

Date: 9/21/20

WebEx Conference Call

RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE

Wednesday, October 7, 2020

12:00 – 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

Kent Sullivan, Chair	Texas	Gary Anderson	Massachusetts
Karima M. Woods, Vice Chair	District of Columbia	Anita G. Fox	Michigan
Lori K. Wing-Heier	Alaska	Chlora Lindley-Myers	Missouri
Elizabeth Perri	American Samoa	Matthew Rosendale	Montana
Alan McClain	Arkansas	Bruce R. Ramage	Nebraska
Ricardo Lara	California	Marlene Caride	New Jersey
Michael Conway	Colorado	Mike Causey	North Carolina
Andrew N. Mais	Connecticut	Glen Mulready	Oklahoma
David Altmaier	Florida	Jessica K. Altman	Pennsylvania
Robert H. Muriel	Illinois	Elizabeth Kelleher Dwyer	Rhode Island
Doug Ommen	Iowa	Raymond G. Farmer	South Carolina
Vicki Schmidt	Kansas	Hodgen Mainda	Tennessee
Sharon P. Clark	Kentucky	Todd E. Kiser	Utah
Eric A. Cioppa	Maine		

NAIC Support Staff: Jane Koenigsman

AGENDA

1. Consider Adoption of its Summer National Meeting Minutes—*James Kennedy (TX)* Attachment One
2. Discuss any Comments Received and Consider Adoption of Proposed 2021 Charges (Comments Pending Sept. 30 Deadline)—*James Kennedy (TX)* Attachment Two
3. Discuss Comments Received on Key Provisions of Receivership and Guaranty Fund Laws —*James Kennedy (TX)* Attachment Three
4. Discuss Any Other Matters Brought Before the Task Force—*James Kennedy (TX)*
5. Adjournment

Draft Pending Adoption

Draft: 8/20/20

Receivership and Insolvency (E) Task Force
Virtual Summer National Meeting
August 7, 2020

The Receivership and Insolvency (E) Task Force met via conference call Aug. 7, 2020. The following Task Force members participated: Kent Sullivan, Chair, represented by James Kennedy (TX); Karima M. Woods, Vice Chair (DC); 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 represented by Kim Cross (IA); Robert H. Muriel represented by Kevin Baldwin (IL); Vicki Schmidt represented by Chut Tee (KS); Sharon P. Clark represented by Rodney Huggle (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 Debbie Doggett and Shelley Forrest (MO); Bruce R. Ramge represented by Lindsay Crawford (NE); Glen Mulready represented by Donna Wilson (OK); Jessica K. Altman represented by Laura Lyon Slaymaker (PA); Elizabeth Kelleher Dwyer and Matt Gendron (RI); Raymond G. Farmer represented by Ryan Basnett (SC); Hodgen Mainda represented by Patrick Merkel (TN); and Todd E. Kiser represented by Jake Garn (UT).

1. Adopted its March 4, Jan. 8, and 2019 Fall National Meeting Minutes

Ms. Cross made a motion, seconded by Ms. Wilson, to adopt the Task Force's March 4, Jan. 8 (**Attachment One**), and 2019 Fall National Meeting (*see NAIC Proceedings – Fall 2019, Receivership and Insolvency (E) Task Force*) minutes. The motion passed unanimously.

2. Adopted Revisions to the Receiver's Handbook for Insurance Company Insolvencies

Ms. Slaymaker made a motion, seconded by Mr. Baldwin, to adopt the *Receiver's Handbook for Insurance Company Insolvencies* for federal taxes and federal releases (**Attachment Two**). The motion passed unanimously.

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

Ms. Wilson said the Receivership Financial Analysis (E) Working Group met Aug. 4 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities, or individuals) of the NAIC Policy Statement on Open Meetings to discuss the status of individual receiverships and related issues. Ms. Wilson made a motion, seconded by Ms. Wilkerson, to adopt the Working Group's report. The motion passed unanimously.

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

Ms. Slaymaker said the Receivership Large Deductible Workers' Compensation (E) Working Group met March 2 and took the following action: 1) received comments on a draft model guideline that provides alternative language for the *Insurer Receivership Model Act* (#555) Section 712—Administration of Loss Reimbursement Policies; and 2) formed a drafting group to address comments received. The drafting group and the Working Group will reconvene after the national meeting. Ms. Slaymaker made a motion, seconded by Mr. Wake, to adopt the Working Group's report, including its March 2 minutes (**Attachment Three**). The motion passed unanimously.

