Implementation Guide

Final Rule 31 CFR Part 223

Version 1.0

Effective August 9, 2024

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Surety Bond Branch

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Purpose:

The U.S. Department of the Treasury, Bureau of the Fiscal Service, published new regulations for the Surety Bond Program on June 10, 2024. The Final Rule can be found in the Federal Register at https://www.federalregister.gov/documents/2024/06/10/2024-12491/surety-companies-doing-business-with-the-united-states. Please note that although the new regulations are now published, their effective date is August 9, 2024. The purpose of this memorandum is to provide additional notice to companies participating in Treasury's Surety Bond Program of certain regulation changes that will impact their participation. The changes to the regulations highlighted by this memorandum can be broadly grouped into three categories: 1) codification of longstanding practices, 2) new publication dates, and 3) the addition of two new classes of Treasury authorized reinsurers. This memorandum is not meant to be a comprehensive list of changes, but rather as guidance to companies regarding how Treasury's Surety Bond Branch intends to implement certain items in light of the changes to the program's regulations. Should you have further questions, please contact the Surety Bond Branch via email at surety.bonds@fiscal.treasury.gov or via phone at 304-480-6635.

Background:

See the Final Rule published at https://www.federalregister.gov/documents/2024/06/10/2024-12491/surety-companies-doing-business-with-the-united-states for additional background information.

Regulation Changes:

31 CFR Part 223 – Surety Companies Doing Business With The United States can be read in its entirety at https://www.ecfr.gov/current/title-31/subtitle-B/chapter-II/subchapter-A/part-223. Until the Final Rule becomes effective, please refer to the amendment published at 89 FR 48831.

Codification of Longstanding Practices

In an effort to provide greater detail regarding the application process and the financial analysis performed by Treasury, certain requirements have been codified in regulation language that was previously published in annual guidance or on the program's website. This also led to the regulations being reorganized and modernized in structure. For example, the baseline eligibility requirements for obtaining a certificate of authority are now all contained in section 223.1, rather than being scattered across multiple sections. Companies should be mindful of the reorganization when referring to form instructions and annual guidance.

New Publication Dates

The Final Rule updates the term of certificates of authority and recognition as a reinsurer in CFR sections 223.3 and 223.12, respectively. Accordingly, Treasury's listing of certificate-holding companies, previously published annually on July 1, will now be published annually on August 1. Because the Final Rule does not go into effect until August 9, 2024, the 2024 Circular 570 publication will not be impacted and was published on July 1, 2024. Companies continuing to meet program requirements and currently holding a certificate of authority set to expire on June 30, 2025, will have the certificate extended through July 31, 2025.

Treasury's listing of reinsuring companies, previously published annually on October 1, will now be published annually on November 1. Companies continuing to meet program requirements and currently listed as an admitted reinsurer with status set to expire on September 30, 2024, will have their status extended through October 31, 2024.

The new publication dates are expected to impact certificate-holding companies completing their quarterly Schedule of Excess Risks. Historically, the publication dates coincided with the quarterly reporting periods for a calendar year. Because the new publication dates do not coincide with the quarter, companies will need to utilize multiple publications in completing the Schedule of Excess Risks for certain quarters. See FAQ #8 for additional details if your company has excess risks.

Please note that these new publication dates do not impact when companies are required to submit renewal documentation and fees.

New Classes of Reinsurers

31 CFR § 223.12 “Recognition as reinsurer” now includes two new classes of reinsurers – Complementary and Alien. In short, these categories allow for certain foreign-domiciled companies to apply for Treasury recognition. If approved, these companies will be able to reinsure risks not running to the U.S. government, and Treasury certified surety companies will be eligible to receive credit for reinsurance ceded to these companies. See section II.A. of the preamble to the Final Rule, as well as CFR section 233.12(i) and CFR 223.12(j) for details on how Treasury’s new classes of reinsurers align with state and/or NAIC’s accredited reinsurers, certified reinsurers, and reciprocal jurisdiction reinsurers.

