of the NPRM regarding companies that only insure or reinsure risks of their parent, affiliated, or controlled unaffiliated business, or that are deemed by Treasury to be primarily engaged in self-insurance. Sections 223.1(c) and 223.12(e) of the proposed rules codified Treasury's longstanding policy that such companies are not eligible to obtain a certificate of authority, nor for recognition as a reinsurer. As noted in the NPRM, these types of companies cannot provide the documentation required by Treasury to evaluate them consistent with its standards. Treasury acknowledges the alternative view offered by this commenter, but continues to believe its existing policy is in the best interests of the surety program. Accordingly, Treasury is adopting these provisions of the rule as proposed.

F. Small Business Administration Surety Bond Guarantee Program

One commenter suggested that Treasury consider a surety's admission in the Small Business Administration's (SBA) Surety Bond Guarantee program to serve as an alternative to reinsurance under the program's requirements. SBA's Surety Bond Guarantee program is not intended to be akin to reinsurance for companies admitted into Treasury's surety bond program. Given the different purposes of the two programs, it would not be appropriate to treat the SBA Surety Bond Guarantee program as reinsurance for this purpose. Accordingly, Treasury declines to adopt the recommendation in this comment.

G. Risk Analysis

One comment letter suggested that Treasury make additional amendments unrelated to the substance of the changes proposed in the NPRM that would, in the view of the commenters, allow Treasury to better consider potential risk posed by “the aggregate of all currently-issued bonds” of a particular surety. The letter asserts that in certain sectors, a small number of surety companies have issued bonds that, in the aggregate, exceed each company's ability to pay, creating a risk that these surety companies will go bankrupt if the obligees on the bonds undertake forfeiture of the bonds. Accordingly, the letter asks that Treasury consider revisions to part 223 that would analyze a surety's aggregate risk when determining whether a surety qualifies for certification, and that Treasury impose an underwriting limitation on the aggregate risk of all bonds issued by a given surety. The letter also asks, should Treasury decline to make such changes, that Treasury clarify that it neither considers nor places limits on aggregate risk when evaluating sureties. The letter also addresses certain regulatory matters that are beyond the scope of the surety bond program.

The substance of these proposed changes is beyond the scope of those proposed by the NPRM. Accordingly, Treasury does not express an opinion on the letter's proposed amendments to the regulations. Nevertheless, for clarity, Treasury notes that there are multiple ways, in addition to its requirement that companies report bonds in excess of their underwriting limitation, by which Treasury ensures that a surety is not underwriting bonds in excess of its ability to pay. For example, Treasury's financial analysis, now codified in more detail in part 223 through this rulemaking, encompasses a robust

review of a surety's financial statements. This review includes a detailed analysis by Treasury of the surety company's reinsurance portfolio via the Treasury Schedule F. And although a surety company reports excess risks to Treasury on a per-bond basis, the Schedule of Excess Risks form that each company submits gives Treasury insight into the overall risk profile of each company and the adequacy of protective measures taken by the company. Additionally, Treasury requires surety companies to report on a quarterly basis the penal sum of all Federal surety bonds (not just those bonds in excess of the companies' underwriting limits) written and outstanding as of the close of the reporting period, including identifying the types of surety bonds being written (*e.g.*, customs, reclamation, construction contract) and the agency obligee. All of these tools provide Treasury with the means to evaluate risks from a surety company, which could result in a deeper analysis of the company and potential non-renewal of its certificate of authority.

III. Additional Changes

In addition to the changes made in response to comments, discussed above, Treasury made a number of changes to the final rule text in §§ 223.2, 223.3, 223.5, 223.7, 223.8, 223.9, 223.10, 223.11, 223.12, 223.16, and 223.22 that were not specified in the NPRM. These changes are clarifying, technical, or nonsubstantive and are made in furtherance of the purposes described in the NPRM.

Treasury updated the application requirements in § 223.2(a)(5)(i) to clarify that when applying for a certificate of authority companies must also report significant changes in operations or corporate structure that might impact their financial statements. Treasury routinely asks for this information in the application process and is now codifying it with the other application requirements. Treasury added a similar requirement in § 223.12(h)(1)(ix) to apply to applications for recognition as an admitted reinsurer.

In § 223.3(a), Treasury removed the phrase “at the company's expense” from the provision that Treasury may require companies to submit additional information when making decisions to issue or renew certificates of authority. Treasury made this edit for consistency with other provisions of part 223 that state Treasury may require additional information but do not specify that doing so is at the company's expense. Treasury believes it is self-evident that companies are responsible for the expense of submitting any required

additional information, and therefore removed that clause from § 223.3 to avoid any confusion as to why the requirement was not mentioned elsewhere.

Treasury made edits in §§ 223.2(a) and (b) and 223.12(h) through (j), to remove “receipt or proof of payment” as part of the application requirements. In the time since Treasury published the NPRM, Treasury has updated its processes whereby it no longer requires applicant companies to submit a receipt or other proof of payment for Treasury to verify that the companies have paid the required fees.

In §§ 223.2(a) and (b), 223.8(a), and 223.12(h) Treasury added a requirement that companies provide the NAIC file upload when submitting their annual or quarterly financial statements. Companies have submitted their statements via the text file upload for many years, so Treasury wanted to clarify these sections to remove any doubt that the companies should continue to do so.

Treasury made an additional edit to the application requirements in § 223.2(b) to clarify that a Schedule of Excess Risks form is submitted as of the close of the preceding quarter, not the preceding year.

In §§ 223.2(b) and 223.8, Treasury corrected the name of the form utilized by companies to report Federal business written and outstanding.

Treasury also made edits to § 223.9(c)(2) to reflect its practice that companies must submit sufficient documentation before receiving credit for reinsurance to the extent of funds withheld, trust agreements, or letters of credit. Treasury also made an edit in this paragraph to conform with a similar statement previously published in supplemental guidance that Treasury’s allowance of credit in these circumstances is discretionary.

Treasury removed language in § 223.11 describing the requirements for Miller Act bonds to improve the clarity of the section.

