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OFFICE OF THE CLERK

VINCENT C. GRAY
MAYOR

OCT 22 2013

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

Today, I am transmitting the proposed bill “Insurance Holding Company and Credit for Reinsurance Modernization Amendment Act of 2013” (“Bill”). The purpose of the bill is to modernize how the District regulates insurance holding companies and their subsidiaries, and the process by which insurance companies can obtain credit for reinsurance. More specifically, Title I of the Bill amends the Holding Company System Act of 1993 to impose additional reporting requirements on insurance holding companies regarding information pertaining to subsidiaries of insurers, the acquisition of control of or mergers with domestic insurers, acquisitions involving insurers not otherwise covered, and the registration of insurers; enhance standards for the management of insurers within a holding company system regarding their “enterprise risks” and other matters; and authorize the Commissioner to initiate and participate in “supervisory colleges.”

Practically speaking, Title I will modernize the District’s Holding Company System Act and enhance the surveillance tools of the Commissioner to permit more rigorous analysis and regulation of insurers. Further, Title I will bring the District into alignment with other National Association of Insurance Commissioners (“NAIC”) member states and provide for uniform regulation among the states. Finally, the amendments in Title I serve as an accreditation element of the NAIC.

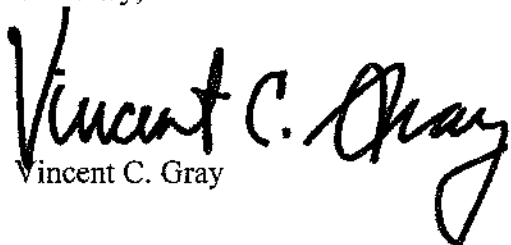
Title II of the Bill will amend the Law on Credit for Reinsurance Act of 1993 and modernize reinsurance regulation in the District, in coordination with the Dodd-Frank financial services federal reform legislation, specifically the Non-Admitted and Reinsurance Reform Act. The Bill will establish requirements to regulate reinsurers, including the authority to: grant, suspend and revoke the accreditations of U.S.-based and certifications of non-U.S.-based reinsurers for whom credit for reinsurance shall be allowed; establish and publish a list of

qualified non-U.S. domiciliary jurisdictions of assuming insurers; and receive notice from, and monitor the concentration of risks of, ceding insurers, among other things.

As you know, reinsurers are a critical part of the insurance market because of their ability to assist direct writers of insurance in spreading their risks, thereby increasing capacity and managing surplus. Title II of the Bill establishes a new licensing category for non-U.S. reinsurers that imposes new informational and capital requirements. Title II also directs the Commissioner to create a list of qualified non-U.S. jurisdictions that meet the supervisory and reciprocal recognition standards, and provides the Commissioner with several important administrative tools to better monitor the solvency and market practices of non-U.S. reinsurers. In turn, by utilizing these tools, the District will be able to better protect consumers in the individual and commercial insurance markets.

Accordingly, I urge the Council to act favorably and expeditiously on the proposed Bill.

Sincerely,


Vincent C. Gray



Chairman Phil Mendelson
at the request of the Mayor

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson, at the request of the Mayor, introduced the following bill,
which was referred to the Committee

To purpose of the Bill is to amend the Holding Company System Act of 1993 to impose additional reporting requirements on insurance holding companies regarding information pertaining to subsidiaries of insurers, the acquisition of control of or mergers with domestic insurers, acquisitions involving insurers not otherwise covered, and the registration of insurers, enhance standards for the management of insurers within a holding company system regarding their “enterprise risks” and other matters, and authorize the Commissioner to initiate and participate in “supervisory colleges;” and to amend the Law on Credit for Reinsurance Act of 1993 and modernize reinsurance regulation in the District, in coordination with the Federal Dodd-Frank financial services reform legislation, specifically the Non-Admitted and Reinsurance Reform Act, to establish requirements to regulate reinsurers, including the authority to: grant, suspend and revoke the accreditations of U.S.-based and certifications of non-U.S.-based reinsurers for whom credit for reinsurance shall be allowed; establish and publish a list of qualified non-U.S. domiciliary jurisdictions of assuming insurers; and receive notice from, and monitor the concentration of risks of, ceding insurers, among other things.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the “Insurance Holding Company and Credit for Reinsurance Modernization Amendment Act of 2013”.

Title I. Insurance Holding Companies.

Sec. 101. The Holding Company System Act of 1993, effective October 21, 1993

(D.C. Law 10-44; D.C. Official Code § 31-701 *et seq.*), is amended as follows:

1 (a) Section 2 (D.C. Official Code § 31-701) is amended as follows:

2 (1) The current paragraph “(3A)” is redesignated as paragraph “(3B)”.

3 (2) A new paragraph (3A) is added to read as follows:

4 “(3A) “Enterprise risk” means any activity, circumstance, event or series
5 of events involving one or more affiliates of an insurer that, if not remedied promptly, is
6 likely to have a material adverse effect upon the financial condition or liquidity of the
7 insurer or its insurance holding company system as a whole, including, but not limited to,
8 anything that would cause the insurer’s Risk-Based Capital to fall into company action
9 level as set forth in Title 31, Chapters 20 and 38B, or would cause the insurer to be in
10 hazardous financial condition as provided in § 31-2101.”.

11 (b) Section 4 (D.C. Official Code § 31-703) is amended as follows:

12 (1) Subsection (a) is amended by adding a new paragraph (3) to read as
13 follows:

14 “(3) For purposes of this section, any controlling person of a domestic
15 insurer seeking to divest its controlling interest in the domestic insurer, in any manner,
16 shall file with the Mayor, with a copy to the insurer, confidential notice of its proposed
17 divestiture at least 30 days prior to the cessation of control. The Mayor shall determine
18 those instances in which the party or parties seeking to divest or to acquire a controlling
19 interest in an insurer will be required to file for and obtain approval of the transaction.
20 The information shall remain confidential until the conclusion of the transaction unless
21 the Mayor, in his or her discretion, determines that confidential treatment will interfere

1 with enforcement of this subchapter. If the statement referred to in paragraph (1) of this
2 subsection is otherwise filed, this paragraph shall not apply.”.