5. Exposed Key Provisions of Receivership and Guaranty Fund Laws

Mr. Kennedy discussed the Task Force's response to the Macroprudential Initiative (MPI). The Task Force received comments on key provisions of receivership and guaranty fund laws that states should consider adopting into their laws, particularly with respect to receiverships of insurers operating in multiple states. The Task Force discussed the comments on its March 4 conference call. He said the key provisions identified in comments will be exposed for a 30-day public comment period ending Sept. 8 for state insurance regulators and interested parties to provide additional feedback for each provision. The Task Force requests comments on each key provision as follows: 1) if it is critical for all states to have in receivership and guaranty fund law in a receivership affecting multiple states; 2) if it should be considered for a limited scope accreditation standard; 3) if other methods should be used to encourage its adoption; and 4) if there are impediments to its adoption.

Draft Pending Adoption

6. Heard a Presentation on Cyber Claims in Receivership

Roger H. Schmelzer (National Conference of Insurance Guaranty Funds—NCIGF), Chad Anderson (Western Guaranty Fund Services—WGFS), and Tim Schotke (Illinois Insurance Guaranty Fund—IIGF) gave a presentation on the NCIGF’s white paper, *Insurance Resolution: Preparing for Cyber Claims*, which is located on the NCIGF’s webpage.

Mr. Schotke said there is more risk in cyberinsurance due to lack of pricing and loss experience. He said cyberinsurance is operationally very different from any other business that guaranty funds deal with, such as indemnity provisions and in-kind services; therefore, receivers need to be prepared. There may be tasks that receivers are not prepared to provide, such as restoring system and forensic work. Mr. Anderson said these policies are complicated and inconsistent and there is little standardization. He said guaranty associations are aiming to be prepared for potential issues in the future. He said guaranty associations are looking for state insurance regulators and receivers to acknowledge potential issues with cyber claims in a receivership and engage in early communication with guaranty funds when an insurer that writes cyber policies becomes troubled. Guaranty associations are looking to put together a group of experts as contacts, if needed, such as forensic experts. Guaranty associations will also be internally evaluating potential claims or other issues. Mr. Schmelzer said guaranty associations are open and eager to work in advance with state insurance regulators and receivers on potential issues with a receivership of cyberinsurance.

7. Heard an Update on International Resolution Activities

Mr. Kennedy reported that the International Association of Insurance Supervisors (IAIS) Resolution Working Group (ReWG) met via conference call in April 2020 to continue development of the *Application Paper on Resolution Planning*. The ReWG expects to finalize the draft of the application paper at a conference call in September 2020. The draft paper is expected to be exposed for consultation in November 2020.

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

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Exposed for Public Comment until Sept. 30, 2020

Send comments to jkoenigsman@naic.org

2021 Charges

The **Receivership and Insolvency (E) Task Force** will:

1. Monitor and promote efficient operations of insurance receiverships and guaranty associations.
2. Monitor and promote state adoption of insurance receivership and guaranty association model acts and regulations and monitor other legislation related to insurance receiverships and guaranty associations.
3. Provide input and comments to the International Association of Insurance Supervisors (IAIS), the Financial Stability Board (FSB) or other related groups on issues regarding international resolution authority.
4. Monitor, review and provide input on federal rulemaking and studies related to insurance receiverships.
5. Provide ongoing review of the *Receiver's Handbook for Insurance Company Insolvencies* (Receiver's Handbook), other related NAIC publications and the Global Receivership Information Database (GRID); and make any necessary updates.
6. Monitor the work of other NAIC committees, task forces and working groups to identify and address any issues that affect receivership law and/or regulatory guidance.
7. Perform additional work as directed by the Financial Condition (E) Committee and/or received through referral by other groups.

The **Receivership Financial Analysis (E) Working Group** will:

1. Monitor receiverships involving nationally significant insurers/groups to support, encourage, promote and coordinate multistate efforts in addressing problems.
2. Interact with the Financial Analysis (E) Working Group, domiciliary regulators and lead states to assist and advise as to what might be the most appropriate regulatory strategies, methods and/or action(s) with regard to potential or pending receiverships.

