MAY 24, 2018

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

Dear Chairman Mendelson:

Today, I am transmitting the “Risk Management and Own Risk Solvency Assessment Act of 2018” (“Bill”). The purpose of the Bill is to provide the requirements for maintaining a risk management framework and completing an Own Risk and Solvency Assessment (ORSA), and to provide guidance and instructions for filing an ORSA Summary Report with the Commissioner of the Department of Insurance, Securities, and Banking.

An ORSA is an internal process undertaken by an insurer or insurance group to assess the adequacy of its risk management and current and prospective solvency positions under normal and severe stress scenarios. An ORSA requires insurers to analyze all reasonably foreseeable and relevant material risks, including risk related to underwriting, credit, market, operations, and liquidity, which could have an impact on the insurer’s ability to meet its policyholder obligations. Enactment of this ORSA bill is a National Association of Insurance Commissioners (NAIC) accreditation requirement for the Department of Insurance, Securities, and Banking.

ORSA provides a single, comprehensive summary of an insurer’s overall enterprise risk management process for regulators. The ORSA report will provide valuable information to the Department, allowing for the assessment of a spectrum of insurer practices related to managing risk and the ability to determine where individual insurers fall on that spectrum.

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

Sincerely,

[Signature]
Muriel Bowser
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 on ________________.

To provide the requirements for maintaining a risk management framework and completing an Own Risk and Solvency Assessment (ORSA); and to provide guidance and instructions for filing an ORSA Summary Report with the Commissioner of the Department of Insurance, Securities and Banking.

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

That this act may be cited as "The Risk Management and Own Risk and Solvency Assessment Act of 2018".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Commissioner" means the Commissioner of the Department of Insurance, Securities and Banking.

(2) "Department" means the Department of Insurance, Securities and Banking.

(3) "Insurance group" means those insurers and affiliates included within an insurance holding company system as defined in section 2(4) of the Holding Company

(4) “Insurer” means the same as provided in section 2(3) of the Annual Audited Financial Reports Act of 1993, effective October 21, 1993 (D.C. Law 10-48; D.C. Official Code § 31-301(3)), except that it shall not include, agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(5) “Own Risk and Solvency Assessment” or “ORSA” means a confidential internal assessment appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group, of the material and relevant risks associated with the insurer or insurance group’s current business plan and the sufficiency of capital resources to support those risks.

(6) “ORSA Guidance Manual” means the current version of the Own Risk and Solvency Assessment Guidance Manual developed and adopted by the National Association of Insurance Commissioners (“NAIC”), as amended from time to time. A change in the ORSA Guidance Manual shall be effective on the January 1 following the calendar year in which the changes are adopted by NAIC.

(7) “ORSA Summary Report” means a confidential high-level summary of an insurer or insurance group’s ORSA.

Sec. 3. Risk management framework.

An insurer shall maintain a risk management framework, as described in the ORSA Guidance Manual, to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks. This requirement may be
satisfied if the insurance group of which the insurer is a member maintains a risk
management framework applicable to the operations of the insurer.

Sec. 4. ORSA requirement.

Subject to section 6, an insurer, or the insurance group of which the insurer is a
member, shall regularly conduct an ORSA using a process comparable to the applicable
process contained in the ORSA Guidance Manual. The ORSA shall be conducted no less
than annually but also at any time when there are significant changes to the risk profile of
the insurer or the insurance group of which the insurer is a member.

Sec. 5. ORSA Summary Report.

(a) Upon the Commissioner’s request, and no more than once each year, an
insurer shall submit to the Commissioner an ORSA Summary Report or any combination
of reports applicable to the insurer or the insurance group of which it is a member that
together contain the information described in the ORSA Guidance Manual.

Notwithstanding any request from the Commissioner, if the insurer is a member of an
insurance group, the insurer shall submit the reports required by this subsection if the
Commissioner is the lead state commissioner of the insurance group as determined by the
procedures within the Financial Analysis Handbook adopted by the NAIC.

(b) The report shall be signed by the insurer or insurance group’s chief risk officer
or other executive having responsibility for the oversight of the insurer’s enterprise risk
management process. This executive shall attest that, to the best of his or her belief and
knowledge, the insurer applies the enterprise risk management process described in the
ORSA Summary Report and that a copy of the report has been provided to the insurer’s
board of directors or the appropriate committee of the board.
(c) An insurer may comply with subsection (a) of this section by providing the
most recent and substantially similar report provided by the insurer or another member of
an insurance group of which the insurer is a member to the commissioner of another state
or to a supervisor or regulator of a foreign jurisdiction, if that report provides information
that is comparable to the information described in the ORSA Guidance Manual. Any such
report in a language other than English must be accompanied by a translation of the
report into the English language.

Sec. 6. Exemptions.

(a) An insurer shall be exempt from the requirements of this act, if:

(1) The insurer has annual direct written and unaffiliated assumed
premiums, including international direct and assumed premiums but excluding premiums
reinsured with the Federal Crop Insurance Corporation and Federal Flood Program, of
less than $500,000,000; and

(2) The insurance group of which the insurer is a member has annual
direct written and unaffiliated assumed premiums, including international direct and
assumed premiums, but excluding premiums reinsured with the Federal Crop Insurance
Corporation and Federal Flood Program, of less than $1,000,000,000.