Treasury made edits to § 223.12(i) and (j) to clarify that Treasury will look to state law to determine whether a reinsurer applying to be a complementary reinsurer or alien reinsurer is recognized as a Reciprocal Jurisdiction Reinsurer, Accredited Reinsurer, or Certified Reinsurer, as appropriate. The NPRM stated that Treasury would look to the NAIC definition of those categories of reinsurer, but as Treasury requires reinsurers to submit proof that they have obtained recognition from at least one U.S. state, Treasury finds it more appropriate to reference state law that is

based on the NAIC models. For similar reasons, Treasury made an edit in § 223.12(j) to clarify that an alien reinsurer must be domiciled in a non-U.S. jurisdiction that is recognized by a U.S. state as a Qualified Jurisdiction or Reciprocal Jurisdiction (provided that the Reciprocal Jurisdiction is not party to an in-force Covered Agreement as described in § 223.12(i)). Treasury removed the language contained in the NPRM that an alien reinsurer’s jurisdiction must be recognized as Qualified or Reciprocal by the NAIC, but Treasury also made an edit in § 223.12(j) to clarify that Treasury may consider, if it deems appropriate, the NAIC lists of Qualified and Reciprocal Jurisdictions.

Treasury also removed the word “independent” where it appeared before the term “qualified actuary” in §§ 223.2(a) and (b) and 223.12(h). The application requirements in these sections require companies to submit reports by “qualified actuary,” as defined by the NAIC. Treasury removed the word “independent” to be clear the term “qualified actuary” in part 223 should be understood as having the same meaning as the term used by the NAIC.

Treasury updated the provision of § 223.9(c)(1)(ii) discussing amounts ceded to parents, subsidiaries, or affiliates to better align with Treasury’s pre-existing guidance on these cessions.

IV. Procedural Analysis

Regulatory Planning and Review

The final rule does not meet the criteria for a “significant” regulatory action under Executive Order 12866, as amended. Therefore, the regulatory review procedures contained therein do not apply.

Administrative PAYGO

The Administrative Pay-As-You-Go Act of 2023 (Pub. L. 118–5) does not apply to this rule because it does not increase direct spending.

Regulatory Flexibility Act

It is hereby certified that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule adopts criteria for recognition for reinsurers outlined in the Covered Agreements and in the NAIC Credit for Reinsurance Model Law and Regulation. Accordingly, reinsurance companies from relevant non-U.S. jurisdictions seeking to assume business from U.S. ceding insurers are already complying with similar financial requirements. Additionally, adherence to these requirements is only

required for companies seeking recognition by Treasury; participation in the program is voluntary. The final rule changes regarding Treasury’s financial analysis mainly codify existing requirements and policies, of which Treasury-certified sureties were already aware. Therefore, this final rule will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires agencies to prepare budgetary impact statements before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Reform Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. This final rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of \$100 million or more in any one year. Accordingly, Treasury has not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (Act) (codified at 44 U.S.C. 3507(d)) requires that collections of information prescribed in the proposed rules be submitted to the Office of Management and Budget (OMB) for review and approval. In accordance with that requirement, Treasury has submitted the collection of information contained in the notice of proposed rulemaking to OMB for approval under OMB Control Number 1530–0074. Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The collection of information is contained in § 223.12(i) and (j). The amendments require companies applying for initial recognition as a complementary reinsurer to submit to Treasury all information provided by the company or by the supervisory authority of the company’s domiciliary jurisdiction to any U.S. state regulator in the two most recently completed calendar years. For renewal of such recognition, companies will submit all semi-annual and annual filing

information provided by the company or by the supervisory authority of the company's domiciliary jurisdiction to any U.S. state regulator in the most recently completed calendar year. Companies applying for initial recognition as an alien reinsurer will submit to Treasury all information provided to any U.S. state regulator in the two most recently completed calendar years. For renewal of such recognition, companies will submit all annual filing information provided to any U.S. state regulator in the most recently completed calendar year.

List of Subjects in 31 CFR Part 223

Financial analysis, Reinsurance, Surety bonds.

For the reasons set forth in the NPRM and in this preamble, Treasury amends 31 CFR part 223 as follows:

PART 223—SURETY COMPANIES DOING BUSINESS WITH THE UNITED STATES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 9304–9308.

■ 2. Revise § 223.1 to read as follows:

§ 223.1 Certificate of authority.

(a) The regulations in this part govern the issuance, renewal, and revocation by the Secretary of the Treasury, acting through the U.S. Department of the Treasury, Bureau of the Fiscal Service (Treasury), of certificates of authority to bonding companies to do business with the United States as sureties on, or reinsurers of, Federal surety bonds (hereinafter “bonds” or “obligations”) under the authority of 31 U.S.C. 9304–9308 and this part, and the acceptance of such obligations.

(b) A company applying for authority to write surety bonds in favor of the United States must be engaged in the business of writing surety or fidelity contracts at the time of its application to Treasury, whether or not also making contracts in other classes of insurance, but shall not be engaged in any type or class of business not authorized by its charter or the laws of the state in which the company is incorporated. It must be the intention of the company to engage actively in the execution of surety bonds or fidelity contracts in favor of the United States.

(c) A company is not eligible for a certificate of authority if it only insures or reinsures risks of its parent, affiliated, or controlled unaffiliated business, or is deemed by Treasury to be primarily engaged in self-insurance.

■ 3. Revise § 223.2 to read as follows:

§ 223.2 Application for certificate of authority.

(a) *Application for issuance of certificate of authority.* Every company not currently holding a certificate of authority wishing to apply for a certificate of authority shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>. The company shall file the following data with Treasury, and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(1) Payment of the application fee in accordance with the provisions of § 223.22;

(2) A written request for a certificate of authority, signed by an officer of the company. This request must indicate:

(i) Whether the company has previously applied for a certificate of authority from Treasury and, if so, the date and disposition of the previous application; and

(ii) Whether Treasury has ever previously issued the company a certificate of authority, the reason for termination of its certificate of authority, and the applicable dates;

(3) A certified copy of its charter or articles of incorporation showing that it is duly authorized to conduct the business referenced under 31 U.S.C. 9304(a)(2) and a statement from an officer of the company certifying that:

(i) The company is authorized to transact surety business; and

(ii) If granted a certificate of authority, there are no restrictions upon the company preventing it from being able to execute and guarantee bonds and undertakings in judicial proceedings, and guarantee contracts to which the United States is a party;

(4) A listing of the names of the company's current officers and directors as of the date of application, including a biographical affidavit of each officer and director per instructions online at <https://www.fiscal.treasury.gov/surety-bonds/>;

