



NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

NAIC 2021 | **SPRING NATIONAL MEETING VIRTUAL**

Date: 3/4/21

*Virtual Meeting
(in lieu of meeting at the 2021 Spring National Meeting)*

RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE

Friday, March 12, 2021

1:00 – 2:00 p.m. ET / 12:00 – 1:00 p.m. CT / 11:00 a.m. – 12:00 p.m. MT / 10:00 – 11:00 a.m. PT

ROLL CALL

Doug Slape, Chair	Texas	Anita G. Fox	Michigan
James J. Donelon, Vice Chair	Louisiana	Chlora Lindley-Myers	Missouri
Peni Itula Sapini Teo	American Samoa	Troy Downing	Montana
Evan G. Daniels	Arizona	Bruce R. Ramge	Nebraska
Michael Conway	Colorado	Marlene Caride	New Jersey
Andrew N. Mais	Connecticut	Russell Toal	New Mexico
David Altmaier	Florida	Mike Causey	North Carolina
Colin M. Hayashida	Hawaii	Mark. O. Rabauliman	Northern Mariana Islands
Dana Popish Severinghaus	Illinois	Glen Mulready	Oklahoma
Doug Ommen	Iowa	Jessica K. Altman	Pennsylvania
Vicki Schmidt	Kansas	Elizabeth Kelleher Dwyer	Rhode Island
Sharon P. Clark	Kentucky	Raymond G. Farmer	South Carolina
Eric A. Cioppa	Maine	Johnathan T. Pike	Utah
Gary D. Anderson	Massachusetts		

NAIC Support Staff: Jane Koenigsman

AGENDA

1. Consider Adoption of its 2020 Fall National Meeting Minutes Attachment One
—*James Kennedy (TX)*
2. Consider Adoption of the Report of the Receivership Financial Analysis (E) Working Group—*Toma Wilkerson (FL) and Donna Wilson (OK)*
3. Consider Adoption of the Report of the Receivership Law (E) Working Group Attachment Two
—*Kevin Baldwin (IL) and Laura Lyon Slaymaker (PA)*
4. Consider Adoption of a Draft *Guideline for Definition of Reciprocal State in Receivership Laws*—*James Kennedy (TX)* Attachment Three
5. Discuss the Future Review of the *Receiver’s Handbook for Insurance Company Insolvencies* and Consider Establishing a Subgroup Attachment Four
—*James Kennedy (TX)*
6. Discuss Follow-up Items from Macro Prudential Initiative (MPI) Recommendations—*James Kennedy (TX)*



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| **MEETING**
| *VIRTUAL*

7. Discuss Any Other Matters Brought Before the Task Force—*James Kennedy (TX)*
8. Adjournment

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Draft: 11/30/20

Receivership and Insolvency (E) Task Force
Virtual Meeting (in lieu of meeting at the 2020 Fall National Meeting)
November 19, 2020

The Receivership and Insolvency (E) Task Force met Nov. 19, 2020. The following Task Force members participated: Texas, Chair, represented by James Kennedy (TX); Karima M. Woods, Vice Chair, represented by Nathaniel Kevin Brown (DC); Lori K. Wing-Heier represented by David Phifer (AK); Alan McClain represented by Steve Uhrynowycz (AR); Ricardo Lara represented by Joe Holloway (CA); Michael Conway represented by Rolf Kaumann (CO); Andrew N. Mais represented by Jared Kosky (CT); David Altmaier represented by Toma Wilkerson (FL); Doug Ommen and Kim Cross (IA); Robert H. Muriel represented by Kevin Baldwin (IL); Vicki Schmidt represented by Tish Becker (KS); Sharon P. Clark represented by Jeff Gaither (KY); Gary Anderson represented by Christopher Joyce (MA); Eric A. Cioppa represented by Robert Wake (ME); Anita G. Fox represented by James Gerber (MI); Chlora Lindley-Myers represented by Shelley Forrest (MO); Mike Causey represented by Jackie Obusek (NC); Bruce R. Ramage represented by Lindsay Crawford (NE); Marlene Caride represented by Diana Sherman (NJ); Glen Mulready represented by Donna Wilson (OK); Jessica K. Altman represented by Laura Lyon Slaymaker (PA); Elizabeth Kelleher Dwyer represented by Matt Gendron (RI); Raymond G. Farmer represented by Daniel Morris (SC); and Tanji. J. Northrup represented by Jake Garn (UT).