(b) If an insurer qualifies for exemption pursuant to paragraph (1) of subsection
(a) of this section, but the insurance group of which the insurer is a member does not
qualify for exemption pursuant to paragraph (2) of subsection (a) of this section, then the
ORSA Summary Report that may be required pursuant to section 5 shall include every
insurer within the insurance group. This requirement may be satisfied by the submission
of more than one ORSA Summary Report for any combination of insurers provided any
combination of reports includes every insurer within the insurance group.

(c) If an insurer does not qualify for exemption pursuant to paragraph (1) of
subsection (a) of this section, but the insurance group of which it is a member qualifies
for exemption pursuant to paragraph (2) of subsection (a) of this section, then the only
ORSA Summary Report that may be required pursuant to Section 5 shall be the report
applicable to that insurer.

(d) An insurer that does not qualify for exemption pursuant to subsection (a) may
apply to the Commissioner for a waiver from the requirements of this act based upon
unique circumstances. In deciding whether to grant the insurer’s request for waiver, the
Commissioner may consider the type and volume of business written, ownership and
organizational structure, and any other factor the Commissioner considers relevant to the
insurer or insurance group of which the insurer is a member. If the insurer is part of an
insurance group with insurers domiciled in more than one state, the Commissioner shall
coordinate with the lead state commissioner and with other domiciliary commissioners of
the other states in considering whether to grant the insurer’s request for a waiver.

(e) Notwithstanding the exemptions stated in this section,

(1) The Commissioner may require an insurer to maintain a risk
management framework, conduct an ORSA, and file an ORSA Summary Report based
on unique circumstances, including the type and volume of business written, ownership
and organizational structure, federal agency requests, and international supervisor
requests.
(2) The Commissioner may require an insurer to maintain a risk management framework, conduct an ORSA, and file an ORSA Summary Report if the insurer has Risk-Based Capital for a company action level event as set forth in section 4 of the Risk-Based Capital Act of 1996, effective April 9, 1997 (D.C. Law 11-233; D.C. Official Code § 31-2003), meets one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in section 2 of the Standards to Identify Insurance Companies Deemed to Be in Hazardous Financial Condition Act of 1993, effective October 21, 1993 (D.C. Law 10-43; D.C. Official Code § 31-2101), or otherwise exhibits qualities of a troubled insurer as determined by the Commissioner.

(f) If an insurer that qualifies for an exemption pursuant to subsection (a) of this section no longer qualifies for that exemption due to changes in premiums as reflected in the insurer's most recent annual statement or in the most recent annual statements of the insurers within the insurance group of which the insurer is a member, the insurer shall have one year following the year the threshold is exceeded to comply with the requirements of this act.

Sec. 7. Contents of ORSA Summary Report.

(a) The ORSA Summary Report shall be prepared consistent with the ORSA Guidance Manual, subject to the requirements of subsection (b) of this section.

Documentation and supporting information shall be maintained for a period to be determined by the Commissioner and made available upon examination or upon request of the Commissioner.

(b) The review of the ORSA Summary Report, and any additional requests for information, shall be made using procedures consistent with the Holding Company

Sec. 8. Confidentiality.

(a) Documents, materials, or other information, including the ORSA Summary Report, in the possession or control of the Department that are obtained by, created by or disclosed to the Commissioner or any other person under this act, are recognized by the District of Columbia as being proprietary and to contain trade secrets. All such documents, materials, or other information shall be confidential by law and privileged, shall not be subject to the Freedom of Information Act of 1976, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 et seq.), shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the Commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties. The Commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer.

(b) Neither the Commissioner nor any person who received documents, materials, or other ORSA-related information, through examination or otherwise, while acting under the authority of the Commissioner or with whom such documents, materials, or other information are shared pursuant to this act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or other information subject to subsection (a) of this section.
(c) To assist in the performance of the Commissioner's regulatory duties, the Commissioner:

(1) May, upon request, share documents, materials, or other ORSA-related information, including confidential and privileged documents, materials or information created or obtained under this act and subject to subsection (a) of this section, with other state, federal, and international financial regulatory agencies, including members of any supervisory college as defined in section 8(a) of the Holding Company System Act of 1993, effective March 11, 2015 (D.C. Law 20-235; D.C. Official Code § 31-707), with the NAIC, and with any third-party consultants designated by the Commissioner; provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and has verified in writing the that the recipient has the legal authority to maintain confidentiality under all applicable laws and regulations;

(2) May receive documents, materials, or other ORSA-related information, including otherwise confidential and privileged documents, materials or information, from regulatory officials of other foreign or domestic jurisdictions, including members of any supervisory college as defined in the Holding Company System Act of 1993, effective October 21, 1993 (D.C. Law 10-44; D.C. Official Code § 31-701 et seq.), and from the NAIC, and shall maintain as confidential or privileged any documents, materials, or information received with notice that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information;
(3) Shall enter into a written agreement with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to this act, consistent with this subsection, which shall;

