

Date: 11/22/21

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

RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE

Tuesday, Nov. 30, 2021

12:00 p.m. – 1:00 p.m. ET / 11:00 a.m. – 12:00 p.m. CT / 10:00 – 11:00 a.m. MT / 9:00 – 10:00 a.m. PT

ROLL CALL

Cassie Brown, 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	Eric Dunning	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	Edward M. Deleon Guerrero	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 Oct. 21 Minutes—*Brian Riewe (TX)* Attachment One
2. Consider Adoption of a Referral to the Financial Regulation Standards and Accreditation (F) Committee—*Brian Riewe (TX)* Attachment Two
3. Consider Adoption of a Memorandum to States on Receivership and Guaranty Fund Laws—*Brian Riewe (TX)* Attachment Three
4. Consider Adoption of the Reports of its Working Group and Subgroup
 - A. Receivership Financial Analysis (E) Working Group—*Toma Wilkerson (FL)*
 - B. Receiver’s Handbook (E) Subgroup—*Kevin Baldwin (IL)* Attachment Four
5. Hear Update on Federal Activities—*Patrick Celestine (NAIC)*
6. Discuss Any Other Matters Brought Before the Task Force—*Brian Riewe (TX)*
7. Adjournment

Draft: 10/26/21

Receivership and Insolvency (E) Task Force
Virtual Meeting
October 21, 2021

The Receivership and Insolvency (E) Task Force met Oct. 21, 2021. The following Task Force members participated: Cassie Brown, Chair, represented by Brian Riewe (TX); James J. Donelon, Vice Chair (LA); Peni Itula Sapini Teo represented by Elizabeth Perri (AS); Michael Conway and Rolf Kaumann (CO); Andrew N. Mais represented by Jared Kosky (CT); David Altmaier represented by Toma Wilkerson (FL); Colin M. Hayashida represented by Patrick P. Lo (HI); Doug Ommen represented by Kim Cross (IA); Dana Popish Severinghaus represented by Kevin Baldwin (IL); Vicki Schmidt represented by Tish Becker (KS); Sharon P. Clark represented by Bill Clark (KY); Gary D. Anderson represented by Christopher Joyce (MA); Eric A. Cioppa represented by Robert Wake (ME); Anita G. Fox represented by Randall Gregg (MI); Chlora Lindley-Myers and Shelley Forrest (MO); Mike Causey represented by Jackie Obusek (NC); Eric Dunning and Justin Schrader (NE); Russell Toal represented by Victoria Baca (NM); 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 Michael Shull (SC); and Johnathan T. Pike (UT).

1. Adopted its Summer National Meeting Minutes

Mr. Riewe said the Task Force met July 27 in lieu of the Summer National Meeting. Ms. Wilkerson made a motion, seconded by Mr. Baldwin, to adopt the Task Force's July 27 minutes (see *NAIC Proceedings – Summer 2021, Receivership and Insolvency (E) Task Force*). The motion passed unanimously.

2. Exposed a Draft Referral to the Financial Regulation Standards and Accreditation (F) Committee

Mr. Riewe said the Executive (EX) Committee and Plenary adopted the receivership revisions to the *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450) at the Summer National Meeting. As the Task Force and its working group were responsible for drafting these model revisions, the Task Force will need to send a referral recommending the Part A Standard that should be considered by the Financial Regulation Standards and Accreditation (F) Committee. Part A standards are those laws and regulations that are required to ensure a state has authority to regulate financial solvency of insurers.

Mr. Riewe said the Task Force sought the input of members to draft an initial recommendation. With one exception, the feedback received was in favor of recommending that the revisions be acceptable, but not required to be adopted by states, rather than identifying substantially similar provisions that would be required. Since there were other revisions to these models for group capital and liquidity stress testing, states are hopefully considering all the model revisions together on their merits and the benefits to receiverships regardless of accreditation requirements. Mr. Wake said while he would like to see more substantive accreditation standards for receivership and insolvency, it is an excellent referral.