3 (2) Subsection (c) is amended by striking “and” at the end of paragraph
4 (11), by redesignating the current paragraph 12 as paragraph 14, and by adding new
5 paragraphs (12) and (13) to read as follows:

6 “(12) An agreement by the person required to file the statement referred to
7 in subsection (a) of this section that it will provide the annual report, specified in § 31-
8 705(k-1), for so long as control exists; and

9 “(13) An acknowledgement by the person required to file the statement
10 referred to in subsection (a) that the person and all subsidiaries within its control in the
11 insurance holding company system will provide information to the Mayor upon request
12 as necessary to evaluate enterprise risk to the insurer.”.

13 (3) Subsection (g) is amended by adding a new paragraph (3A) to read as
14 follows:

15 “(3A) If the proposed acquisition of control will require the approval of
16 more than one commissioner, the public hearing referred to in paragraph (2) of this
17 subsection may be held on a consolidated basis upon request of the person filing the
18 statement referred to in subsection (a) of this section. Such person shall file the statement
19 referred to in subsection (a) of this section with the National Association of Insurance
20 Commissioners (“NAIC”) within 5 days of making the request for a public hearing. A
21 commissioner may opt out of a consolidated hearing, and shall provide notice to the
22 applicant of the opt-out within 10 days of the receipt of the statement referred to in
23 subsection (a) of this section. A hearing conducted on a consolidated basis shall be

1 public and shall be held within the United States before the commissioners of the states in
2 which the insurers are domiciled. Such commissioners shall hear and receive evidence.
3 A commissioner may attend such hearing, in person or by telecommunication.”.

4 (4) Subsection (i) is amended by inserting the phrase “divestiture of,”
5 after the phrase “control of,”.

6 (c) Section 5 (D.C. Official Code § 31-704) is amended by repealing
7 subparagraph (b)(2)(A) in its entirety.

8 (d) Section 6 (D.C. Official Code § 31-705) is amended as follows:

9 (1) Subsection (b) is amended by striking “and” at the end of paragraph
10 (4) and the period at the end of paragraph (5), and inserting new paragraphs (4A), (5A)
11 and (5B) to read as follows:

12 “(4A) If requested by the Mayor, the insurer shall include financial
13 statements of or within an insurance holding company system, including all affiliates.
14 Financial statements may include but are not limited to annual audited financial
15 statements filed with the U.S. Securities and Exchange Commission (“SEC”) pursuant to
16 the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as
17 amended. An insurer required to file financial statements pursuant to this paragraph may
18 satisfy the request by providing the Mayor with the most recently filed parent corporation
19 financial statements that have been filed with the SEC;

20 “(5A) Statements that the insurer’s board of directors is responsible for
21 and oversees corporate governance and internal controls and that the insurer’s officers or
22 senior management have approved, implemented, and continue to maintain and monitor
23 corporate governance and internal control procedures; and

1 “(5B) Any other information required by the Mayor by rule or
2 regulation.”.

3 (2) Subsection (k) is amended by striking the phrase “After a disclaimer
4 has been filed, the insurer shall be relieved of any duty to register or report under this
5 section which may arise out of the insurer’s relationship with the person unless and until
6 the Mayor disallows such a disclaimer. The Mayor shall disallow such a disclaimer only
7 after furnishing all parties in interest with notice and opportunity to be heard and after
8 making specific findings of fact to support the disallowance.”, and inserting the phrase

9 “A disclaimer of affiliation shall be deemed to have been granted unless the
10 Mayor, within 30 days following receipt of a complete disclaimer, notifies the filing party
11 the disclaimer is disallowed. In the event of disallowance, the disclaiming party may
12 request an administrative hearing, which shall be granted. The disclaiming party shall be
13 relieved of its duty to register under this section if approval of the disclaimer has been
14 granted by the Mayor, or if the disclaimer is deemed to have been approved.”.

15 (3) A new subsection (k-1) is added to read as follows:

16 “(k-1) The ultimate controlling person of every insurer subject to registration
17 shall also file an annual enterprise risk report. The report shall, to the best of the ultimate
18 controlling person’s knowledge and belief, identify the material risks within the insurance
19 holding company system that could pose enterprise risk to the insurer. The report shall
20 be filed with the lead state commissioner of the insurance holding company system as
21 determined by the procedures within the Financial Analysis Handbook adopted by the
22 National Association of Insurance Commissioners.”.

1 (4) Subsection (1) is amended by inserting the phrase “or enterprise risk
2 filing” between the phrases “any summary of the registration statement” and “required by
3 this section”.

4 (e) Section 7 (D.C. Official Code § 31-706) is amended as follows:

5 (1) Subsection (a) is amended as follows:

6 (A) Paragraph (1) is amended to add a new subparagraph (A-1) to
7 read as follows:

8 “(A-1) Agreements for cost sharing services and management shall
9 include such provisions as required by rules and regulations issued by the Mayor;”.

10 (B) Paragraph (2) is amended by striking the paragraph in its
11 entirety and inserting the following in its place:

12 “The following transactions involving a domestic insurer and any person
13 in its holding company system, including amendments or modifications of affiliate
14 agreements previously filed pursuant to this section, which are subject to any materiality
15 standards contained in subparagraphs (a) through (e) of this paragraph, may not be
16 entered into unless the insurer has notified the Mayor in writing of its intention to enter
17 into such a transaction at least 30 days prior thereto, or any shorter period as the Mayor
18 may permit, and the Mayor has not disapproved it within such a period. The notice for
19 amendments or modifications shall include the reasons for the change and the financial
20 impact on the domestic insurer. Informal notice shall be reported to the Mayor, within 30
21 days after termination of a previously filed agreement, for determination of the type of
22 filing required, if any:”.