The **Receivership Law (E) Working Group** will:

1. Review and provide recommendations on any issues identified that may affect states' receivership and guaranty association laws; for example, any issues that arise as a result of market conditions, insurer insolvencies, federal rulemaking and studies, international resolution initiatives or as a result of the work performed by or referred from other NAIC committees, task forces and/or working groups.
2. Discuss significant cases that may impact the administration of receiverships.

3. Complete work as assigned from the Task Force to address recommendations from the Financial Stability (EX) Task Force's Macroprudential Initiative (MPI) referral.

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- a. Complete work related to QFCs including: 1) explore if bridge institutions could be implemented under regulatory oversight pre-receivership to address an early termination of qualified financial contracts (QFCs), and if appropriate, develop applicable guidance; 2) develop enhancements to the *Receiver's Handbook* guidance on QFCs; and, 3) identify related pre-receivership considerations related to QFCs and, if necessary, make referrals to other relevant groups to enhance pre-receivership planning, examination and analysis guidance.
- b. Review and provide recommendations for remedies to ensure continuity of essential services and functions to an insurer in receivership by affiliated entities, including non-regulated entities. This will encompass a review of Models 440 and 450 to provide proposed revisions to address the continuation of essential services through affiliated intercompany agreements in a receivership.
- c. Consult with and/or make referrals to other NAIC Working Groups, as deemed necessary, as the topic relates to affiliated intercompany agreements and pre-receivership considerations. Complete by the 2021 Fall National Meeting.

Attachment Three Combined Comments

RECEIVERSHIP & INSOLVENCY (E) TASK FORCE

SUMMARY OF COMMENTS ON KEY PROVISIONS

On Aug. 7, 2020, the Receivership and Insolvency (E) Task Force requested additional feedback (below) on the comments previously received, specifically, respond to: 1) is the key provision listed critical for all states to have in receivership and guaranty fund law for a multi-state receivership; 2) should the key provisions listed be considered for a limited scope accreditation standard; 3) if not accreditation, what other options do you propose to encourage states to adopt these key provisions; and 4) what impediments, if any, do you foresee in implementing any of these provisions into state law. Comments were due Sept. 8, 2020

15 Responses: AR, FL, LA, MA, MI, MO, PA, SD, TX, WA, ACLI, CANTILO & BENNETT LLP, ARBOR STRATEGIES, LLC, MORGAN LEWIS, JOINT COMMENTS FROM NOLHGA & NCIGF

- Responses are compiled below. Comment letters that contained additional feedback or explanation are attached. (LA, TX, ACLI, ARBOR STRATEGIES, NOLHGA/NCIGF)

Key Provisions Identified in Comments	Related Model Section	Is it critical to a multi-jurisdictional receivership? (Y/N)	Should it be considered as an accreditation standard? (Y/N)
Conflicts of Law: <ul style="list-style-type: none"> • The receivership act and insurance guaranty association acts prevail if there is a conflict with other laws, which ensures that these laws control over general laws. 	#555 § 102	<ul style="list-style-type: none"> • Y=FL, MI, MO, PA, SD, WA, ACLI • N=AR (§102 on its face is limited to “this state”), MA, TX, CANTILO, MORGAN_LEWIS 	<ul style="list-style-type: none"> • Y=MO (Part A only), WA • N=AR, MI, PA, SD, TX, ACLI, CANTILO, MORGAN_LEWIS
Stays & Injunctions <ul style="list-style-type: none"> • Provides automatic stay of actions against receivership estate and insureds. • Court may issue any stays, injunctions, or other orders as necessary or appropriate. 	#555 § 108	<ul style="list-style-type: none"> • Y=AR, FL, MI, MO, PA, SD, TX, WA, ACLI, CANTILO, MORGAN_LEWIS (but courts have the authority and are doing it; better to have in statute perhaps), NOLHGA/NCIGF • N=MA 	<ul style="list-style-type: none"> • Y=AR, MI, MO (Part A only), TX, WA, CANTILO • N=PA, SD, ACLI, MORGAN_LEWIS