(5) A memorandum setting forth:

(i) A comprehensive statement of the company's method of operation, including, but not limited to, underwriting guidelines, claims adjustment procedures, reinsurance philosophy, control over collateral, and significant changes in operations or corporate structure that impact its financial statements;

(ii) The classes of business in which it engages;

(iii) Any special underwriting agreements, management agreements, or pooling agreements in force. Copies of

such agreements must be included with the memorandum; and

(iv) Present plans of the company as to the types of Federal bonds it intends to write, the anticipated annual premium volume of the Federal bonds, and the geographical areas in which it intends to write the Federal bonds;

(6) A certified copy of a license from its state of incorporation and a completed Surety License Form (Form No. FS 2208);

(7) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(8) The National Association of Insurance Commissioners (NAIC) annual statement form with all Schedules and Exhibits completed, including copies of the NAIC File Upload, showing the last two full calendar years of the company's financial condition, including proof that the company has paid-up capital of at least \$250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company. The annual financial statement's Jurat Page (only) is to be signed (facsimile or electronic signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(9) The Insurance Regulatory Information System (IRIS) ratio results, and an explanation for any ratios outside the normal ranges as established by the NAIC for the last two full calendar years preceding the date of application;

(10) A written statement signed by the Insurance Commissioner or other proper financial officer of any state attesting that the company maintains on deposit legal investments having a current market value of not less than \$100,000 for the protection of claimants, including all of its policyholders in the U.S.;

(11) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) for the last two full calendar years preceding the date of application;

(12) Copies of all reinsurance treaties currently in force along with a completed Summary of Reinsurance Treaties, per instructions provided online at <https://www.fiscal.treasury.gov/surety-bonds/>;

(13) A completed Schedule of Excess Risks form (Form No. FS 285–A) as of the date of the application;

(14) A Statement of Actuarial Opinion as of the close of the last two full calendar years preceding the date of application provided by a qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC; and

(15) Such other evidence as Treasury may, in its discretion, request to establish that the company is solvent, willing, and able to meet the continuing obligation to carry out its contracts. Additionally, Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (a)(1) through (14) of this section.

(b) *Applications for renewal of certificate of authority.* Every company wishing to apply for the annual renewal of its certificate of authority shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>. The company shall file the following data with Treasury, and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(1) Payment of the application fee in accordance with the provisions of § 223.22;

(2) A completed Surety License Form (Form No. FS 2208) and a certified copy of the licenses from any states indicated on the Surety License Form that were not indicated on the company's most recent form;

(3) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(4) A statement of its financial condition, as of the close of the preceding year, on the annual statement form of the NAIC with all Schedules and Exhibits completed, including copies of the NAIC File Upload, showing that it has paid-up capital of at least \$250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company. The Annual Financial Statement's Jurat Page (only) is to be signed (facsimile or electronic signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(5) IRIS ratio results, and an explanation for any ratios outside the normal ranges as established by the

NAIC, as of the close of the preceding year;

(6) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) as of the close of the preceding year;

(7) A completed Schedule of Excess Risks form (Form No. FS 285-A) as of the close of the preceding quarter;

(8) A Statement of Actuarial Opinion as of the close of the preceding year provided by a qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC;

(9) A listing of the names of the company's current officers and directors as of the close of the preceding year, including a biographical affidavit of any new officer and director for whom a biographical affidavit was not previously provided, per instructions online at <https://www.fiscal.treasury.gov/surety-bonds/>;

(10) A Report of Federal Business Written and/or Outstanding as of the close of the preceding year, per instructions provided online at <https://www.fiscal.treasury.gov/surety-bonds/>; and

(11) Such other evidence as Treasury may request to establish that the company is solvent, willing, and able to meet the continuing obligation to carry out its contracts. Additionally, Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (b)(1) through (10) of this section.

■ 4. Revise § 223.3 to read as follows:

§ 223.3 Issuance of certificates of authority.

(a) In determining whether to issue or renew a certificate of authority, Treasury will evaluate the whole application package under § 223.2, the financial condition of the company as determined under § 223.9, the history of the company, and any further evidence or information that Treasury may, in its discretion, require the company to submit.

(b) A certificate of authority will be effective for a term that expires on the last day of the next July. All statutory requirements and regulatory requirements under this part are continuing obligations, and any certificate issued is expressly subject to continuing compliance with such requirements. The certificate of authority will be renewed annually on the first day of August, *provided that* the company remains qualified under the law, the regulations in this part, and other relevant Treasury requirements,

and the company submits the fee required under § 223.22 by March 1st of each year.

(c) If a company meets the requirements for a certificate of authority as an acceptable surety on Federal bonds in all respects except that it is limited to reinsurance business only, it may be issued a certificate of authority as a reinsuring company on Federal bonds. The fees for initial application and renewal of a certificate as a reinsuring company are the same as the fees for an initial application and renewal of a certificate of authority as an acceptable surety on Federal bonds.

§ 223.4 [Removed and Reserved]

■ 5. Remove and reserve § 223.4.

■ 6. Revise § 223.5 to read as follows:

§ 223.5 Business.

A company holding a certificate of authority, or its agent, may only execute (sign or otherwise validate) a surety bond in favor of the United States in a state where it is licensed to do surety business. It need not be licensed in the state or other area in which the principal resides or where the contract is to be performed. The term *other area* includes the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands.

§ 223.6 [Removed and Reserved]

■ 7. Remove and reserve § 223.6.

■ 8. Revise § 223.7 to read as follows:

§ 223.7 Notification of changes.

(a) Every company certified under this part or recognized as an admitted reinsurer pursuant to § 223.12(h) must notify Treasury of changes that have a significant impact on its financial statements or solvency during the term of such certification or admission. Paragraphs (a)(1) through (4) of this section are not intended to be an exhaustive list of all such changes that Treasury may require to be reported and may evaluate as part of its ongoing analysis of the company. Additionally, Treasury will publish supplemental guidance on additional information that may be required. Every company certified under this part or recognized as an admitted reinsurer pursuant to § 223.12(h) must notify Treasury of the following:

(1) *Capital changes.* Companies must forward to Treasury, when available, approvals by the insurance authorities of the company's state regulator when changes in paid-up capital or contributions or withdrawals to surplus have occurred;

(2) *Changes in stock ownership.* Stock insurance companies must provide a statement signed and sworn to by the Secretary or Assistant Secretary and by the Treasurer or Assistant Treasurer of the company each time any person (whether an individual, corporation, or organization of any kind) becomes owner of more than 5 percent of any class of outstanding stock issued by the company;

(3) *Mergers, transfer, assumption, and group/pool restructuring.* Companies must notify Treasury at least six months prior to any merger, consolidation, transfer, assumption, material group or pool restructuring, or name changes in which the reporting company is involved. The company must furnish to Treasury copies or agreements or documents pertaining to the same, as approved by the insurance authorities of the company's state regulator; and

(4) *Charters and bylaws amendments.* Whenever a company amends its charter or bylaws it must submit a certified copy of the amended charter or bylaws to Treasury.

