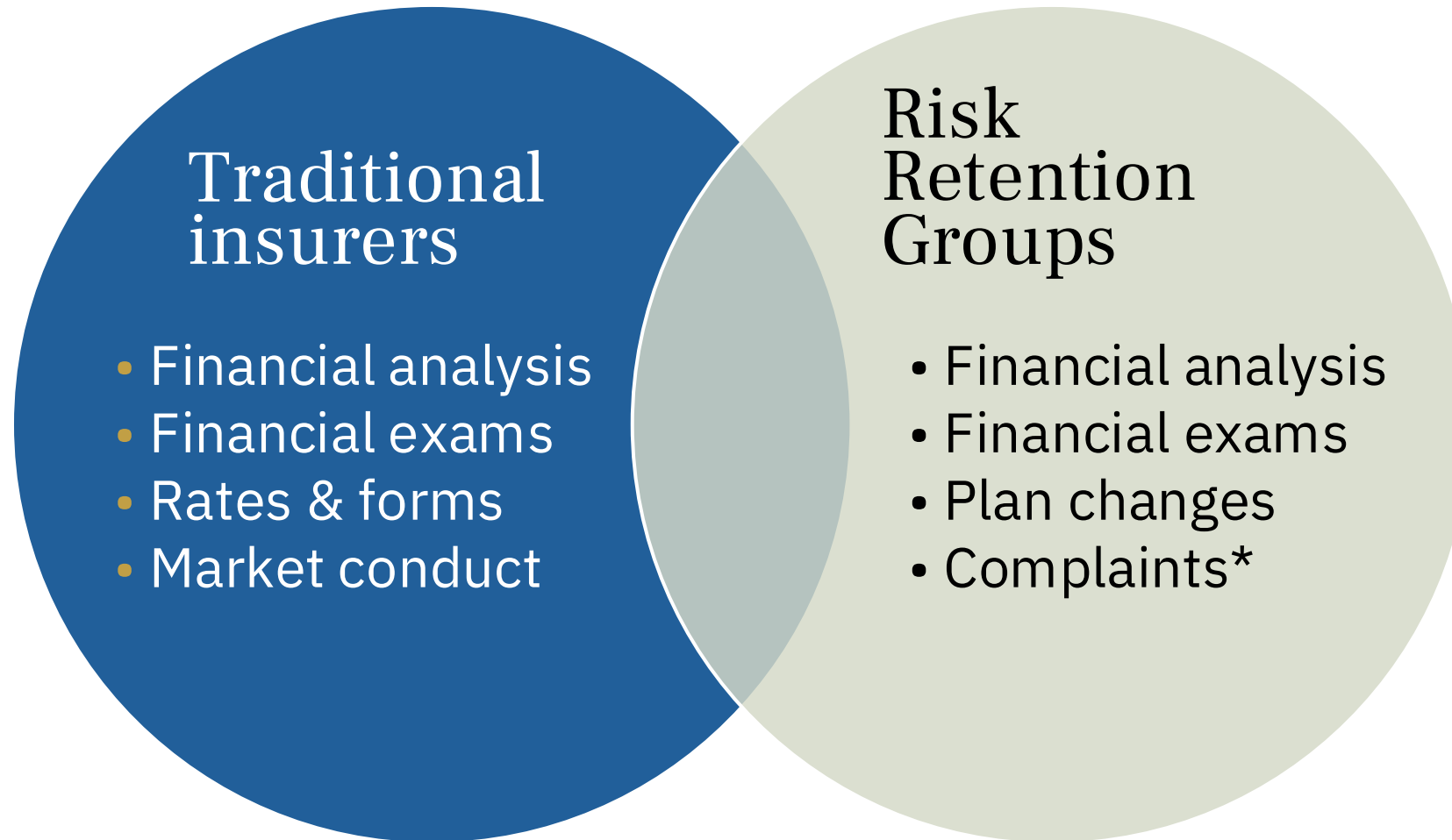


The Role of State Regulation*



**very low volume of complaints due to ownership and insureds being one and the same*

NAIC Financial Regulation Standards & Accreditation Program *

States that charter Risk Retention Groups are subject to financial regulation standards that are essentially the same, with some modifications and adaptations (“accreditation interlineations”) to meet the unique needs and conditions of the RRG marketplace and to comport with the Liability Risk Retention Act.

* Credits: Excerpts from Continuing Legal Education (CLE) presentation at 12-7-25 NAIC Fall meeting, Hollywood, Florida. Presenters: Christine Brown, VT DFR, Sandy Bigglestone, Strategic Risk Solutions (formerly VT DFR); Gerald Yoshida, Esq., Goodwill Anderson Quinn & Stifel LLP (NRRA); and Joseph Deems, National Risk Retention Association (NRRA)

Part A Laws & Regulations Comparison *

Traditional Regulation	Risk Retention Group Regulation
Examination Authority	Identical
Capital and Surplus Requirement	Identical w/ accreditation interlineations for RBC action levels.
Accounting Practices and Procedures	NAIC Annual Statement Blank; follow accounting procedures and practices prescribed by NAIC Accounting Practices and Procedures Manual or another basis of accounting as permitted or prescribed by state law or regulation.
Corrective Action	Identical
Valuation of Investments	If a basis of accounting other than NAIC SAP is used, the state must have authority to determine the valuation of securities.
Insurance Holding Company Systems	Identical