<p>Continuation of Coverage for life and health policies:</p> <ul style="list-style-type: none"> • Governs the continuation of policies when a liquidation order is entered. • Specifies that policies or annuities covered by a life and health insurance guaranty association continue in force after the entry of a liquidation order. 	#555 § 502	<ul style="list-style-type: none"> • Y=AR, FL, MA, MI, MO, PA, SD, TX, WA, ACLI, CANTILO, NOLHGA/NCIGF • N=MORGAN_LEWIS • Other= ARBOR (See comment letter) 	<ul style="list-style-type: none"> • Y=AR, MI, MO (Part A only), TX, WA, CANTILO • N=PA, SD, ACLI, MORGAN_LEWIS
<p>Priority of Distribution:</p> <ul style="list-style-type: none"> • Priority scheme for distribution of assets must comport with the Supreme Court's decision in <i>United States Department of Treasury v. Fabe</i>. 	#555 § 801	<ul style="list-style-type: none"> • Y=AR, FL, MA, MI, MO, SD, TX, ACLI, CANTILO, MORGAN_LEWIS, NOLHGA/NCIGF • N=PA, WA 	<ul style="list-style-type: none"> • Y =AR, MI, MO (Part A only), TX, CANTILO, MORGAN_LEWIS • N=PA, SD, WA, ACLI
<p>Ancillary Conservation of Foreign Insurers:</p> <ul style="list-style-type: none"> • Limits scope of ancillary receiverships. 	#555 § 1001	<ul style="list-style-type: none"> • Y=AR, FL, MA, MI, MO, SD, TX, WA, ACLI, CANTILO • N=PA, MORGAN_LEWIS 	<ul style="list-style-type: none"> • Y=AR, MA, MO (Part A only), WA, CANTILO • N=MI, PA, SD, TX, ACLI, MORGAN_LEWIS
<p>Domiciliary Receivers in Other States:</p> <ul style="list-style-type: none"> • Other states' receivership laws and are given full faith and credit, which promotes the consistent application of laws and orders and avoids conflicting reciprocity standards. • Provides for the disposition of deposits, and ensures that they are available to the receivership estate or guaranty associations, as applicable. 	#555 § 1002	<ul style="list-style-type: none"> • Y=AR, FL, MA, MI, MO, PA, TX, WA, ACLI, CANTILO • N=LA (See comment letter), SD MORGAN_LEWIS 	<ul style="list-style-type: none"> • Y=AR, MA, MI, MO (Part A only), TX, WA, CANTILO • N=LA (See comment letter), MO, PA, SD, ACLI, MORGAN_LEWIS

<p>Treatment of Large Deductible Workers Compensation policies:</p> <ul style="list-style-type: none"> • Procedures govern parties' rights regarding large deductible policies in liquidation. 	#555 §712 or pending alternate guideline	<ul style="list-style-type: none"> • Y=AR, MA, MI, PA, TX, WA, NOLHGA/NCIGF • N=FL, MO, SD, CANTILO, MORGAN_LEWIS 	<ul style="list-style-type: none"> • Y=AR, WA • N=MA, MI, MO, PA, SD, TX, ACLI, CANTILO, MORGAN_LEWIS
<p>Designated court for receivership proceedings:</p> <ul style="list-style-type: none"> • Court may order that one judge hears all matters in a delinquency proceeding. 	#555 § 105 K	<ul style="list-style-type: none"> • Y=MA, PA, SD, ACLI • N=AR, FL, MI, MO, TX, WA, CANTILO, MORGAN_LEWIS 	<ul style="list-style-type: none"> • N=AR, MA, MI, MO, PA, SD, TX, WA, ACLI, CANTILO, MORGAN_LEWIS
<p>Limitation on judicial discretion regarding a receivership petition:</p> <ul style="list-style-type: none"> • Court must enter judgment on petition within 15 days of conclusion of the evidence. • If grounds for receivership are established, the court must grant the petition. 	#555 § 205 #555 § 208	<ul style="list-style-type: none"> • Y=AR, PA, SD, ACLI • N=FL, MA, MI, MO, TX, WA, CANTILO, MORGAN_LEWIS, • Other observations=NOLHGA/NCIGF (see comment letter) 	<ul style="list-style-type: none"> • Y=AR • N=MA, MI, MO, PA, SD, TX, WA, ACLI, CANTILO, MORGAN_LEWIS
<p>Timing of Proceedings:</p> <ul style="list-style-type: none"> • Limit how long receivership proceeding can remain open (e.g., deadline for filing of rehabilitation plan). • Address the timing of liquidation orders. 	#555 § 105 L #555 § 403 #555 § 404	<ul style="list-style-type: none"> • Y=AR, ACLI • N=FL, MA, MI, MO, PA, SD, TX, WA, CANTILO, MORGAN_LEWIS 	<ul style="list-style-type: none"> • Y=AR, MA • N=MI, MO, PA, SD, TX, WA, ACLI, CANTILO, MORGAN_LEWIS
<p>Reinsurance:</p> <ul style="list-style-type: none"> • Align receivership and life / health guaranty association laws regarding reinsurance. 	#555 § 611, 612, #520 8.N.	<ul style="list-style-type: none"> • Y=FL, MA, WA, ACLI • N=AR, MI, MO, PA, SD, TX, CANTILO, MORGAN_LEWIS, NOLHGA/NCIGF 	<ul style="list-style-type: none"> • Y=MA, WA • N=AR. MI, MO, PA, SD, TX, ACLI, CANTILO, MORGAN_LEWIS
<p>Property & Casualty Guaranty Fund Limits:</p>	#540 § 8.A.(1)	<ul style="list-style-type: none"> • Y=WA, CANTILO • N=AR, FL, MA, MI, MO, PA, SD, TX, MORGAN_LEWIS 	<ul style="list-style-type: none"> • Y=WA, CANTILO • N=AR, MA, MI, MO, PA. SD, TX, ACLI, MORGAN_LEWIS