1 (C) Subparagraph (2)(C) is amended by striking the
2 subparagraph in its entirety and inserting the following in its place:

3 “(C) Reinsurance agreements or modifications thereto, including:

4 “(i) All reinsurance pooling agreements;

5 “(ii) Agreements in which the reinsurance premium or a
6 change in the insurer’s liabilities, or the projected reinsurance premium or a change in the
7 insurer’s liabilities in any of the next three years, equals or exceeds five percent (5%) of
8 the insurer’s surplus as regards policyholders, as of the 31st day of December next
9 preceding, including those agreements which may require as consideration the transfer of
10 assets from an insurer to a non-affiliate, if an agreement or understanding exists between
11 the insurer and non-affiliate that any portion of the assets will be transferred to one or
12 more affiliates of the insurer;”.

13 (D) Subparagraph (2)(D) is amended by inserting the phrase “tax
14 allocation agreements, guarantees,” after the phrase “service contracts,”.

15 (2) Subsection (c) is amended as follows:

16 (A) Paragraph (4) is amended by striking the phrase
17 “recommending the selection of independent certified public accountants, reviewing the
18 insurer’s financial condition, the scope and results of the independent audit and any
19 internal audit,” in the second full sentence.

20 (B) Paragraph (5) is amended by striking the word “having” and
21 inserting the phrase “, a mutual insurance holding company, or a publicly held
22 corporation that has” in its place.

23 (C) A new paragraph (6) is added to read as follows:

1 “(6) An insurer may make application to the Mayor for a waiver from the
2 requirements of this subsection, if the insurer’s annual direct written and assumed
3 premium, excluding premiums reinsured with the Federal Crop Insurance Corporation
4 and Federal Flood Program, is less than \$300,000,000. An insurer may also make
5 application to the Commissioner for a waiver from the requirements of this subsection
6 based upon unique circumstances. The Mayor may consider various factors including, but
7 not limited to, the type of business entity, volume of business written, availability of
8 qualified board members, or the ownership or organizational structure of the entity.”.

9 (f) Section 8 (D.C. Official Code § 31-707) is amended as follows:

10 (1) Subsection (a) is amended by striking the subsection in its entirety and
11 inserting the following in its place:

12 “(a) Subject to the limitation contained in this section and in addition to the
13 powers which the Mayor has under the insurance laws of the District relating to the
14 examination of insurers, the Mayor shall have the power to examine any insurer
15 registered under section 6 (D.C. Official Code § 31-705) and the insurer’s affiliates to
16 ascertain the financial condition of the insurer, including the enterprise risk to the insurer
17 by the ultimate controlling party, or by any entity or combination of entities within the
18 insurance holding company system, or by the insurance holding company system on a
19 consolidated basis.”.

20 (2) A new subsection (a-1) is added to read as follows:

21 “(a-1)(1) The Mayor may order any insurer registered under section 6 to produce
22 such records, books, or other information papers in the possession of the insurer or its
23 affiliates as are reasonably necessary to determine compliance with this chapter.

1 “(2) To determine compliance with this chapter, the Mayor may
2 order any insurer registered under section 6 to produce information not in the possession
3 of the insurer if the insurer can obtain access to such information pursuant to contractual
4 relationships, statutory obligations, or other method. In the event the insurer cannot
5 obtain the information requested by the Mayor, the insurer shall provide the Mayor a
6 detailed explanation of the reason that the insurer cannot obtain the information and the
7 identity of the holder of information. Whenever it appears to the Mayor that the detailed
8 explanation is without merit, the Mayor may require, after notice and hearing, the insurer
9 to pay a penalty of \$100 for each day’s delay, or may suspend or revoke the insurer’s
10 license.”.

11 (3) A new subsection (d) is added to read as follows:

12 “(d) In the event the insurer fails to comply with an order issued pursuant to this
13 section, the Mayor shall have the power to examine the records, books, or other
14 information papers in the possession of the insurer’s affiliates to obtain the relevant
15 information. The Mayor shall also have the power to issue subpoenas, to administer
16 oaths, and to examine under oath any person for purposes of determining compliance
17 with this section. Upon the failure or refusal of any person to obey a subpoena, the
18 Mayor may petition a court of competent jurisdiction, and upon proper showing, the court
19 may enter an order compelling the witness to appear and testify or produce documentary
20 evidence. Failure to obey the court order shall be punishable as contempt of court. Every
21 person shall be obliged to attend as a witness at the place specified in the subpoena, when
22 subpoenaed, anywhere within the District. He or she shall be entitled to the same fees
23 and mileage, if claimed, as a witness in the District of Columbia Superior Court, which

1 fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance
2 of witnesses, and their testimony, shall be itemized and charged against, and be paid by,
3 the company being examined.”.

4 (g) A new section 8a (D.C. Official Code § 31-707a) is added to read as
5 follows:

6 “§ 31-707a. Supervisory colleges.

7 “(a) With respect to any insurer registered under section 6 (D.C. Official Code §
8 31-705), and in accordance with subsection (c) of this section, the Mayor shall have the
9 power to participate in a supervisory college for any domestic insurer that is part of an
10 insurance holding company system with international operations in order to determine
11 compliance by the insurer with this act. The powers of the Mayor with respect to
12 supervisory colleges include, but are not limited to, the following:

13 “(1) Initiating the establishment of a supervisory college;

14 “(2) Clarifying the membership and participation of other supervisors in
15 the supervisory college;

16 “(3) Clarifying the functions of the supervisory college and the role of
17 other regulators, including the establishment of a group-wide supervisor;

18 “(4) Coordinating the ongoing activities of the supervisory college,
19 including planning meetings, supervisory activities, and processes for information
20 sharing; and

21 “(5) Establishing a crisis management plan.