1. Adopted its Oct. 7 Meeting Minutes

Mr. Kennedy said the Task Force met Oct. 7. During this meeting, the Task Force: 1) adopted its Summer National Meeting minutes; 2) adopted 2021 proposed charges for the Task Force and its Working Groups; and, 3) discussed comments received on key provisions of receivership and guaranty fund laws.

Mr. Baldwin made a motion, seconded by Ms. Wilkerson, to adopt the Task Force's Oct. 7 minutes (Attachment One). The motion passed unanimously.

2. Adopted the Report of the Receivership Financial Analysis (E) Working Group

Ms. Wilkerson said the Receivership Financial Analysis (E) Working Group met Nov. 2 in regulator-to-regulator session pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy on Open Meetings to discuss the status of individual receiverships and related issues. The Working Group also released a public request for feedback and best practices on overcoming challenges related to the impact of the COVID-19 pandemic on the administration of receiverships. She said the purpose is to learn from each other during this time and that any feedback should be sent by Dec. 4 to Jane Koenigsman (NAIC).

Ms. Wilkerson made a motion, seconded by Mr. Baldwin, to adopt the Working Group's report. The motion passed unanimously.

3. Adopted the Report of the Receivership Large Deductible Workers' Compensation (E) Working Group

Ms. Wilson said the Working Group met Nov. 5 and Sept. 30. The Working Group was charged to complete the work that began in 2018 to consider enhancements to states' receivership laws and practices related to the receivership of insurers with significant books of large deductible workers' compensation business. The Working Group began work on the Guideline for the Administration of Large Deductible Policies in Receivership in 2019. Substantive comments were received on the original draft, and a drafting group was formed to complete the redrafting. During several meetings, the drafting group developed an alternative to *Insurer Receivership Model Act* (#555) Section 712, Administration of Loss Reimbursement Policies. A dozen states have already adopted variations of the National Conference of Insurance Guaranty Funds (NCIGF) model language. The guideline follows similar principles as the NCIGF model, but the Working Group believes this is an improvement upon prior versions and on Model #555 Section 712. A central topic was the issue of ownership of collateral, which is addressed in the guideline. States that already have a current large deductible provision may choose not to make any changes, or they may choose to update their laws with the guideline language. For that reason, it is proposed as a guideline rather than as a revision to Model #555. It will be especially helpful for states that currently do not have a large deductible receivership provision. As the Working Group reported originally in 2018, having a large deductible provision in law is better than not having any large deductible provision, so once adopted, the Working Group strongly encourage states that do not currently have a receivership provision that addresses large deductible policies to consider the guideline. The Working Group exposed the guideline for a

30-day public comment period ending Oct. 30. No substantive comments were received, and the Working Group adopted the guideline on Nov. 5.

Ms. Wilson said that in developing the guideline, the Working Group also determined that the *Receiver's Handbook for Insurance Company Insolvencies* (Receiver's Handbook) should be updated to reference the guideline and its principles. The Working Group exposed the revisions for a 30-day public comment period, and it adopted them on Nov. 5. Due to the Receiver's Handbook revisions referring to the new guideline, the revisions would be applicable once the NAIC Plenary adopts it.

Ms. Wilson said the adoption of these two work products completes the Working Group charges, and the Working Group will disband. The Working Group has no charges for 2021.

Ms. Wilson made a motion, seconded by Ms. Slaymaker, to adopt the Working Group's report and disband the Working Group (Attachment Two). The motion passed unanimously.

4. Adopted the Model Guideline for Administration of Large Deductible Policies in Receivership

Ms. Slaymaker made a motion, seconded by Mr. Kaumann, to adopt the Guideline for Administration of Large Deductible Policies in Receivership (Attachment Three). The motion passed unanimously.

5. Adopted Updated Guidance for Large Deductible Policies in the Receiver's Handbook

Mr. Baldwin made a motion, seconded by Mr. Uhrynowycz, to adopt the Receiver's Handbook revisions subject to the NAIC's adoption of the Guideline for Administration of Large Deductible Policies in Receivership (Attachment Four). The motion passed unanimously.