<ul style="list-style-type: none"> Establish minimum limits of guaranty fund coverage. 			
<p>Life / Health Guaranty Association Model:</p> <ul style="list-style-type: none"> Encourage states to adopt 2017 revisions to Model #520. 	#520 (2017)	<ul style="list-style-type: none"> Y=FL, MI, PA, SD, WA, ACLI, ARBOR (Model 520, see comment letter) N=AR, MA, MO, TX, CANTILO, MORGAN_LEWIS 	<ul style="list-style-type: none"> Y=WA, ARBOR (Model 520, see comment letter) N=AR, MA, MI, MO, PA, SD TX, ACLI, CANTILO, MORGAN_LEWIS
<p>Guideline for Implementation of State Orderly Liquidation Authority:</p> <ul style="list-style-type: none"> Addresses the implementation of a receivership in the event of a proceeding under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act. 	GDL # 1700	<ul style="list-style-type: none"> Y=MI, SD, TX, WA, ACLI N=FL, MA, MO, NO, PA, CANTILO, MORGAN_LEWIS, NOLHGA/NCIGF (may not need to be adopted in every state, see comment letter) No opinion =AR 	<ul style="list-style-type: none"> N=MA, MI, MO, PA, SD, TX, WA, ACLI, CANTILO, MORGAN_LEWIS No opinion=AR
<p>Other Comments:</p> <ul style="list-style-type: none"> CANTILO: For the sake of simplicity and adoption, I recommend considering a revised uniform definition of RECIPROCAL STATE that includes the selected key provisions and making being a RECIPROCAL STATE as thus redefined the accreditation standard. Most of these are important but they are not all essential to an effective multi-state receivership. The more that is included, the harder the “sell” as an accreditation standard. ACLI = See Comment letter for recommended wording changes to accreditation standards. NOLHGA/NCIGF=See comment letter for observations on addressing the judicial framework for resolution. 			
<p>Question: If not an update to accreditation standards, what other options do you propose for encouraging states to adopt these provisions into law?</p>	<ul style="list-style-type: none"> AR=All provisions considered “critical” are recommended as “accreditation standard”. MA=We would be supportive of additional Guidance being issued by the RITF or the Receivership Law (E) Working Group, as well as the benefits of certain provisions being discussed in the Receiver’s Handbook for Insurance Company Insolvencies. In either case, it would be helpful, where possible, to provide examples of real life situations where having had a specific provision in place would have been beneficial and why. M= I think industry trade groups and NCOIL have influence to decide which key provisions are entered into law. PA= We marked most as no because we would be unable to achieve the standard and would never pass accreditation. SD=Encourage states. These are not and should not be accreditation standards. TX= The insurance industry has successfully sought amendments to specific receivership laws (e.g., IRMA § 711 and the NCIGF large deductible provision). When any changes to receivership laws are sought, the critical 		