22 “(b) Each registered insurer subject to this section shall be liable for and shall pay
23 the reasonable expenses of the Mayor’s participation in a supervisory college in

1 accordance with subsection (c) of this section, including reasonable travel expenses. For
2 purposes of this section, a supervisory college may be convened as either a temporary or
3 permanent forum for communication and cooperation between the regulators charged
4 with the supervision of the insurer or its affiliates, and the Mayor may establish a regular
5 assessment to the insurer for the payment of these expenses.

6 “(c) In order to assess the business strategy, financial position, legal and
7 regulatory position, risk exposure, risk management and governance processes, and as
8 part of the examination of individual insurers in accordance with section 8 (D.C. Official
9 Code § 31-707), the Mayor may participate in a supervisory college with other regulators
10 charged with supervision of the insurer or its affiliates, including other state, federal, and
11 international regulatory agencies. The Mayor may enter into agreements in accordance
12 with section 10(c) (D.C. Official Code § 31-709(c)) providing the basis for cooperation
13 between the Mayor and the other regulatory agencies, and the activities of the supervisory
14 college. Nothing in this section shall delegate to the supervisory college the authority of
15 the Mayor to regulate or supervise the insurer or its affiliates within its jurisdiction.”

16 (h) Section 9 (D.C. Official Code § 31-708) is amended as follows:

17 (1) Subsection (b) is amended by inserting the phrase “or with whom such
18 documents, materials, or other information are shared pursuant to this act” between the
19 words “Commissioner” and “shall.”

20 (2) Subsection (c) is amended as follows:

21 (A) Paragraph (1) is amended as follows: (i) by inserting the
22 phrase “including members of any supervisory college described in section 8(a) (D.C.
23 Official Code § 31-707a)”; after the phrase “law enforcement authorities”; (ii) by

1 inserting the phrase “in writing” after the phrase “recipient agrees”; and by inserting the
2 phrase “, and has verified in writing the legal authority to maintain confidentiality” after
3 the phrase “other information”.

4 (B) A new paragraph (1A) is added to read as follows:

5 “(1A) Notwithstanding paragraph (1) above, the Commissioner may only
6 share confidential and privileged documents, material, or information reported pursuant
7 to section 6(1) § 31-705(l) with commissioners of states having statutes or regulations
8 substantially similar to subsection (a) of this section and who have agreed in writing not
9 to disclose such information.”.

10 (C) Paragraph (3) is amended by striking the paragraph in its
11 entirety and inserting the following in its place:

12 “(3) Shall enter into written agreements with the NAIC governing the
13 sharing and use of information provided pursuant to this act and consistent with this
14 subsection that shall:

15 “(i) specify procedures and protocols regarding the confidentiality
16 and security of information shared with the NAIC and its affiliates and subsidiaries
17 pursuant to this act, including procedures and protocols for sharing that information by
18 the NAIC with other state, federal or international regulators;

19 “(ii) specify that ownership of information shared with the NAIC
20 and its affiliates and subsidiaries pursuant to this act remains with the Mayor and that the
21 NAIC’s use of the information is subject to the direction of the Mayor;

1 “(iii) require prompt notice to be given to an insurer whose
2 confidential information in the possession of the NAIC pursuant to this act is subject to a
3 request or subpoena to the NAIC for disclosure or production; and

4 “(iv) require the NAIC and its affiliates and subsidiaries to
5 consent to intervention by an insurer in any judicial or administrative action in which the
6 NAIC and its affiliates and subsidiaries may be required to disclose confidential
7 information about the insurer shared with the NAIC and its affiliates and subsidiaries
8 pursuant to this act.”.

9 (3) A new subsection (c-1) is added to read as follows:

10 “(c-1) The sharing of information by the Mayor pursuant to this act shall not
11 constitute a delegation of regulatory authority or rulemaking, and the Mayor is solely
12 responsible for the administration, execution and enforcement of the provisions of this
13 act.”.

14 (4) A new subsection (d-1) is added to read as follows:

15 “(d-1) Documents, materials, or other information in the possession or control of
16 the NAIC pursuant to this act shall be confidential by law and privileged, shall not be
17 subject to the Freedom of Information provisions of the District of Columbia
18 Administrative Procedures Act of 1968, approved October 21, 1968 (Pub. L. 90-614;
19 D.C. Official Code § 2-531 *et seq.*), shall not be subject to subpoena, and shall not be
20 subject to discovery or admissible into evidence in any private civil action.”.

21 (i) Section 12 (D.C. Official Code § 31-710) is amended by inserting a new
22 subsection (e-1) to read as follows:

1 “(e-1) Whenever it appears to the Mayor that any person has committed a
2 violation of section 4 (D.C. Official Code § 31-703) which prevents the full
3 understanding of the enterprise risk to the insurer by affiliates or by the insurance holding
4 company system, the violation may serve as an independent basis for disapproving
5 dividends or distributions and for placing the insurer under an order of supervision in
6 accordance with the insurance laws of the District of Columbia.”.

7 **Title II. Credit for Reinsurance.**

8 Sec. 201. The Law on Credit for Reinsurance Act of 1993, effective October 15,
9 1993 (D.C. Law 10-36; D.C. Official Code § 31-501 *et seq.*), is amended as follows:

10 (a) Section 2 (D.C. Official Code § 31-501) is amended to read as
11 follows:

12 “(a) Credit for reinsurance shall be allowed a domestic ceding insurer as
13 either an asset or a reduction from liability on account of reinsurance ceded only when
14 the reinsurer meets the requirements of subsections (b), (c), (d), (e), (f) or (g) of this
15 section. Credit shall be allowed under subsections (b), (c) or (d) of this section only as
16 respects cessions of those kinds or classes of business which the assuming insurer is
17 licensed or otherwise permitted to write or assume in its state of domicile or, in the case
18 of a U.S. branch of an alien assuming insurer, in the state through which it is entered and
19 licensed to transact insurance or reinsurance. Credit shall be allowed under subsections
20 (d) or (e) of this section only if the applicable requirements of subsection (h) have been
21 satisfied.