(b) Noncompliance with this section may result in Treasury denying a company's application for its certificate of authority, its recognition as an admitted reinsurer, renewal of its certificate of authority, or renewal of its recognition as an admitted reinsurer; or in Treasury revoking a company's certificate of authority or recognition as an admitted reinsurer.

■ 9. Revise § 223.8 to read as follows:

§ 223.8 Quarterly financial reporting requirements.

Every company certified under this part is required to file the following each quarter with Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>:

(a) A statement of its financial condition, as of the close of the preceding quarter, on the quarterly statement form of the NAIC with all Schedules and Exhibits completed, including copies of the NAIC File Upload, showing that it has paid-up capital of at least \$250,000 in cash or its equivalent, in the case of a stock insurance company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company. The Quarterly Financial Statement's Jurat Page (only) is to be signed (facsimile or electronic signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(b) A completed Schedule of Excess Risks form (Form No. FS 285-A) as of the close of the preceding quarter;

(c) A Report of Federal Business Written and/or Outstanding as of the close of the preceding quarter, per instructions provided online at <https://www.fiscal.treasury.gov/surety-bonds/>;

(d) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(e) A listing of the names of the company's current officers and directors as of the close of the preceding quarter, including a biographical affidavit of each new officer and director per instructions online at <https://www.fiscal.treasury.gov/surety-bonds/>; and

(f) Such other evidence as Treasury may request to establish that the company is solvent, willing, and able to meet the continuing obligation to carry out its contracts. Additionally, Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (a) through (e) of this section along with the due dates for quarterly reporting.

■ 10. Revise § 223.9 to read as follows:

§ 223.9 Determination of financial condition and other required information.

In determining the financial condition of every company applying for a certificate of authority or renewal of a certificate of authority under this part, Treasury will generally compute the company's assets and liabilities in accordance with paragraphs (a) through (f) of this section, provided that Treasury may exercise discretion in valuing the assets and liabilities of such companies. While paragraphs (a) through (f) specify how Treasury will value certain classes of assets and liabilities and the analysis that Treasury will perform, they are not intended to be an exhaustive list of all assets and liabilities that Treasury may require to be reported and may evaluate as part of this analysis. Additionally, Treasury will annually publish supplemental guidance on the financial analysis performed by Treasury, including applicable ratios and acceptable ranges for ratios.

(a) *Assets*—(1) *General criteria for admissibility.* The cash capital and other funds included in the financial statement must be safely invested in accordance with the laws of the state in which the company is incorporated. Admissible assets must be reported in U.S. Dollars and are generally limited to

investments in cash, cash equivalents, short term investments, mortgage loans (within certain limits), and real property necessary for the conduct of a company's business. In cases where an investment (other than U.S. Government securities and securities of affiliates or subsidiaries) exceeds 10 percent of the total admitted assets, Treasury may require additional supporting documentation as needed on a case-by-case basis in order for the asset to be admissible. Additionally, Treasury considers normal account balances (such as, but not limited to, investment income due and accrued, agents' balances and premiums receivables, reinsurance recoverables on paid losses, and funds held by or deposited with ceding reinsuring companies) to be admissible provided they meet Treasury's standards. In order to be admissible, normal account balances may be evaluated for transactional substance, quality, and liquidity. Some assets that may be admissible under codification and/or certain state permitted practices may require supporting documentation as needed on a case-by-case basis in order to be admissible under Treasury's criteria. Assets resulting from reinsurance transactions must meet the credit for reinsurance standards listed under paragraph (c) of this section.

(2) *Securities.* Bonds, unaffiliated common stocks, and unaffiliated preferred stocks must be valued and reported in accordance with the NAIC's Accounting Practices and Procedures Manual (as updated or amended from time to time) and the NAIC Securities Valuation Office (SVO). Those with an investment grade designation will be admissible and those with a non-investment grade designation will be considered on a case-by-case basis.

(i) *All other securities.* The value of all other securities should be valued as of December 31 and reported in U.S. Dollars. For securities that do not have a SVO designation or have a SVO non-investment grade designation and are significant for Treasury purposes, Treasury may consider, if it deems appropriate, other relevant data (e.g., prospectus, marketability/liquidity information, internal investment strategies/philosophies) and perform an analysis to determine whether the securities meet Treasury's criteria for admissibility.

(ii) *Securities of controlled companies.* Investments in subsidiaries, controlled entities, and affiliated entities must be reported in accordance with the NAIC Accounting Practices and Procedures Manual (as updated or amended from time to time).

(A) *Other insurance companies.* Companies owning securities of other insurance companies, which are under the same direction and control as the reporting company, must furnish copies of the NAIC File Upload of the subsidiaries. The assets of these subsidiaries will be analyzed according to the criteria set forth in this section.

(B) *Non-insurance companies.* Companies owning securities of non-insurance companies, which are under the same direction and control as the reporting company, must furnish copies of independently audited financial statements of such companies as of the reporting date.

(3) *Real estate and mortgages.* Only real estate essential to the operating needs of the company for conducting its business, and conventional first mortgage loans on unencumbered, improved, or productive real estate located within the United States, are admissible. These must be reported in accordance with the NAIC's Accounting Practices and Procedures Manual (as updated or amended from time to time). The real estate and mortgaged property must be supported by an appraisal report that includes the information and computations normally used in arriving at a competent appraised value. In instances where the aggregate values exceed 20 percent of the policyholders' surplus, Treasury may, if it deems appropriate, require additional supporting documentation.

(b) *Minimum bail reserve requirements.* Companies transacting surety bail business must submit a schedule showing bail premiums in force, bail liability, and the amount of any associated unearned premium reserve.