6. Adopted the Report of the Receivership Law (E) Working Group

Mr. Baldwin said the NAIC Executive (EX) Committee approved a Request for NAIC Model Law Development at the Summer National Meeting that allowed the Working Group to begin discussing how to best address the issue of continuation of essential services by affiliates in receivership. The Working Group also considered changes to the *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450). The Working Group met Aug. 18 in regulator-to-regulator session pursuant to paragraph 6 (consultations with NAIC staff members related to NAIC technical guidance) of the NAIC Policy Statement on Open Meetings. It also met Oct. 29 and Aug. 25. During these meetings, the Working Group requested and reviewed recommendations from state insurance regulators and interested parties on possible revisions to Model #440 and Model #450, as well as other possible options to address the continuation of essential services issue. The Working Group agreed to draft revisions provided by the National Organization of Life and Health Guaranty Associations (NOLHGA) and the NCIGF to Section 5 of Model #440. These revisions establish that if an affiliate enters into a service agreement with an insurer, and a receiver is appointed for the insurer, the affiliate would be subject to the receivership proceedings and the authority of the receiver. There were also several suggestions to strengthen the language in Model #450 Section 19 regarding affiliated transactions. The Working Group is currently working on a first draft of the revisions that it will consider during a future meeting.

Mr. Baldwin said the Working Group was also charged to develop enhancements to the guidance for receivers regarding qualified financial contracts (QFCs). The revisions to Chapter 4 of the Receiver's Handbook are an update to the guidance that already existed for QFCs. The revisions were exposed for a 30-day public comment period. Comments were incorporated into the draft, and the Working Group adopted the revisions on Oct. 29. Mr. Baldwin said the Working Group reviewed the guidance for the use of bridge financial institutions but agreed not to make any revisions to the existing Receiver's Handbook guidance. He said these updates complete this portion of the Working Group's charges.

Mr. Baldwin made a motion, seconded by Mr. Holloway, to adopt the Working Group's report (Attachment Five). The motion passed unanimously.

7. Adopted Updated Guidance for QFCs in the Receiver's Handbook

Mr. Kaumann made a motion, seconded by Mr. Phifer, to adopt the Receiver's Handbook revisions for QFCs (Attachment Six). The motion passed unanimously.

8. Exposed a Draft Guideline for the Definition of “Reciprocal State” in Receivership Laws

Mr. Kennedy said that the Task Force discussed the definition of the term “reciprocal state” in state receivership laws on its Oct. 7 call. While some states have updated the reciprocity provisions, most states have laws based on older version of NAIC Model #555. Some of these laws are not consistent with newer NAIC models. As a result, stays and injunctions in a receivership might not be recognized in other states, which can impact receiverships that effect multiple states. The draft Guideline for the Definition of “Reciprocal State” in Receivership Laws is consistent with NAIC Financial Standards and Accreditation Program for meeting the Part A standard for a receivership law. If a state has a receivership scheme, it would be considered a reciprocal state under this definition. Although it uses the same criteria as the Accreditation Standards, it does not explicitly require a state or jurisdiction to be accredited to be reciprocal. The guideline includes a drafting note that provides an explanation of why this definition can be critical the recognition of receivership stays and injunctions.

Mr. Kennedy said the draft guideline would be exposed for a 42-day public comment period ending Dec. 31 (Attachment Seven).

9. Heard an Update on Part A: Accreditation Standards for Receivership and Guaranty Fund Laws

Mr. Kennedy said an ad hoc group was formed during the Task Force’s Oct. 7 meeting to discuss the Financial Standards and Accreditation Program Part A standards for receivership and guaranty fund laws and explore whether changes should be considered to encourage more states to update their laws. Six regulators and several interested parties volunteered. The group met Nov. 4. NAIC accreditation and legal staff explained the current standard. He said the goal of the Accreditation Program is based on outcomes, not uniformity, so the focus is on achieving the intended goal of a receivership and guaranty fund law. The group discussed the difficulty in making any changes to the standard given the differences across states’ laws. An approach that was discussed was whether to provide additional guidance in the accreditation interlineations, which are interpretive guidance for the accreditation program. Clarifying the interlineations would not change the standard for receivership and guaranty fund laws but would describe the outcome that these laws should produce. This would not require a state to change any laws, but it might encourage states to consider whether their receivership and guaranty fund laws should be updated to meet the intended outcome of laws. Mr. Kennedy said that the group will have further discussions before any recommendations are made.

10. Adopted a Report to the Financial Stability (EX) Task Force

Mr. Kennedy said the Task Force drafted a report to the Financial Stability (EX) Task Force that describes the conclusions from the evaluation of receivership and guaranty fund laws and practices in the context of the Macroprudential Initiative (MPI). The report was exposed for a 14-day public comment period ending Nov. 13. One edit from Maine was accepted and included in the draft.

Mr. Baldwin made a motion, seconded by Mr. Wake, to adopt the report (Attachment Eight). The motion passed unanimously.