22 “(b) Credit shall be allowed when the reinsurance is ceded to an assuming insurer
23 that is licensed to transact insurance or reinsurance in the District.

1 “(c) Credit shall be allowed when the reinsurance is ceded to an assuming
2 insurer that is accredited by the Commissioner as a reinsurer in the District. In order
3 to be eligible for accreditation, a reinsurer must:

4 “(1) File with the Commissioner evidence of its submission to
5 the District’s jurisdiction;

6 “(2) Submit to the District’s authority to examine its books and
7 records;

8 “(3) Be licensed to transact insurance or reinsurance in at least one
9 state, or in the case of a U.S. branch of an alien assuming insurer, entered through and
10 licensed to transact insurance or reinsurance in at least one state;

11 “(4) File annually with the Commissioner a copy of its annual
12 statement filed with the insurance department of its state of domicile and a copy of its
13 most recent audited financial statement; and

14 “(5) Demonstrate to the satisfaction of the Commissioner that it has
15 adequate financial capacity to meet its reinsurance obligations and is otherwise
16 qualified to assume reinsurance from domestic insurers. An assuming insurer is
17 deemed to meet this requirement as of the time of its application if it maintains a surplus
18 as regards policyholders in an amount not less than \$20,000,000, and its accreditation has
19 not been denied by the Commissioner within ninety (90) days after submission of its
20 application.

21 “(d)(1) Credit shall be allowed when the reinsurance is ceded to an
22 assuming insurer that is domiciled in, or in the case of a U.S. branch of an alien
23 assuming insurer is entered through, a state that employs standards regarding credit for

1 reinsurance substantially similar to those applicable under this statute, and the
2 assuming insurer or U.S. branch of an alien assuming insurer:

3 “(A) Maintains a surplus as regards policyholders in an amount
4 not less than \$20,000,000; and

5 “(B) Submits to the authority of the District to examine its
6 books and records.

7 “(2) The requirement of subparagraph (1)(A) of this subsection does
8 not apply to reinsurance ceded and assumed pursuant to pooling arrangements among
9 insurers in the same holding company system.

10 “(e)(1) Credit shall be allowed when the reinsurance is ceded to an
11 assuming insurer that maintains a trust fund in a qualified U.S. financial institution,
12 as defined in section 4(b) (D.C. Official Code § 31-503(b)), for the payment of the
13 valid claims of its U.S. ceding insurers, their assigns and successors in
14 interest. To enable the Commissioner to determine the sufficiency of the trust
15 fund, the assuming insurer shall report annually to the Commissioner information
16 substantially the same as that required to be reported on the NAIC Annual Statement
17 form by licensed insurers. The assuming insurer shall submit to examination of its
18 books and records by the Commissioner and bear the expense of examination.

19 “(2)(A) Credit for reinsurance shall not be granted under
20 this subsection unless the form of the trust and any amendments to the trust have been
21 approved by the commissioner of the state where the trust is domiciled or the

1 commissioner of another state who, pursuant to the terms of the trust instrument,
2 has accepted principal regulatory oversight of the trust.

3 “(B) The form of the trust and any trust amendments
4 also shall be filed with the commissioner of every state in which the ceding insurer
5 beneficiaries of the trust are domiciled. The trust instrument shall provide that contested
6 claims shall be valid and enforceable upon the final order of any court of competent
7 jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees
8 for the benefit of the assuming insurer’s U.S. ceding insurers, their assigns and
9 successors in interest. The trust and the assuming insurer shall be subject to
10 examination as determined by the Commissioner.

11 “(C) The trust shall remain in effect for as long as the
12 assuming insurer has outstanding obligations due under the reinsurance agreements
13 subject to the trust. No later than February 28 of each year the trustee of the trust shall
14 report to the Commissioner in writing the balance of the trust and a listing of the
15 trust’s investments as of December 31 of the preceding year, and shall certify the date
16 of termination of the trust, if so planned, or certify that the trust will not expire prior to
17 December 31 of that year.

18 “(3) The following requirements apply to the following
19 categories of assuming insurer:

20 “(A) The trust fund for a single assuming insurer shall
21 consist of funds in trust in an amount not less than the assuming insurer’s liabilities
22 attributable to reinsurance ceded by U.S. ceding insurers, and, in addition, the assuming

1 insurer shall maintain a trusteed surplus of not less than \$20,000,000, except as
2 provided in subparagraph (B) of this paragraph.

3 “(B) At any time after the assuming insurer has
4 permanently discontinued underwriting new business secured by the trust for at least
5 three full years, the commissioner with principal regulatory oversight of the trust may
6 authorize a reduction in the required trusteed surplus, but only after a finding, based
7 on an assessment of the risk, that the new required surplus level is adequate for the
8 protection of U.S. ceding insurers, policyholders and claimants in light of reasonably
9 foreseeable adverse loss development. The risk assessment may involve an actuarial
10 review, including an independent analysis of reserves and cash flows, and shall
11 consider all material risk factors, including, when applicable, the lines of business
12 involved, the stability of the incurred loss estimates and the effect of the surplus
13 requirements on the assuming insurer’s liquidity or solvency. The minimum required
14 trusteed surplus may not be reduced to an amount less than thirty percent (30%) of the
15 assuming insurer’s liabilities attributable to reinsurance ceded by U.S. ceding insurers
16 covered by the trust.