(c) *Reinsurance.* (1) Companies are required to submit Treasury Schedule F (Treasury Form No. TFS 6314) reflecting information in the company's annual statements. Credit for reinsurance may be taken (to the extent specified in the referenced provisions of § 223.12) for reinsurance in all classes of risk provided that it is ceded to the following companies:

- (i) Companies holding a current certificate of authority from Treasury;
- (ii) U.S. domiciled non-Treasury certified or recognized parents, subsidiaries, and/or affiliates if Treasury determines that the parent, subsidiary, and/or affiliate is financially solvent;
- (iii) Admitted reinsurers as defined under § 223.12(h);
- (iv) Complementary reinsurers as defined under § 223.12(i);
- (v) Alien reinsurers as defined under § 223.12(j), up to the extent credit is allowed for reinsurance ceded to the

alien reinsurer by the ceding company's state of domicile (subject to paragraph (c)(3) of this section); and

(vi) An instrumentality or agency of the United States that is permitted by Federal law or regulation to execute reinsurance contracts.

(2) Treasury may give credit for reinsurance not covered in paragraph (c)(1) of this section, to the extent of funds withheld or letters of credit or trust agreements from such reinsurers, provided the company advises Treasury and provides sufficient documentation of the amount of funds held, letters of credit posted or funds secured in trust for each company. Treasury may also give credit for trust account assets associated with multi-beneficiary trust agreements established and maintained in the United States by overseas accredited or trustee reinsurers listed online at <https://www.fiscal.treasury.gov/surety-bonds/>, to the extent the relevant ceded business is covered by these trust account assets.

(3) If, after its review of the financial documentation submitted by an alien reinsurer recognized pursuant to § 223.12(j) and of the financial documentation submitted by the ceding company, Treasury determines that either company may be unable to carry out its obligations, Treasury may require additional collateral for the ceding company to receive credit for reinsurance to the extent credit is given for reinsurance ceded to the alien reinsurer by the ceding company's state of domicile.

(d) *Risk based capital (RBC).* Treasury uses RBC in determining the financial solvency of companies, together with such companies' overall financial results, ratios, and trends. Companies must maintain RBC results that fall within acceptable ranges as established by the NAIC or provide a satisfactory explanation for results that do not.

(e) *Financial ratios.* Treasury uses the NAIC IRIS ratios to measure companies' solvency, profitability, and liquidity. Companies must maintain results for these ratios that fall within acceptable ranges as established by the NAIC or provide a satisfactory explanation for results that do not.

(f) *Financial results and trends.* Treasury analyzes financial results from annual and quarterly financial statements required under this part for evidence of negative financial results or trends. Treasury may require companies to submit additional documentation or explanation regarding financial statements with evidence of negative financial results or trends such as decreasing policyholders' surplus, large

underwriting losses, negative cashflows, or unsatisfactory IRIS ratio results.

(g) *Noncompliance.* Noncompliance with paragraphs (a) through (f) of this section may result in Treasury denying a company's application for its certificate of authority, or renewal of its certificate, or in Treasury revoking a company's certificate.

■ 11. Revise § 223.10 to read as follows:

§ 223.10 Limitation of risk.

(a) Except as provided in § 223.11, no company holding a certificate of authority shall underwrite any single risk on any bond or policy on behalf of any individual, firm, association, or corporation, whether or not the United States is interested as a party thereto, the amount of which is greater than 10 percent of the paid-up capital and surplus of such company, as determined by Treasury. Such figure (*i.e.*, 10 percent of a company's paid-up capital and surplus as determined by Treasury) is hereinafter referred to as the underwriting limitation. For purposes of this part, *single risk* means the total risk under one bond or policy regardless of the number of individual risks under that bond or policy.

(b) In determining the underwriting limitation, the full penalty of any surety and fidelity obligation will be regarded as the liability, and no offset will be allowed on account of any estimate of risk that is less than such full penalty, except in the following cases:

(1) Appeal bonds; in which case the liability will be regarded as the amount of the judgment appealed from, plus 10 percent of said amount to cover interest and costs;

(2) Bonds of executors, administrators, trustees, guardians, and other fiduciaries, where the penalty of the bond or other obligation is fixed in excess of the estimated value of the estate; in which cases the estimated value of the estate, upon which the penalty of the bond was fixed, will be regarded as the liability;

(3) Indemnifying agreements executed by sole heirs or beneficiaries of an estate releasing the surety from liability;

(4) Contract bonds given in excess of the amount of the contract; in which cases the amount of the contract will be regarded as the liability; or

(5) Bonds for banks or trust companies as principals, conditioned to repay moneys on deposit, whereby pursuant to any law or decree of a court, the amount to be deposited shall be less than the penalty of the bond; in which cases the maximum amount on deposit at any one time will be regarded as the liability.

■ 12. Revise § 223.11 to read as follows:

§ 223.11 Limitation of risk: Protective methods.

In the case of risks otherwise in excess of a company's limitation of risk prescribed in § 223.10, compliance may be achieved by the following methods:

(a) *Coinsurance.* Two or more companies holding a certificate of authority may underwrite a single risk on any bond or policy, the amount of which does not exceed their aggregate underwriting limitations. Each company must limit its liability upon the face of the bond or policy to an amount which must be within its respective underwriting limitation.

(b) *Reinsurance*—(1) *Bonds running to the United States.* (i) With respect to all bonds running to the United States to the extent that its excess liability is not addressed through another protective method specified in this section, a company writing such bonds must reinsure liability in excess of the underwriting limitation with one or more companies holding a certificate of authority from Treasury within 45 days from the date of execution and delivery of the bond. Such reinsurance shall not be in excess of the underwriting limitation of the reinsuring company. Federal agencies may accept a bond from the direct writing company in satisfaction of the total bond requirement even though it may exceed the direct writing company's underwriting limitation. Within the 45-day period, the direct writing company shall furnish to the Federal agency any requested reinsurance agreements. However, a Federal agency may, in its discretion, require that the direct writing company obtain reinsurance within a lesser period than 45 days, and may require the direct writing company to provide completely executed reinsurance agreements before making a final determination that any bond is acceptable.