Hearing no objections, the draft referral was released for a 30-day public comment period ending Nov. 22.

3. Exposed a Draft Memorandum to State Insurance Departments

Mr. Riewe said when the Task Force adopted the final recommendations from the Macroprudential Initiative (MPI), it had identified several provisions of receivership law that were considered important to a multi-jurisdictional receivership. These are provisions for which all states should consider reviewing their laws and potentially making updates. This included conflicts of law, continuation of coverage, priority of distribution, full faith, and credit on stays and injunctions. In addition to those, the NAIC has adopted the receivership revisions to Model #440 and Model #450 and adopted the new *Guideline for Administration of Large Deductible Policies in Receivership* (#1980) and *Guideline for Definition of Reciprocal State in Receivership* (#1985). Lastly, while 34 states have adopted those 2017 revisions to the *Life and Health Insurance Guaranty Association Model Act* (#520), the memorandum reminds state insurance departments to consider adoption. The draft memorandum is intended to encourage states to consider a review of their laws and adopt updates. The memorandum is concise and may be used as a starting point for discussion with each state insurance department's legal or legislative liaison staff. Any volunteers willing to speak at zone meetings could use this memorandum as talking points for those discussions.

Hearing no objections, the draft memorandum was released for a 30-day public comment period ending Nov. 22.

4. Heard an Update on International Resolution Activities

Mr. Wake said the International Association of Insurance Supervisors (IAIS) Resolution Working Group adopted the *Application Paper on Resolution Powers and Planning*. The Working Group began work on an application paper on policyholder protection schemes. Mr. Wake said the U.S. is undergoing a targeted jurisdictional assessment regarding the holistic framework, which includes an assessment of resolution and crisis management.

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



Date: November 30, 2021

To: Superintendent Elizabeth Kelleher Dwyer (RI), Chair of Financial Regulation Standards and Accreditation (F) Committee

From: Commissioner Cassie Brown (TX), Chair of Receivership and Insolvency (E) Task Force

Re: 2021 Amendments to the *Insurance Holding Company System Regulatory Act (#440)* and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450)*

On August 17, 2021, the NAIC Executive (EX) Committee and Plenary unanimously adopted revisions to the NAIC *Insurance Holding Company System Regulatory Act (#440)* and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions (#450)*. The revisions help ensure efficient coordination with affiliates and to enforce the continuation of essential services by an affiliate to an insurer in the event of insolvency.

These revisions were drafted by the Receivership Law (E) Working Group under charges assigned by the Receivership and Insolvency (E) Task Force. These revisions, referred to as the “receivership revisions” do not include recent revisions to Models #440 and #450 for group capital calculation or liquidity stress test. The receivership revisions address the continuation of essential services through affiliated intercompany agreements with an insurer that is placed into receivership by: 1) bringing affiliate service providers deemed “integral” or “essential” to an insurer’s operations under the jurisdiction of a rehabilitator, conservator, or liquidator for purposes of interpreting, enforcing, and overseeing the affiliate’s obligations under the service agreement and give the commissioner authority to require that “integral” or “essential” affiliate service providers consent to such jurisdiction; 2) further clarifying the ownership of data and records of the insurer that are held by the affiliate; and 3) clarifying that premiums of the insurer held by the affiliate are the property of the insurer and rights of offset are determined by receivership law. See attachment A for a copy of the amendments.

The recommendation for Part A Accreditation Standards is that these receivership revisions be considered acceptable, but not required to be adopted by states. However, the revisions are considered important and all states are encouraged to adopt them. States may consider adoption of the changes in conjunction with opening their holding company laws to consider adoption of the Group Capital Calculation and Liquidity Stress Test revisions.

The Task Force will continue to encourage states to adopt these revisions based on the benefits these revisions add to state regulation, and to the goal of improving efficiencies in receivership and reducing costs to a receivership estate.