17 “(4)(A) In the case of a group including incorporated and
18 individual unincorporated underwriters:

19 “(i) For reinsurance ceded under reinsurance
20 agreements with an inception, amendment or renewal date on or after August 1, 1995, the
21 trust shall consist of a trusteed account in an amount not less than the group’s
22 respective underwriters’ several liabilities attributable to business ceded by U.S.
23 domiciled ceding insurers to any member underwriter of the group;

1 “(ii) For reinsurance ceded under reinsurance
2 agreements with an inception date on or before July 31, 1995, and not amended or
3 renewed after that date, notwithstanding the other provisions of this chapter, the trust
4 shall consist of a trusteed account in an amount not less than the group’s
5 respective underwriters’ several insurance and reinsurance liabilities attributable to business
6 written in the United States; and

7 “(iii) In addition to these trusts, the group shall
8 maintain in trust a trusteed surplus of which \$100,000,000 shall be held jointly for
9 the benefit of the U.S. domiciled ceding insurers of any member of the group for all
10 years of account; and

11 “(B) The incorporated members of the group shall not be
12 engaged in any business other than underwriting as a member of the group and shall be
13 subject to the same level of regulation and solvency control by the group’s domiciliary
14 regulator as are the unincorporated members.

15 “(C) Within ninety (90) days after its financial statements
16 are due to be filed with the group’s domiciliary regulator, the group shall provide to the
17 Commissioner an annual certification by the group’s domiciliary regulator of the
18 solvency of each underwriter member or, if a certification is unavailable, financial
19 statements, prepared by independent public accountants, of each underwriter
20 member of the group.

21 “(5) In the case of a group of incorporated underwriters
22 under common administration, the group shall:

1 “(A) Have continuously transacted an insurance
2 business outside the United States for at least three (3) years immediately prior to
3 making application for accreditation;

4 “(B) Maintain aggregate policyholders’ surplus of
5 at least \$10,000,000,000;

6 “(C) Maintain a trust fund in an amount not less than the
7 group’s several liabilities attributable to business ceded by U.S. domiciled ceding
8 insurers to any member of the group pursuant to reinsurance contracts issued in the
9 name of the group;

10 “(D) Maintain a joint trusted surplus of which
11 \$100,000,000 shall be held jointly for the benefit of U.S. domiciled ceding insurers of
12 any member of the group as additional security for these liabilities; and

13 “(E) Within ninety (90) days after its financial
14 statements are due to be filed with the group’s domiciliary regulator, make available
15 to the Commissioner an annual certification of each underwriter member’s solvency by the
16 member’s domiciliary regulator and financial statements of each underwriter member
17 of the group prepared by its independent public accountant.

18 “(F) Credit shall be allowed when the reinsurance is ceded to an assuming
19 insurer that has been certified by the Commissioner as a reinsurer in this state and secures
20 its obligations in accordance with the requirements of this subsection.

1 “(1) In order to be eligible for certification, the assuming insurer
2 shall meet the following requirements:

3 “(A) Be domiciled and licensed to transact insurance or
4 reinsurance in a qualified jurisdiction, as determined by the Commissioner pursuant to
5 paragraph (3) of this subsection;

6 “(B) Maintain minimum capital and surplus, or its equivalent, in
7 an amount to be determined by the Commissioner pursuant to regulation;

8 “(C) Maintain financial strength ratings from two or more rating
9 agencies deemed acceptable by the Commissioner pursuant to regulation;

10 “(D) Submit to the jurisdiction of the District, appoint the
11 Commissioner as its agent for service of process in the District, and agree to provide
12 security for 100 percent of the assuming insurer’s liabilities attributable to
13 reinsurance ceded by U.S. ceding insurers if it resists enforcement of a final U.S.
14 judgment;

15 “(E) Meet all applicable information filing requirements as
16 determined by the Commissioner, both with respect to an initial application for
17 certification and on an ongoing basis; and

18 “(F) Satisfy any other requirements for certification deemed
19 relevant by the Commissioner.

1 “(2) An association including incorporated and individual
2 unincorporated underwriters may be a certified reinsurer. In order to be eligible
3 for certification, in addition to satisfying requirements of paragraph (1):

4 “(A) The association shall satisfy its minimum capital and
5 surplus requirements through the capital and surplus equivalents (net of liabilities) of
6 the association and its members, which shall include a joint central fund that may be
7 applied to any unsatisfied obligation of the association or any of its members, in an
8 amount determined by the Commissioner to provide adequate protection;

9 “(B) The incorporated members of the association shall not be
10 engaged in any business other than underwriting as a member of the association and shall
11 be subject to the same level of regulation and solvency control by the association’s
12 domiciliary regulator as are the unincorporated members; and

13 “(C) Within ninety (90) days after its financial statements are
14 due to be filed with the association’s domiciliary regulator, the association shall provide to
15 the Commissioner an annual certification by the association’s domiciliary regulator
16 of the solvency of each underwriter member or, if a certification is unavailable, financial
17 statements, prepared by independent public accountants, of each underwriter member of
18 the association.

19 “(3) The Commissioner shall create and publish a list of qualified
20 jurisdictions under which an assuming insurer licensed and domiciled in such
21 jurisdiction is eligible to be considered for certification by the Commissioner as a certified
22 reinsurer.

1 “(A) In order to determine whether the domiciliary jurisdiction
2 of a non-U.S. assuming insurer is eligible to be recognized as a qualified jurisdiction,
3 the Commissioner shall evaluate the appropriateness and effectiveness of the
4 reinsurance supervisory system of the jurisdiction, both initially and on an ongoing
5 basis, and consider the rights, benefits and the extent of reciprocal recognition afforded
6 by the non-U.S. jurisdiction to reinsurers licensed and domiciled in the U.S. A qualified
7 jurisdiction must agree to share information and cooperate with the Commissioner
8 with respect to all certified reinsurers domiciled within that jurisdiction. A
9 jurisdiction may not be recognized as a qualified jurisdiction if the Commissioner has
10 determined that the jurisdiction does not adequately and promptly enforce final U.S.
11 judgments and arbitration awards. Additional factors may be considered in the
12 discretion of the Commissioner.