	<p>provisions identified by the RITF could be included in the legislation. Additional training to Commissioners and staff regarding receiverships could explain the necessity of updated receivership laws.</p> <ul style="list-style-type: none"> • WA= Propose certain sections to be adopted as an accreditation standard rather than substantially similar or entire model law. • NOLHGA/NCIGF=We suggest considering route as an alternative to accreditation standards to achieve the Task Force goals. See Comment Letter.
<p>Question: What impediments, if any, do you foresee in implementing any of these provisions into state law?</p>	<ul style="list-style-type: none"> • AR=General legislative bias against granting deference or priority to a sister state’s laws to its citizens perceived detriment. • FL=State legislatures and governors will focus on budgetary and public health issues rather than receivership laws. Limiting judicial discretion and directing assignment of judges will likely draw constitutional challenges. • MA= Challenges in this case would include 1) the legislative calendar in each state, 2) convincing the legislature that these changes are needed when there may not be an immediate need and there are many other pressing priorities, and 3) educating individual legislators on the insurer receivership process generally, as well as the benefits it provides to consumers. • MI= Different state economics, marketplaces, domestic insurers who pay the guaranty fund assessments and help determine coverage, different types of insurance coverages laws within the state (no fault system vs at fault), disagreements among the insurance industry as to who should pay for insolvencies. • PA= The biggest implementation is the number of provisions. Passing laws in our marked is difficult and lengthy. • WA= States and interested parties differing priorities how receivership proceedings should be governed under the state receivership courts.
<p>Other Comments Received</p>	<p>Additional Feedback?</p>
<p>Create accreditation standard requiring adoption of Life and Health Insurance Guaranty Association Model Act in a “functionally consistent” manner.</p>	<ul style="list-style-type: none"> • AR=Unnecessary. • MI= Not supportive overall of having a one size fits all approach for guaranty fund laws since assessment bases vary from state to state. • PA= We do not think this is feasible. • ARBOR=See comment letter “We therefore urge the Task Force to make model #520 an accreditation standard”) • NOLHGA/NCIGF=The question of additional uniformity for the guaranty system has been discussed by the NAIC, Congress, and the Federal Insurance Office. Both the life and health guaranty system and property casualty

	<p>guaranty system operate with a functional consistency. Most states are following NAIC models; and to the extent there are inconsistencies among states, there is a rational basis that reflects state-specific conditions. State legislatures can adapt their guaranty fund laws to local conditions, and we would expect states to defend that authority.</p>
<p>Promote cost effective resolution in early stages of receivership proceedings.</p>	<ul style="list-style-type: none"> • AR= Usually, if there is a “cost effective” resolution, it is pursued by Management/Ins Dept prior to filing receivership proceedings. • MI= The key question is how and the fact that no two receiverships are exactly alike. • PA= I feel we already strive for this. • ACLI= should be considered by the Task Force.
<p>Provide standardized judicial education on the receivership process.</p>	<ul style="list-style-type: none"> • AR= Work on this was done many years ago with the National Judicial College, but funding from NAIC wasn’t available. • MI= Supportive of proposal, didn’t IAIR have a program to do this? • MO=It would be beneficial to have Continuing Legal Education (“CLE”) courses. • PA= That is difficult because the process varies from state to state and some states have seasoned receivership judges. • ACLI= should be considered by the Task Force. • NOLHGA/NCIGF= We view opportunities for judicial education and coordination to be worthwhile where possible... (see comment letter).
<p>Strengthen the NAIC’s Financial Analysis Working Group (FAWG) and Receivership Financial Analysis Working Group (R-FAWG).</p>	<ul style="list-style-type: none"> • AR= Since insurance regulation is state based and state controlled, not sure how effective strengthening could be. • MI= Goals and actions to do this? • ACLI= should be considered by the Task Force. • NOLHGA/NCIGF=We commend the RITF and its Receivership Financial Analysis Working Group (“RFAWG”) for leadership driving further coordination and planning. The RITF also has enhanced communication between RFAWG and the Financial Analysis Working Group (“FAWG”) in order to promote pre-planning for receiverships where possible. NOLHGA and NCIGF have commented on the importance of those goals on several occasions. We see the good and ongoing progress made by receivership leaders and stakeholders as being driven by RITF, RFAWG, and FAWG leadership.