Previously, these reinsurers were viewed as unauthorized by Treasury. Please note that state and/or NAIC recognition does not equate to Treasury recognition for these classes of reinsurers. These companies must apply to and be approved by Treasury to be recognized as authorized by Treasury. Treasury will accept applications for the new classes of reinsurers beginning August 9, 2024, and intends to publish the first listings of reinsurers accepted to the program on November 1, 2024. If a company’s application is approved subsequent to November 1, Treasury has a process for timely updating the listing throughout the year for approved companies. Once admitted, companies may reapply annually to maintain their status by submitting renewal documentation and fees. Subsequent lists will be published annually on November 1. Application requirements will be published on or before August 9, 2024, and will be located on the Surety Bond Branch website.

For certificate-holding companies and admitted reinsurers, Treasury expects the greatest impact of the new classes of reinsurers to be within the Schedule of Excess Risk and the Treasury Schedule F. Because Treasury intends to publish its first listings of the new reinsurers on November 1, 2024, certificate-holding companies and admitted reinsurers may not recognize these reinsurers as authorized reinsurance until Q4 2024 reporting.

Frequently Asked Questions:

1Q. **As a certificate-holding company, can I take credit on the Treasury Schedule F and Schedule of Excess Risks for complementary and alien reinsurers immediately?**

1A. *No. Treasury must review and approve applications for complementary and alien reinsurers before publishing a listing of acceptable reinsurers and doing so will take time. Applications can be submitted anytime during the year; however, companies may notice delays in processing or Treasury may not process applications during its annual rating season from March 1 through July 31. The first listings containing complementary and alien reinsurers will be available on November 1, 2024. As such, credit may be taken for approved companies when completing the Treasury Schedule F as of December 31, 2024.*

2Q. **How long will it take to process an application for a complementary or alien reinsurer?**

2A. *The time to process an application can vary depending on the nature of the entity, completeness of the application, and accuracy of the application. As such, Treasury will work to process all applications as timely as possible. Please note that applications can be submitted anytime during the year, however companies may notice delays in processing or Treasury may not process applications during its annual rating season from March 1 through July 31.*

3Q. **How do I apply to be a complementary or alien reinsurer?**

3A. *Application requirements will be published on or before August 9, 2024, and will be located on the Surety Bond Branch website. Please submit applications to the Surety Bond Branch via email at surety.bonds@fiscal.treasury.gov.*

4Q. **How much is the application fee and renewal fee for a complementary or alien reinsurer?**

4A. *Application fees will be disclosed on Treasury's Surety Bond Branch website and Treasury's annual letter for each class of company or before August 9, 2024. Fees will also be published in the Federal Register.*

5Q. **As a certificate-holding company or admitted reinsurer, my certificate/listing is set to expire on June 30, 2025, and September 30, 2024, respectively, but new listings will not be published until August 1, 2025, and November 1, 2024, respectively. Will I still be certified/authorized during the gap period?**

5A. *Yes, the Surety Bond Branch will notify each existing certificate-holding company or admitted reinsurer via email from surety.bonds@fiscal.treasury.gov that certificates/listings have been extended as disclosed in the above guidance.*

6Q. **What are the differences between the two new classes of reinsurers (complementary vs. alien)?**

6A. *A major distinguishing feature between complementary reinsurers and alien reinsurers is complementary reinsurers are domiciled in a jurisdiction subject to an in-force Covered*

Agreement entered into with the United States (e.g., the United Kingdom or European Union) while alien reinsurers are domiciled in non-U.S. jurisdictions recognized by a U.S state as Qualified or Reciprocal Jurisdictions (not party to an in-force Covered Agreement).

Another major distinguishing factor between complementary reinsurers and alien reinsurers is the extent of credit that will be given by Treasury for reinsurance ceded to the new classes of reinsurance. Complementary reinsurers may benefit from the elimination of collateral requirements (if specific conditions are met) on reinsurance agreements with ceding U.S. insurers as outlined in the Covered Agreement. Alien reinsurers may benefit from reductions in collateral requirements (if specific conditions are met) on reinsurance agreements with ceding U.S. insurers as determined by Treasury to the extent allowed by the ceding company's state of domicile.