13 “(B) A list of qualified jurisdictions shall be published through
14 the NAIC Committee Process, and the Commissioner shall consider this list in
15 determining qualified jurisdictions. If the Commissioner approves a jurisdiction as
16 qualified that does not appear on the list of qualified jurisdictions, the Commissioner
17 shall provide thoroughly documented justification in accordance with criteria to be
18 developed under regulations.

19 “(C) U.S. jurisdictions that meet the requirement for
20 accreditation under the NAIC financial standards and accreditation program shall be
21 recognized as qualified jurisdictions.

1 “(D) If a certified reinsurer’s domiciliary jurisdiction ceases
2 to be a qualified jurisdiction, the Commissioner has the discretion to suspend the
3 reinsurer’s certification indefinitely, in lieu of revocation.

4 “(4) The Commissioner shall assign a rating to each certified reinsurer,
5 giving due consideration to the financial strength ratings that have been assigned by
6 rating agencies deemed acceptable to the Commissioner pursuant to regulation.
7 The Commissioner shall publish a list of all certified reinsurers and their ratings.

8 “(5) A certified reinsurer shall secure obligations assumed from
9 U.S. ceding insurers under this subsection at a level consistent with its rating, as
10 specified in regulations promulgated by the Commissioner.

11 “(A) In order for a domestic ceding insurer to qualify for full
12 financial statement credit for reinsurance ceded to a certified reinsurer, the certified
13 reinsurer shall maintain security in a form acceptable to the Commissioner and consistent
14 with the provisions of section 3 (D.C. Official Code § 31-502), or in a multi-beneficiary
15 trust in accordance with subsection (e) of this section, except as otherwise provided in
16 this subsection.

17 “(B) If a certified reinsurer maintains a trust to fully secure its
18 obligations subject to subsection (e) of this section, and chooses to secure its
19 obligations incurred as a certified reinsurer in the form of a multi-beneficiary trust,
20 the certified reinsurer shall maintain separate trust accounts for its obligations incurred
21 under reinsurance agreements issued or renewed as a certified reinsurer with reduced

1 security as permitted by this subsection or comparable laws of other U.S. jurisdictions
2 and for its obligations subject to subsection (e) of this section. It shall be a condition to
3 the grant of certification under this subsection that the certified reinsurer shall have bound
4 itself, by the language of the trust and agreement with the Commissioner with principal
5 regulatory oversight of each such trust account, to fund, upon termination of any such
6 trust account, out of the remaining surplus of such trust any deficiency of any other such
7 trust account.

8 “(C) The minimum trustee surplus requirements provided in
9 subsection (e) are not applicable with respect to a multi-beneficiary trust
10 maintained by a certified reinsurer for the purpose of securing obligations incurred
11 under this subsection, except that such trust shall maintain a minimum trustee surplus
12 of \$10,000,000.

13 “(D) With respect to obligations incurred by a certified
14 reinsurer under this subsection, if the security is insufficient, the Commissioner shall
15 reduce the allowable credit by an amount proportionate to the deficiency, and has the
16 discretion to impose further reductions in allowable credit upon finding that there is a
17 material risk that the certified reinsurer’s obligations will not be paid in full when due.

18 “(E) For purposes of this subsection, a certified
19 reinsurer whose certification has been terminated for any reason shall be treated as a
20 certified reinsurer required to secure 100% of its obligations.

21 “(i) As used in this subsection, the term “terminated”
22 refers to revocation, suspension, voluntary surrender and inactive status.

1 “(ii) If the Commissioner continues to assign a higher
2 rating as permitted by other provisions of this section, this requirement does not apply to
3 a certified reinsurer in inactive status or to a reinsurer whose certification has been
4 suspended.

5 “(6) If an applicant for certification has been certified as a reinsurer in
6 an NAIC accredited jurisdiction, the Commissioner has the discretion to defer to that
7 jurisdiction’s certification, and has the discretion to defer to the rating assigned by
8 that jurisdiction, and such assuming insurer shall be considered to be a certified
9 reinsurer in this state.

10 “(7) A certified reinsurer that ceases to assume new business in this
11 state may request to maintain its certification in inactive status in order to continue to
12 qualify for a reduction in security for its in-force business. An inactive certified
13 reinsurer shall continue to comply with all applicable requirements of this subsection,
14 and the Commissioner shall assign a rating that takes into account, if relevant, the reasons
15 why the reinsurer is not assuming new business.

16 “(g) Credit shall be allowed when the reinsurance is ceded to an assuming
17 insurer not meeting the requirements of subsections (b), (c), (d), (e) or (f) of this
18 section, but only as to the insurance of risks located in jurisdictions where the
19 reinsurance is required by applicable law or regulation of that jurisdiction.

20 “(h)(1) If the assuming insurer is not licensed, or accredited or
21 certified to transact insurance or reinsurance in this state, the credit permitted by
22 subsections (c) and (d) of this section shall not be allowed unless the assuming
23 insurer agrees in the reinsurance agreements:

1 “(A) That in the event of the failure of the assuming insurer to
2 perform its obligations under the terms of the reinsurance agreement, the assuming
3 insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any
4 court of competent jurisdiction in any state of the United States, will comply with all
5 requirements necessary to give the court jurisdiction, and will abide by the final
6 decision of the court or of any appellate court in the event of an appeal; and

7 “(B) To designate the Commissioner or a designated attorney
8 as its true and lawful attorney upon whom may be served any lawful process in any
9 action, suit or proceeding instituted by or on behalf of the ceding company insurer.