11. Heard an International Resolution Update

Mr. Kennedy said the Resolution Working Group of the International Association of Insurance Supervisors (IAIS) developed a draft *Application Paper on Resolution Powers and Planning*. The IAIS adopted the draft paper at its November Annual Meeting, and it is available on the IAIS website. There will be a public stakeholder session on the draft paper Nov. 30, and the deadline for providing comments is Feb. 5, 2021. Mr. Kennedy said that the Resolution Working Group has proposed an application paper on policyholder protection schemes for its 2021 workplan.

Having no further business, the Receivership and Insolvency (E) Task Force adjourned.

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Virtual Meeting

RECEIVERSHIP LAW (E) WORKING GROUP

Thursday, March 4, 2021

2:00 – 3:00 p.m. ET / 1:00 – 12:00 p.m. CT / 12:00 – 1:00 p.m. MT / 11:00 a.m. – 12:00 p.m. PT

Summary Report

The Receivership Law (E) Working Group met Mar. 4, 2021. During this meeting, the Working Group:

1. Adopted its Feb. 4 minutes, which included the following actions:
 - a. Discussed comments received on the amendments to the *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450). The Working Group agreed to make further revisions based on the comments.
 - b. Exposed further revisions to Model #440 and Model #450 for a 14-day comment period ending Feb. 26, 2021.
 - c. Adopted its Dec. 17, 2020 minutes, which included the following action:
 - i. Exposed amendments to Model #440 and Model #450 for a 42-day comment period ending Jan. 29, 2021.
2. Discussed comments received on the second exposure of the amendments to Model #440 and Model #450 and agreed to consider drafting further amendments to Section 5A(1)(g) of Model #440 related to bond or deposit requirements.
3. The Working Group met Feb. 18 in regulator-to-regulator session pursuant to paragraph 3 (specific companies, entities or individuals) of the NAIC Policy Statement on Open Meetings.

Model Laws, Regulations, Guidelines and Other Resources *[insert date if adopted]*

Draft 11/19/20

Adopted by the Executive (EX) Committee and Plenary, [REDACTED],

Adopted by the Financial Condition (E) Committee [REDACTED],

Adopted by the Receivership and Insolvency (E) Task Force [REDACTED],

GUIDELINE FOR DEFINITION OF RECIPROCAL STATE IN RECEIVERSHIP LAWS

Drafting Note: The receivership laws of most states address the coordination of receiverships involving multiple states. Typically, these laws provide that a domiciliary receiver appointed in another state has certain rights and protections, such as the following:

- The domiciliary receiver is vested with the title to the insurer's assets in the state;
- Attachments, garnishments, or levies against the insurer or its assets are prohibited; and
- Actions against the insurer and its insureds are stayed for a specified period of time.

In many states' laws, these provisions may apply only if the domiciliary state is a "reciprocal state." Frequently, the definition of a reciprocal state is based on NAIC model laws adopted more than twenty years ago. These definitions may be inconsistent with laws in other states, and more prescriptive than the Part A standards of the NAIC Financial Regulation Standards and Accreditation Program for state receivership laws. As a result, the assets of a receivership estate might not be protected outside of the domiciliary state, and the Receiver may be forced to defend litigation in multiple forums.

The provisions described above are intended to promote judicial economy, which benefits all participants in the receivership process. This Guideline provides a statutory definition that may be used by states with a reciprocity requirement to effectuate the purposes of these provisions. Under this definition, any state meeting the applicable NAIC Part A Accreditation standards for receivership laws will be treated as a reciprocal state. The definition recognizes the diversity of existing state receivership laws, and should avoid unnecessary litigation regarding the recognition of a state as a reciprocal state.

Definition of Reciprocal State for Receivership

"Reciprocal State" means a state that has enacted a law that sets forth a scheme for the administration of an insurer in receivership by the state's insurance commissioner [or substitute the equivalent title used by the state, such as superintendent or director], or comparable insurance regulatory official.

Chronological Summary of Action (all references are to the Proceedings of the NAIC)
[insert reference if adopted]

PROPOSED NEW SUBGROUP CHARGE:

The **Receiver's Handbook (E) Subgroup** of the Receivership and Insolvency (E) Task Force will:

1. Review the Receiver's Handbook to identify areas where information is outdated, updates are required, or additional guidance is needed. Based on this review, draft recommended edits to the Receiver's Handbook.
2. Complete by the 2022 Fall National Meeting.

Staff Support: Sherry Flippo and Jane Koenigsman