Part A Laws & Regulations Comparison *

Traditional Regulation	Risk Retention Group Regulation
Reinsurance Ceded	<p>State law should contain the NAIC Credit for Reinsurance Model Law, the NAIC’s Credit for Reinsurance Model Regulation or substantially similar laws.</p> <p>(Specific additional regulations have been developed for RRGs when obtaining reinsurance from affiliates or other reinsurers that may not meet the traditional guidelines)</p>
CPA Audits	Identical
Actuarial Opinion	Identical
Receivership	Identical

Part A Laws & Regulations Comparison *

Traditional Regulations	Risk Retention Group Regulations
Guaranty Funds	RRGs are prohibited from participating in guaranty funds by the LRRRA.
Filings with NAIC	Identical
Producer Controlled Insurers	Identical
Managing General Agents Act	Identical
Reinsurance Intermediaries Act	Identical
Regulatory Authority	Not Included since RRGs don't follow UCAA process. (RRG state statutes and regulations incorporate a framework for organization, licensing and change of control of domestic RRGs, including the registration requirements in accordance with the federal LRRRA)

Part A Laws & Regulations Comparison *

Traditional Regulations	Risk Retention Group Regulations
Risk Management and Own Risk and Solvency Assessment	Identical
Corporate Governance	State statute or regulation should contain a requirement for prescriptive governance standards of domestic RRGs that is substantially similar to the NAIC Model Risk Retention Act.

Following the passage of the *LRRA*

- Healthcare is the largest sector but not dominant at about 30+% of all RRGs, nationally.
- RRGs serving the Government & Institutions sector have done particularly well long-term—United Educators RRG, Housing Authority RRG, States RRG and National Catholic RRG are Vermont-domiciled RRGs active since the 1980s.
- Transportation is growing (circa 17%)
- Good diversity of formations with most business sectors currently active represented.

Permissible Non-Chartering State Regulation *

An RRG is exempt from any non-domiciliary state law, rule or regulation that would discriminate against an RRG or any of its members, or that would regulate the operation of an RRG or make the operation of an RRG unlawful except that any state can require an RRG to:

- Comply with unfair claim settlement practices
- Pay applicable premium or surplus lines taxes
- Participate in shared risk and residual market mechanisms
- Designate the insurance commissioner as agent for service of process
- Submit to a financial examination *if* the chartering state has not initiated such an examination
- Comply with state deceptive, false, or fraudulent trade practice laws
- Comply with lawful orders for delinquency or dissolution proceedings
- Comply with a court-ordered injunction for hazardous financial condition
- Include a notice in insurance policies, in 10-point type, stating the RRG is not subject to all state laws and regulations, and that the insolvency guaranty fund is not available for the RRG.

Permissible Non-chartering State Regulation (continued) *

- In each state in which the RRG intends to do business, the RRG must submit a copy of the same feasibility study or plan of operation as filed with the domicile or chartering state
- In each state in which an RRG is conducting business, it must submit a copy of the same annual financial statement as filed with the domicile or chartering state
- The LRRRA does not permit an RRG to write coverage that is prohibited by any state statute or by the highest court in a state
- The LRRRA does not exempt an RRG from the policy form or coverage requirements of any state motor vehicle no-fault or motor vehicle financial responsibility law
- Subject to the LRRRA's provisions prohibiting RRG discrimination, the LRRRA does not preempt state financial responsibility laws or regulations that establish conditions for obtaining a license or permit or to conduct certain activities in the state

NRRA's Focus:

- Educating our RRG members, the industry, state insurance regulators and legislators about the federal law
- Advocating to protect the rights of RRGs and RPGs at the NAIC, federal and state levels
- Supporting litigation and cases in defense of RRGs and RPGs under the federal law

KEY CASES INVOLVING REGULATION OF RRGs

SOME REGULATOR CASES DISTINGUISHED

Non-domiciliary states cannot decide that the policy of an RRG does not qualify as “liability” insurance

- In every case we have seen where a non-domiciliary state decides that some RRG’s policy does not qualify as “liability” insurance, each of those states have/had approved the identical coverages as “liability” insurance for other carriers to write in those states - - i.e., discrimination (§ 3902 [a][4].)

**STATE STATUTORY LAWS DISTINGUISHED
ATTEMPTS TO REGULATE
THE BUSINESS OR OPERATIONS OF RRGs
(§3902[a][1])**

State courts cannot apply a state law that directly or indirectly regulates an RRG's coverage, policy language, decisions, claims handling, or legal exposure, unless the LRRRA expressly allows it.

Allied Professionals Ins. Co. RRG vs. Wadsworth (2014) (2nd Circuit CofA)

Reis v. OOIDA Risk Retention Group (2018)(Georgia Supreme Court)

State courts cannot apply a state law that directly or indirectly regulates an RRG's coverage, policy language, decisions, claims handling, or legal exposure, unless the LRRRA expressly allows it. (continued)

Speece vs. Allied Professionals Insurance Co. (2015) (Nebraska Supreme Court)

Allied Professionals Ins. Co. vs. Anglesey (2020) (9th Circuit CofA)

Attorneys Liab. Prot. Soc'y, Inc. v. Ingaldson Fitzgerald, (2016) (9th Circuit CofA) (ALPS)

- State statute's prohibition on reimbursements of fees and costs incurred by an insurer after successfully defending a non-covered claim was preempted by the LRRRA ... because the statute placed a restriction on Alaska insurance contracts and therefore the statute could not be applied to an RRG. (ALPS)