(ii) For bonds required to be furnished to the United States by the Miller Act (40 U.S.C. 3131, as amended), in addition to complying with the requirements of paragraph (b)(1)(i) of this section, the direct writing company must execute the following reinsurance agreement forms: Standard Form 273 (Reinsurance Agreement for a Bonds Statute Performance Bond), Standard Form 274 (Reinsurance Agreement for a Bonds Statute Payment Bond), and Standard Form 275 (Reinsurance Agreement in Favor of the United States). These forms are available on the General Services Administration website at www.gsa.gov.

(2) *Bonds not running to the United States.* A company holding a certificate of authority from Treasury writing risks

covered by bonds or policies not running to the United States, to the extent that its excess liability is not addressed through another protective method specified in this section, must reinsure liability in excess of its underwriting limitation within 45 days from the date of execution and delivery of the bond or policy with any of:

(i) One or more companies holding a certificate of authority from Treasury;

(ii) One or more companies recognized as a reinsurer in accordance with § 223.12, except for any reinsurer who is required by a U.S. state to post 100 percent collateral;

(iii) A pool, association, etc., to the extent that it is composed of such companies; or

(iv) An instrumentality or agency of the United States that is permitted by Federal law or regulation to execute reinsurance contracts.

(3) *Limitation.* No certificate-holding company may cede to a reinsuring company recognized under § 223.12 any single risk in excess of 10 percent of the latter company's paid-up capital and surplus.

(c) *Other methods.* With respect to all risks other than bonds required to be furnished to the United States by the Miller Act (40 U.S.C. 3131, as amended), which must be either coinsured or reinsured in accordance with paragraph (a) or (b)(1)(ii) of this section respectively, the excess liability may be protected:

(1) By the deposit with the company in pledge, or by conveyance to it in trust for its protection, of assets admitted by Treasury, the current market value of which is at least equal to the liability in excess of its underwriting limitation. Treasury may, on a case-by-case basis, consider a letter of credit provided by a financial institution to be adequate security under this paragraph (c) if Treasury can verify that the assets referenced in the letter of credit are pledged exclusively to secure the excess risk, and if the letter of credit meets other requirements Treasury might prescribe. Assets used to protect excess liability pursuant to this paragraph (c) cannot also be used to obtain credit for reinsurance pursuant to § 223.9(c); or

(2) If such obligation was incurred on behalf of or on account of a fiduciary holding property in a trust capacity, by a joint control agreement providing that the whole or a sufficient portion of the property so held may not be disposed of or pledged in any way without the consent of the insuring company.

§ 223.12 Recognition as reinsurer.

(a) *Use of recognized reinsurers.* Companies holding a certificate of authority may:

(1) Receive credit for reinsurance ceded to a reinsurer recognized pursuant to this section, as described in § 223.9(c); and

(2) Protect liability in excess of their underwriting limit on risks not running to the United States by reinsuring excess liability with a reinsurer recognized pursuant to this section.

(b) *Application.* Every company applying for recognition by Treasury as one of the categories of reinsurers in paragraphs (c) through (j) of this section, or annual renewal of such recognition, shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>. The applicant company must submit the documentation and must meet the requirements as outlined in this section and in supplemental guidance published by Treasury on its website.

(c) *Treasury recognition.* Recognition by Treasury will be effective for a term that expires on the last day of the following October. A list of reinsuring companies so recognized by Treasury will be published online at <https://www.fiscal.treasury.gov/surety-bonds/>.

(d) *Notice to Treasury.* Each company recognized pursuant to this section shall immediately notify Treasury if a U.S. state takes action to suspend or revoke the company's license or its status or eligibility as an Accredited Reinsurer, Certified Reinsurer, or Reciprocal Jurisdiction Reinsurer, or if the company notifies a U.S. state that a supervisory authority in its domiciliary jurisdiction takes regulatory action against it for serious noncompliance with applicable law (as determined by the supervisory authority in its domiciliary jurisdiction).

(e) *Eligibility.* A company is not eligible for recognition under this section if it only insures or reinsures risks of its parent, affiliated, or controlled unaffiliated business, or is deemed by Treasury to be primarily engaged in self-insurance.

(f) *Guidance.* Treasury may issue supplemental guidance regarding the timing, form, content, and its analysis of the submissions required pursuant to this section. Such guidance will be posted on its website.

(g) *Noncompliance.* Noncompliance with the requirements of this section may result in a company's application for recognition, or for renewal of its recognition, being denied.

■ 13. Revise § 223.12 to read as follows:

(h) *Admitted reinsurers*—(1) *Application for recognition by U.S. company.* Any company organized under the laws of the United States or of any state thereof, wishing to apply for recognition as an admitted reinsurer of surety companies doing business with the United States, shall submit an application to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>. The company shall file the following data with Treasury and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(i) Payment of the application fee in accordance with the provisions of § 223.22;

(ii) A written request for recognition as an admitted reinsurer, signed by an officer of the company. This request must indicate:

(A) The reason for applying for recognition;

(B) Whether the company has ever previously applied for recognition as an admitted reinsurer, whether Treasury approved the application, and the applicable dates; and

(C) If Treasury previously approved the company for recognition as an admitted reinsurer, the reason for termination of its recognition and the applicable date;

(iii) A certified copy of its charter or articles of incorporation with all amendments as of the date of application showing the legal name of the company and that it is authorized to write reinsurance;

(iv) A listing of the names of the company's current officers and directors as of the date of application, including a biographical affidavit of each officer and director per instructions online at <https://www.fiscal.treasury.gov/surety-bonds/>;

(v) A certified copy of a license from any one state in which it has been authorized to do business showing its authority to write reinsurance and/or other lines of insurance;

(vi) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(vii) Annual statements of its financial condition, as of the close of the last two full years preceding the date of application, on the annual statement form of the NAIC with all Schedules and Exhibits completed, including copies of the NAIC File Upload, showing that it has paid-up capital of at least \$250,000 in cash or its equivalent, in the case of a stock insurance

company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company. The Annual Financial Statement's Jurat Page (only) is to be signed (facsimile signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(viii) IRIS ratio results, and an explanation for any ratios outside the normal ranges as established by the NAIC for the last two years preceding the date of application;

(ix) A memorandum setting forth the company's method of operation, including lines of business written, the company's underwriting and claims philosophy, and significant changes in the company's operations or corporate structure that impact its financial statements;

(x) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) for two years preceding the date of application;

(xi) A Statement of Actuarial Opinion as of the close of the last two years preceding the date of application provided by a qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC; and

(xii) Such other evidence as Treasury may request to establish that the company is solvent and able to meet the continuing obligation to carry out its contracts. Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (h)(1)(i) through (xi) of this section.