Date: November 30, 2021
To: State Insurance Departments
From: Receivership and Insolvency (E) Task Force
Re: Recently Adopted Model Amendments and Guidelines; and Provisions of Receivership Laws Critical to a Multi-Jurisdiction Receivership

In 2020, the Task Force concluded its Macroprudential Initiative (MPI) to evaluate receivership and guaranty fund laws. Through this process the Task Force highlighted several topics that it identified as being critical for states laws with respect to a multi-jurisdictional receivership and which may require a state's attention.

The Task Force encourages state insurance departments to review their receivership and guaranty fund laws to ensure it addresses the following topics.

Insurer Receivership Model Act (#555, "IRMA")

- Conflicts of Law (IRMA §102) was added as a new section in IRMA and it states that receivership and guaranty fund laws govern together; however, receivership law prevails when there is a conflict between the guaranty fund law or the provisions of any other law. The benefit of having this provision is that it prevents potential legal delays in the administration of a receivership.
- Continuation of Coverage (IRMA §502) provides that all insurance policies, excluding life, disability, long term care, health, or annuities, are cancelled at a specified time unless the Liquidator, with the consent of the receivership court, extends the period. This provision was re-written and improved in IRMA.

The Task Force conducted a survey in 2019 that showed that states' laws differ with respect to IRMA §502 from having provisions substantially similar to IRMA §502B, or to a prior version of Model #555, or a state has no continuation of coverage provision, or no exclusions for life and health lines of business. This provision has been the subject of litigation in receivership. For these reasons, states are encouraged to review their law against IRMA and consider amendments.

- Priority of Distribution (IRMA §801) of estate assets is a provision that was rewritten in IRMA. It outlines the priority scheme for payment of claims, which places policyholder claims above that of unsecured creditors or shareholders. The benefit of having this provision is that it furthers state insurance department goals to protect policyholders in the administration of a receivership.

Reciprocal State; Full Faith and Credit on Stays and Injunctions

An effective stay provision promotes judicial economy and predictability, which benefits all participants in the receivership process. However, the significant improvements in IRMA regarding stays have not been widely

adopted. Further background on the topic is available in the 2017 Financial Condition (E) Committee memorandum posted to the NAIC website.¹ States are encouraged to review their receivership laws, and consider the following:

- 1) States with no stay provisions, or provisions based on older NAIC models, should compare their laws to the more recent NAIC Models, and evaluate the benefits of a more comprehensive stay. (IRMA §108)
- 2) States with no reciprocity provisions, or provisions based on older NAIC models, should consider adopting a provision similar to IRLMA § 5 (C) (2) or IRMA § 1002 (A). In the alternative, a state could update its definition of a “reciprocal state.” In 2021, the NAIC adopted the *Guideline for Definition of Reciprocal State in Receivership Laws* (GDL#1985) that defines reciprocal state as any state that has enacted a law setting forth a scheme for receivership.²

Ancillary Conservation of Foreign Insurers (IRMA §1001) provides for ancillary conservation of an insurer writing in the state but domiciled in another state, in limited circumstances. Ancillary conservation is relevant to insurers conducting business in multiple jurisdictions, should be coordinated with the domiciliary state, and may require consideration of whether the involved states are reciprocal.

2021 Revisions to the Insurance Holding Company System Model Act and Regulation (#440 & #450)

In 2021, the NAIC adopted receivership revisions to the NAIC *Insurance Holding Company System Regulatory Act* (#440) and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450). The revisions address the continuation of essential services through affiliated agreements with an insurer that is placed into receivership by bringing affiliate service providers deemed “integral” or “essential” to an insurer’s operations under the jurisdiction of the receiver; clarify the ownership of data and records and premiums of the insurer that are held by the affiliate; and, outline provisions that should be included in affiliated management services and cost sharing agreements in the event the insurer is placed into receivership.