Complementary Reinsurer:

- *i.* *From a jurisdiction subject to an in-force Covered Agreement with the United States, and meets all requirements under the applicable Covered Agreement*
- *ii.* *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 Law and Regulation.*
- *iii.* *Eligible to receive <u>full elimination</u> of collateral requirement on reinsurance agreements with U.S. insurers.*

Alien Reinsurer:

- *i.* *From a jurisdiction recognized by a U.S. state as a Qualified Jurisdiction or as a Reciprocal Jurisdiction (provided that the Reciprocal Jurisdiction is not subject to an in-force Covered Agreement)*
- *ii.* *Recognized by at least one U.S. state as an Accredited Reinsurer, Certified Reinsurer, or 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 meets all requirements in accordance with the state granting recognition.*
- *iii.* *Eligible to receive reduction of collateral requirement on reinsurance agreements with U.S. insurers, to the extent allowed by the ceding company's state of domicile.*

7Q. **My company could be considered both a Complementary and/or Alien Reinsurer or recently changed its status. How do I know which Treasury classification applies to the company?**

7A. *Companies apply for the desired classification by submitting an application to the Surety Bond Branch. Application information will be published on our website on or before August 9, 2024. Please note that a company may be recognized as both a complementary and alien reinsurer provided the company meets both requirements under different periods. For example, a company may have been recognized as a certified reinsurer by the NAIC from 2016 – 2019. In 2020 the company became subject to a Covered Agreement and was approved as reciprocal jurisdiction reinsurer by a U.S.*

state. In this scenario, a company may be recognized as an alien reinsurer to receive a partial collateral reduction for reinsurance agreements entered into from 2016 – 2019. The company may also be recognized as a complementary reinsurer to receive full elimination of collateral requirements for 2020 to present. In this instance the company would pay fees associated with both complementary and alien reinsurer to be recognized by Treasury under both classifications. Because the application requirements for each type of reinsurer differs, Treasury processes two separate applications and maintains two separate listings of reinsurers. As a result, Treasury assesses two separate fees in an effort to recoup the cost of processing applications and maintaining listings.

8Q. **How do I complete the Schedule of Excess Risks for Q3 and Q4 now that the quarterly reporting requirement and Treasury publication dates do not align?**

8A. *Starting in Q4 2024, Treasury's publication of certified sureties and reinsurers will not coincide with the beginning of a calendar quarter. However, certified sureties are still required to submit a Schedule of Excess Risks on a quarterly basis based on a calendar year. For example, a Treasury certified surety completes its Q3 Schedule of Excess Risks for July – September. Treasury publishes its Circular 570 on August 1 disclosing the new underwriting limits in effect for companies participating in the program. On the Q3 Schedule of Excess Risks, the company will assess excess risks for July using the previously published underwriting limitations. The company will use the newly published underwriting limitation to assess excess risks for August – September.*

9Q. **Is there a difference between the NAIC's Alien Insurers and Treasury's Alien Reinsurers?**

9A. *Yes. Alien Insurers recognized by the NAIC are typically offshore companies not licensed in the U.S. who cede or assume reinsurance with a U.S. domestic insurance company. The NAIC's Alien Insurers are assigned an Alien ID (AA-) unique identifier to be used for Schedule F reporting.*

Treasury's Alien Reinsurers are analogous to an Accredited Reinsurer, Certified Reinsurer (CR-), or Reciprocal Jurisdiction Reinsurer (RJ-) as defined by state law based on the NAIC model and meets all requirements in accordance with the state granting recognition. If approved by Treasury, Alien Reinsurers may be eligible to receive reduction of collateral requirement on reinsurance agreements with U.S. insurers, to the extent allowed by the ceding company's state of domicile.