(2) *Application by a U.S. branch.* A U.S. branch of a non-U.S. company applying for recognition as an admitted reinsurer must file the following data with Treasury, and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(i) The submissions listed in paragraphs (h)(1)(i) through (xii) of this section, except that the financial statement of such branch shall show that it has net assets of not less than \$250,000 over and above all liabilities; and

(ii) Evidence satisfactory to Treasury to establish that it has on deposit in the United States not less than \$250,000 available to its policyholders and creditors in the United States.

(3) *Application for renewal of recognition as an admitted reinsurer.* Any company recognized pursuant to paragraph (h)(1) or (2) of this section wishing to apply for renewal of its recognition shall submit an application

to Treasury, c/o Surety Bonds Program, to the location, and in the manner, specified online at <https://www.fiscal.treasury.gov/surety-bonds/>. The company must file the following data with Treasury and shall transmit therewith the fee in accordance with the provisions of § 223.22:

(i) Payment of the application fee in accordance with the provisions of § 223.22;

(ii) A copy of the latest available report of its examination by its domiciliary State Insurance Department including a copy of company responses to any significant findings or recommendations;

(iii) Annual statements of its financial condition, as of the close of the preceding year, on the annual statement form of the NAIC with all Schedules and Exhibits completed, including copies of the NAIC File Upload, showing that it has paid-up capital of at least \$250,000 in cash or its equivalent, in the case of a stock insurance

company, or has net assets of not less than \$500,000 over and above all liabilities, in the case of a mutual insurance company. The Annual Financial Statement's Jurat Page (only) is to be signed (facsimile signatures are acceptable) by the company President, Secretary, and a Notary Public who shall also affix a notary seal;

(iv) IRIS ratio results, and an explanation for any ratios outside the normal ranges as established by the NAIC as of the close of the preceding year;

(v) A completed Treasury Schedule F (Form No. TFS 6314), as referenced in § 223.9(c) as of the close of the preceding year;

(vi) A Statement of Actuarial Opinion as of the close of the preceding year provided by a qualified actuary, as defined by the NAIC, on the adequacy of all loss reserves with the scope and format of the statement also conforming to the requirements of the NAIC;

(vii) A listing of the names of the company's current officers and directors as of the close of the preceding year, including a biographical affidavit of each new officer and director per instructions online at <https://www.fiscal.treasury.gov/surety-bonds/>; and

(viii) Such other evidence as Treasury may request to establish that the company is solvent and able to meet the continuing obligation to carry out its contracts. Treasury will publish supplemental guidance annually regarding evidence it may require, submission methods, and format of the data listed in paragraphs (h)(3)(i) through (vii) of this section.

(i) *Complementary reinsurers.* Any company may apply for recognition as a complementary reinsurer or annual renewal of such recognition provided the company is licensed to write reinsurance by and has its head office in (or is domiciled in) a non-U.S.

jurisdiction that is subject to an in-force Covered Agreement entered into with the United States pursuant to 31 U.S.C. 313–314, which Covered Agreement addresses the elimination, under specified conditions, of collateral requirements as a condition for entering into any reinsurance agreement with a ceding insurer domiciled in a U.S. state or for allowing the ceding insurer to recognize credit for reinsurance. To obtain recognition as a complementary reinsurer, the company must submit to Treasury the fee in accordance with the provisions of § 223.22 and must:

(1) Meet and maintain all capital and surplus, solvency, and market conduct requirements under the applicable Covered Agreement;

(2) Be recognized by at least one U.S. state as a Reciprocal Jurisdiction Reinsurer, as defined by the state's credit for reinsurance law or regulation based on the NAIC's Credit for Reinsurance Model Law and Regulation, and submit proof of such recognition; and

(3) Submit to Treasury:

(i) For initial applications for recognition, all information provided by the company or by the supervisory authority of the company's domiciliary jurisdiction to any U.S. state regulator in the two most recently completed calendar years.

(ii) For applications for renewal of recognition, all semi-annual and annual filing information provided by the company or by the supervisory authority of the company's domiciliary jurisdiction to any U.S. state regulator in the most recently completed calendar year.

(iii) Payment of the application fee in accordance with the provisions of § 223.22.

(j) *Alien reinsurers.* Any company may apply for recognition or annual renewal of such recognition as an alien reinsurer, provided it is licensed to write reinsurance by, and has its head office or domicile in, a non-U.S.

jurisdiction that is recognized by a U.S. state as a Qualified Jurisdiction or as a Reciprocal Jurisdiction, provided that the Reciprocal Jurisdiction is not party to an in-force Covered Agreement as described in paragraph (i) of this section. Treasury may also consider, if it deems appropriate, the lists of Qualified and Reciprocal Jurisdictions most recently published through the

relevant NAIC committee when determining a company's eligibility for recognition pursuant to this paragraph (j). To obtain such recognition, the company must submit to Treasury the fee in accordance with the provisions of § 223.22 and must:

(1) Be recognized by at least one U.S. state as an "Accredited Reinsurer," "Certified Reinsurer," or a "Reciprocal Jurisdiction Reinsurer," as defined by the state's credit for reinsurance law or regulation based on the NAIC's Credit for Reinsurance Model Law and Regulation, and submit proof of such recognition;

(2) Meet and maintain all capital and surplus, market conduct, and other requirements for eligibility as an "Accredited Reinsurer," "Certified Reinsurer," or "Reciprocal Jurisdiction Reinsurer" in accordance with the law and regulation of all U.S. states granting it such recognition; and

(3) Submit to Treasury:

(i) For initial applications for recognition, all information provided to any U.S. state regulator in the two most recently completed calendar years.

(ii) For applications for renewal of such recognition, all annual filing information provided to any U.S. state regulator in the most recently completed calendar year.

(iii) Payment of the application fee in accordance with the provisions of § 223.22.

§ 223.13 [Removed and Reserved]

■ 14. Remove and reserve § 223.13.

§ 223.14 [Removed and Reserved]

■ 15. Remove and reserve § 223.14.

■ 16. Revise § 223.15 to read as follows:

§ 223.15 Paid-up capital and surplus for Treasury rating purposes; how determined.