The Task Force encourages state insurance departments to consider these Model amendments based on the benefits these revisions add to state regulation, and to the goal of improving efficiencies in receivership and reducing costs to a receivership estate.

Treatment of Workers Compensation Large Deductible Policies

In 2021, the NAIC adopted the *Guideline for Administration of Large Deductible Policies in Receivership* (GDL#1980) to address the treatment of large deductible policies in receivership. The Guideline makes significant improvements over IRMA §712 Administration of Loss Reimbursement Policies, and the National Conference of Insurance Guaranty Funds (NCIGF) Model Large Deductible Legislation, Administration of Large Deductible Policies and Insured Large Deductible Collateral. The Guideline provides that the guaranty associations, on behalf of the claimants, are entitled to any deductible reimbursements from the policyholder and the right to draw on the collateral. While some states already have existing laws on this topic, states that do not or that wish to update their existing laws, are encouraged to consider Guideline #1980.³

2017 Revisions to the Life and Health Insurance Guaranty Association Model Act (#520)

The 2017 amendments to Model #520 aimed to address issues arising in connection with guaranty fund coverage in insolvencies of insurers writing long-term care insurance. While states have made good progress adopting these amendments with 34 states adopting to date, remaining states are encouraged to consider adoption. Further guidance is available in the Task Force’s 2018 memorandum, which is posted to the NAIC website.⁴

¹ https://content.naic.org/sites/default/files/inline-files/cmte_e_receivership_related_170717_committee_recommendation.pdf

² <https://content.naic.org/sites/default/files/GL1985.pdf>

³ <https://content.naic.org/sites/default/files/GL1980.pdf>

⁴ https://content.naic.org/sites/default/files/inline-files/committees_e_receivership_related_rev_memo_520.pdf

For further resources or information about these Model Laws and Guidelines, states may contact NAIC staff, jkoenigsman@naic.org.

Draft: 11/22/21

Receiver's Handbook (E) Subgroup
Virtual Meeting
November 18, 2021

The Receiver's Handbook (E) Subgroup of the Receivership and Insolvency (E) Task Force met Nov. 18, 2021. The following Subgroup members participated: Kevin Baldwin, Chair (IL); Toma Wilkerson, Vice Chair (FL); Joe Holloway (CA); Jared Kosky (CT); James Gerber (MI); Leatrice Geckler (NM); Donna Wilson and Jamin Dawes (OK); Laura Lyon Slaymaker and Crystal McDonald (PA); and Brian Riewe (TX).

1. Adopted its June 14 Minutes.

The Subgroup met June 14 and took the following action: 1) adopted its May 26 minutes; 2) discussed the drafting group process; and 3) demonstrated the SharePoint Collaboration website to the drafting groups. Mr. Baldwin noted that the minutes from the June meeting were in the meeting materials.

Mr. Geckler made a motion, seconded by Ms. Wilson, to adopt the Subgroup's June 14 minutes (Attachment Four-A). The motion passed unanimously.

2. Exposed Revised Chapter 1 and Chapter 2 of the Receiver's Handbook

Mr. Baldwin thanked the volunteers who had participated in the drafting groups for Chapters 1 and Chapter 2 of the *Receiver's Handbook for Insurance Company Insolvencies* (Receiver's Handbook). Chapter 1 had extensive revisions and was presented in the meeting materials as a clean copy. To view the original Receiver's Handbook, the current Receiver's Handbook version is posted on the Subgroup's website under the documents tab. Chapter 2 was presented in the materials as a markup version of the original Receiver's Handbook chapter. The Subgroup considered public exposure of revised Chapter 1 and Chapter 2 for a 30-day period with all comments to be sent to Sherry Flippo (NAIC).

Mr. Holloway made a motion, seconded by Ms. Wilkerson, to expose Chapters 1 and Chapter 2 of the Receiver's Handbook for a 30-day public comment period ending Dec. 20. The motion passed unanimously.

Having no further business, the Receiver's Handbook (E) Subgroup adjourned.