(i) Specify procedures and protocols to be used to protect confidentiality and security of information shared with the NAIC or a third-party consultant pursuant to this act, including procedures and protocols for sharing by the NAIC with other state regulators from states in which an insurance group has domiciled insurers. The agreement shall require the recipient to maintain the confidentiality and privileged status of the ORSA-related documents, materials, or other information and to verify in writing that the recipient has the legal authority to maintain confidentiality under all applicable laws and regulations;

(ii) Specify that the Commissioner retains ownership of information shared with the NAIC or a third-party consultant pursuant to this act and that the NAIC’s or a third-party consultant’s use of the information is subject to the direction of the Commissioner;

(iii) Prohibit the NAIC or a third-party consultant from storing the information shared pursuant to this act in a permanent database after the underlying analysis is completed;

(iv) Require prompt notice to be given by the Department to an insurer whose confidential information is in the possession of the NAIC or third-party consultant pursuant to this act and is subject to a request or subpoena for disclosure or production;
(v) Require the NAIC or a third-party consultant to consent to
intervention by an insurer in any judicial or administrative action in which the NAIC or a
third-party consultant may be required to disclose confidential information about the
insurer shared with the NAIC or a third-party consultant pursuant to this act; and
(vi) In the case of an agreement involving a third-party consultant,
provide for the insurer's written consent.
(d) The sharing of documents, materials, and other information by the
Commissioner to another regulatory authority pursuant to this act shall not constitute a
delegation of regulatory authority. The Commissioner is solely responsible for the
administration and execution of this act.
(e) No waiver of any applicable privilege or claim of confidentiality in the
documents, proprietary, or trade-secret materials, or other ORSA-related information
shall occur as a result of disclosure of such ORSA-related information or documents to
the Commissioner under this section or as a result of sharing authorized in this act. The
documents, material, and other information shall retain the confidential status specified in
subsection (a) of this section notwithstanding their lawful disclosure to the
Commissioner, the NAIC, or a third-party consultant.

Sec. 9. Sanctions.

Any insurer failing, without just cause as defined by the Commissioner by rule, to
timely file an ORSA Summary Report required by this act shall, after notice and hearing
conducted according to the rules for contested cases set forth in Chapter 38 of Title 26 of
the District of Columbia Municipal Regulations, pay a penalty in an amount not to
exceed $1,000 per day. The maximum penalty assessed under this section shall be
$25,000. The Commissioner shall recover this penalty.

Sec. 10. Rulemaking.
The Commissioner may promulgate rules necessary to implement the provisions
of this act.

Sec. 11. Fiscal impact statement.
The Council adopts the fiscal impact statement of the Chief Financial Officer as
the fiscal impact statement required by section 4a of the General Legislative Procedures
Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-
301.47a).

Sec. 12. Effective date.
This Act shall take effect following approval by the Mayor (or in the event of veto
by the Mayor, action by the Council to override the veto), and a 30-day period of
Congressional review as provided in section 602(c)(1) of the District of Columbia Home
Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-206(c)(1)), and
publication in the District of Columbia Register.
MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer

DATE: January 29, 2018

SUBJECT: Fiscal Impact Statement – Risk Management and Own Risk and Solvency Assessment Act of 2018

REFERENCE: Draft Bill as Shared with the Office of Revenue Analysis on January 26, 2018

Conclusion

Funds are sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the bill.

Background

The bill requires certain insurance companies and insurance groups operating in the District to maintain a risk management framework and to annually submit to the Commissioner of the Department of Insurance, Securities and Banking (DISB) a summary of their Own Risk and Solvency Assessments (ORSA). The ORSA summary reports must follow the parameters in the ORSA Guidance Manual established and maintained by the National Association of Insurance Commissioners (NAIC). The DISB Commissioner must keep confidential any ORSA summary reports it receives and must ensure the confidentiality of any documents it subsequently shares with other domestic or foreign regulatory bodies, NAIC, or any associated third-party contractors. The bill, which is NAIC model legislation, provides limited exemptions from the mandatory filing requirement.

Financial Plan Impact

Funds are sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the bill. The bill imposes a new reporting requirement on insurance companies and groups in the District, but companies and groups are subject to this reporting in the forty-nine states that adopted the model legislation. The District must pass this legislation to maintain accreditation with NAIC, and DISB can absorb any oversight costs within its existing budget.
MEMORANDUM

TO: Alana Intrieri  
Executive Director  
Office of Policy and Legislative Affairs

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

DATE: January 26, 2018

SUBJECT: Legal Sufficiency Certification of the “Risk Management and Own Risk and Solvency Assessment Act of 2018” (AE-17-731)

This is to Certify that this Office has reviewed the above-referenced bill and has found it to be legally sufficient. If you have any questions regarding this certification, please do not hesitate to contact me at 724-5524.

Janet M. Robins

1350 Pennsylvania Avenue, N.W., Suite 409, Washington, D.C. 20004 (202) 724-5524