10 “(2) This subsection is not intended to conflict with or override the
11 obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this
12 obligation is created in the agreement.

13 “(i) If the assuming insurer does not meet the requirements of subsections
14 (b), (c) or (d), the credit permitted by subsection (e) or (f) of this section shall not be
15 allowed unless the assuming insurer agrees in the trust agreements to the following
16 conditions:

17 “(1) Notwithstanding any other provisions in the trust instrument, if
18 the trust fund is inadequate because it contains an amount less than the amount
19 required by paragraph (3) of this subsection (e), or if the grantor of the trust has been
20 declared insolvent or placed into receivership, rehabilitation, liquidation or similar
21 proceedings under the laws of its state or country of domicile, the trustee shall comply
22 with an order of the Commissioner with regulatory oversight over the trust or with an

1 order of a court of competent jurisdiction directing the trustee to transfer to the
2 commissioner with regulatory oversight all of the assets of the trust fund.

3 “(2) The assets shall be distributed by and claims shall be filed with
4 and valued by the Commissioner with regulatory oversight in accordance with the laws of
5 the state in which the trust is domiciled that are applicable to the liquidation of domestic
6 insurance companies.

7 “(3) If the Commissioner with regulatory oversight determines that the
8 assets of the trust fund or any part thereof are not necessary to satisfy the claims of the
9 U.S. ceding insurers of the grantor of the trust, the assets or part thereof shall be returned
10 by the Commissioner with regulatory oversight to the trustee for distribution in
11 accordance with the trust agreement.

12 “(4) The grantor shall waive any right otherwise available to it under
13 U.S. law that is inconsistent with this provision.

14 “(j) If an accredited or certified reinsurer ceases to meet the
15 requirements for accreditation or certification, the Commissioner may suspend or
16 revoke the reinsurer’s accreditation or certification.

17 “(1) The Commissioner must give the reinsurer notice and
18 opportunity for hearing. The suspension or revocation may not take effect until after
19 the Commissioner’s order on hearing, unless:

20 “(A) The reinsurer waives its right to hearing;

1 “(B) The Commissioner’s order is based on regulatory
2 action by the reinsurer’s domiciliary jurisdiction or the voluntary surrender or
3 termination of the reinsurer’s eligibility to transact insurance or reinsurance business in
4 its domiciliary jurisdiction or in the primary certifying state of the reinsurer under
5 paragraph (6) of subsection (e); or

6 “(C) The Commissioner finds that an emergency requires
7 immediate action and a court of competent jurisdiction has not stayed the
8 Commissioner’s action.

9 “(D) While a reinsurer’s accreditation or certification is suspended, no
10 reinsurance contract issued or renewed after the effective date of the suspension qualifies
11 for credit except to the extent that the reinsurer’s obligations under the contract are
12 secured in accordance with section 3 (D.C. Official Code § 31-502). If a
13 reinsurer’s accreditation or certification is revoked, no credit for reinsurance may be
14 granted after the effective date of the revocation except to the extent that the reinsurer’s
15 obligations under the contract are secured in accordance with paragraph (5) of
16 subsection (f) or § 31-502.

17 “(k)(1) A ceding insurer shall take steps to manage its reinsurance
18 recoverables proportionate to its own book of business. A domestic ceding insurer shall
19 notify the Commissioner within thirty (30) days after reinsurance recoverables
20 from any single assuming insurer, or group of affiliated assuming insurers, exceeds
21 fifty percent (50%) of the domestic ceding insurer’s last reported surplus to
22 policyholders, or after it is determined that reinsurance recoverables from any single

1 assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit.
2 The notification shall demonstrate that the exposure is safely managed by the domestic
3 ceding insurer.

4 “(2) A ceding insurer shall take steps to diversify its reinsurance
5 program. A domestic ceding insurer shall notify the Commissioner within thirty (30) days
6 after ceding to any single assuming insurer, or group of affiliated assuming insurers, more
7 than twenty percent (20%) of the ceding insurer’s gross written premium in the prior
8 calendar year, or after it has determined that the reinsurance ceded to any single
9 assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit.
10 The notification shall demonstrate that the exposure is safely managed by the domestic
11 ceding insurer.”

12 (b) Paragraph (2) of section 3 (D.C. Official Code § 31-502(2)) is
13 amended to read as follows:

14 “(2) Securities listed by the Securities Valuation Office of the National
15 Association of Insurance Commissioners, including those deemed exempt from filing as
16 defined by the Purposes and Procedures Manual of the Securities Valuation Office, and
17 qualifying as admitted assets.”.

18 **Title III. Miscellaneous.**

19 Sec. 301. Fiscal impact statement.

20 The Council adopts the fiscal impact statement in the committee report as the
21 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home
22 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 2-
23 206.02(c)(3)).

1 Sec. 302. Effective date.

2 This act shall take effect following approval by the Mayor (or in the event of veto
3 by the Mayor, action by the Council to override the veto), and a 30-day period of
4 Congressional review as provided in section 602(c)(1) of the District of Columbia Home
5 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-206.02(c)(1)), and
6 publication in the District of Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



Legal Counsel Division

MEMORANDUM

TO: Adam H. Levi
Assistant Attorney General
Department of Insurance, Securities and Banking

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: October 4, 2013

SUBJECT: Legal Sufficiency Review of Draft Bill, the "Insurance Holding Company and Credit for Reinsurance Modernization Amendment Act of 2013"
(AE-13-744)

This is to Certify that this Office has reviewed the above-referenced Draft Bill and found it to be legally unobjectionable. If you have any questions in this regard, please do not hesitate to call me at 724-5524.


Janet M. Robins