Treasury determines the amount of paid-up capital and surplus of any company holding or seeking a certificate of authority or recognized (or seeking recognition) as an admitted reinsurer pursuant to § 223.12(h) on an insurance accounting basis under the regulations in this part, from the company's financial statements and other information, or by such examination of the company at its own expense as Treasury may deem appropriate.

■ 17. Amend § 223.16 by revising the first three sentences to read as follows:

§ 223.16 List of certificate holding companies.

A list of certificate holding companies is published annually as of August 1 in Department Circular No. 570, Companies Holding Certificates of Authority as Acceptable Sureties on

Federal Bonds and as Acceptable Reinsuring Companies, with information as to underwriting limitations, areas in which listed sureties are licensed to transact surety business, and other details. If Treasury shall take any exceptions to the financial statements submitted by a company or other information pertinent to the company's financial solvency, before issuing Department Circular 570, Treasury shall give a company due notice of such exceptions. Copies of the Circular are available at <https://www.fiscal.treasury.gov/surety-bonds/list-certified-companies.html>, or from the Surety Bonds Program, upon request. * * *

■ 18. Amend § 223.17 by revising paragraphs (b)(1)(iii) and (iv) to read as follows:

§ 223.17 Acceptance and non-acceptance of bonds.

* * * * *

(b) * * *

(1) * * *

(iii) Provide the company with an opportunity to rebut the stated reasons or cause; and

(iv) Provide the company with an opportunity to cure the stated reasons or cause.

* * * * *

■ 19. Amend § 223.18 by revising paragraphs (a) introductory text and (a)(1) to read as follows:

§ 223.18 Revocation.

(a) Treasury may initiate a revocation proceeding against a Treasury-certified company in one of two ways:

(1) Treasury, of its own accord, under § 223.19, may initiate revocation proceedings against the company when it has reason to believe that the company is not complying with 31 U.S.C. 9304–9308 and/or the regulations under this part; or

* * * * *

■ 20. Amend § 223.19 by revising the introductory text and paragraph (b)(2) to read as follows:

§ 223.19 Treasury-initiated revocation proceedings.

Whenever Treasury has reason to believe that a company is not complying with the requirements of 31 U.S.C. 9304–9308 and/or the regulations under this part, including but not limited to a failure to satisfy corporate and financial standards, Treasury shall:

* * * * *

(b) * * *

(2) The company responded, was provided an opportunity to demonstrate or achieve compliance, and failed to do so.

■ 21. Amend § 223.20 by revising paragraphs (b)(1) and (h)(8) and (9) to read as follows:

§ 223.20 Revocation proceedings initiated by Treasury upon receipt of an agency complaint.

* * * * *

(b) * * *

(1) The agency has determined, consistent with agency authorities, the principal is in default on the obligation covered by the bond. Alternatively, if the default has been litigated, documentation indicating a court of competent jurisdiction has determined the principal is in default;

* * * * *

(h) * * *

(8) The formal adjudication standards under the Administrative Procedure Act, 5 U.S.C. 554, 556, and 557, do not apply to the informal hearing or adjudication process.

(9) Treasury may promulgate additional procedural guidance governing the conduct of informal hearings.

* * * * *

■ 22. Revise § 223.21 to read as follows:

§ 223.21 Reinstatement.

If, after one year from the date that Treasury notifies the company of its decision to decline to renew or revoke the certificate of authority of a company under this part, the company can demonstrate that the basis for the non-renewal or revocation has been cured, as determined by Treasury in its discretion, and that it can comply with, and does meet, all continuing requirements for certification under 31 U.S.C. 9304–9308 and this part, the company may submit an application to Treasury for reinstatement or reissuance of a certificate of authority, which will be granted without prejudice if all such requirements are met. Treasury may waive the one year waiting period for good cause shown, as determined by Treasury in its sole discretion.

■ 23. Revise § 223.22 to read as follows:

§ 223.22 Fees for service of the Treasury Department.

(a) Fees shall be imposed and collected, for the services listed in paragraphs (a)(1) through (6) of this section that are performed by Treasury, regardless of whether the action requested is granted or denied. An online payment portal is provided at <https://www.fiscal.treasury.gov/surety-bonds/>. The amount of the fee will be based on which of the following categories of service is requested:

(1) Examination of a company's application for a certificate of authority

as an acceptable surety on Federal bonds or for a certificate of authority as an acceptable reinsuring company on such bonds (see § 223.2(a));

(2) Examination of a company's application for recognition as an admitted reinsurer of surety companies doing business with the United States (see § 223.12(h));

(3) Examination of a company's application for recognition as a complementary reinsurer of surety companies doing business with the United States (see § 223.12(i));

(4) Examination of a company's application for recognition as an alien reinsurer of surety companies doing business with the United States (see § 223.12(j));

(5) Determination of a company's continuing qualifications for annual renewal of its certificate of authority (see § 223.2(b)); or

(6) Determination of a company's continuing qualifications for annual renewal of its recognition as an admitted reinsurer, complementary reinsurer, or alien reinsurer (see § 223.12).

(b) In a given year a uniform fee will be collected from every company requesting a particular category of service, e.g., determination of a company's continuing qualifications for annual renewal of its certificate of authority. However, Treasury reserves the right to redetermine the amounts of fees annually. Fees are determined in accordance with Office of Management and Budget Circular A–25, as amended.

(c) Specific fee information may be obtained from the Surety Bonds Program, or online at <https://www.fiscal.treasury.gov/files/surety-bonds/user-fees.pdf>. In addition, a notice of the amount of a fee referred to in paragraphs (a)(1) through (6) of this section will be published in the **Federal Register** as each change in such fee is made.

By the Department of the Treasury.

David Lebryk,

Fiscal Assistant Secretary.

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 95, 96, and 97

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing three general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 95, 96, and 97, each of which was previously made available on OFAC's website.

DATES: GLs 94, 95, and 96 were issued on May 1, 2024. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Compliance, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: <https://ofac.treasury.gov/>.

Background

On May 1, 2024, OFAC issued GLs 95, 96, and 97 to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. GL 95 and GL 96 both have an expiration date of July 30, 2024; GL 97 has an expiration date of June 17, 2024. Each GL was made available on OFAC's website (<https://ofac.treasury.gov/>) at the time of publication. The text of these GLs is provided below.