<p>Create NAIC “SWAT” team of receivership experts.</p>	<ul style="list-style-type: none"> • AR= IAIR and NAIC already produce lists of experts and their expertise • MI= Nice idea, but who pays the costs and who controls the experts? • MO=The Task Force and Working Groups already have receivership experts. • PA= Many states have procurement requirements that dictate who can be appointed. • ACLI= should be considered by the Task Force.
<p>Revise Section 7 of the Insurance Holding Company System Regulatory Act to ensure the continuation of inter-affiliate services in receiverships.</p>	<ul style="list-style-type: none"> • AR= In progress. • MI= Yes, I would support that. • TX= The Receivership Law Working Group is currently working on this. • ACLI= should be considered by the Task Force. • ARBOR= we do not believe that section 7 of the Insurance Holding Company System Regulatory Act need to be revised. Regulators have significant authority already over activities within holding company systems, including the ability to enforce existing contracts. No additional regulatory powers are needed, or appropriate.
<p>Create crisis management groups for supervisory colleges within Section 7 of the Insurance Holding Company System Regulatory Act and/or guidance such as the Receivers’ Handbook.</p>	<ul style="list-style-type: none"> • MI=Supportive of this concept. • ACLI= should be considered by the Task Force. • MORGAN_LEWIS=Y • NOLHGA/NCIGF= Meanwhile, some comments under consideration appear to be being managed as parts of other NAIC workstreams, and the Task Force may want to consider whether they are ripe for additional input as part of this process. RLWG is considering changes to the Model Holding Company System Regulatory Act to help provide continuity of services from an affiliate in receivership.
<p>Develop statutory changes to accommodate transactions under Insurance Business Transfer and corporate division statutes.</p>	<ul style="list-style-type: none"> • AR= In progress. • MI= I would wait and see what happens under the limited number of states that have adopted these provisions. • ACLI= should be considered by the Task Force. • ARBOR=While we do not have comments at this point in time regarding any changes to accommodate transactions under Insurance Business Transfer or corporate division statutes, we remain concerned that these transactions could negatively impact the guaranty association system. We therefore reserve our comments until further details about the proposals are available. • NOLHGA/NCIGF= Meanwhile, some comments under consideration appear to be being managed as parts of other NAIC workstreams, and the Task Force may want to consider whether they are ripe for additional input as part of this process. ...And the Restructuring Mechanisms (E) Working Group will be evaluating statutes that would accommodate restructuring transactions. That Working Group’s charge includes examining the impact of restructuring mechanisms on guaranty associations and policyholders, on which we assume the RITF will have

	input. NOLHGA and NCIGF have been commenting to the Working Group about identified concerns and potential solutions.
Develop statutory changes (if needed) to permit guaranty funds to assess for administrative costs that are not tied to the volume of insolvency activity.	<ul style="list-style-type: none"> • AR= Changes recently made to NCIGF Model Act. • MI= I would agree that a safety net needs to be there. • ACLI= should be considered by the Task Force.
Develop statutory changes as needed to prevent “orphan claims” scenarios.	<ul style="list-style-type: none"> • AR=Already covered in L&H Model; P&C changes needed, but could be complicated to develop. • ACLI= should be considered by the Task Force. • MORGAN_LEWIS=Yes



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON
COMMISSIONER

September 8, 2020

Mr. James Kennedy
Chairman, Receivership and Insolvency Task Force
National Association of Insurance Commissioners
11000 Walnut Street
Kansas City, MO 64106-2197

Re: Receivership and Insolvency Task Force Request for Comments on Key
Provisions of Receivership and Guaranty Association Laws

Dear Mr. Kennedy and Ms. Koenigsman:

Thank you for the opportunity to respond to the Task Force's request for comments regarding key provisions of your Receivership and Guaranty Association Model Laws. Specifically, the Louisiana Department of Insurance (LDI) responds to the following sentence contained in Section 1002 of the Insurance Receivership Model Act addressing "full faith and credit":

The statutory provisions of another state and all orders entered by courts of competent jurisdiction in relation to the appointment of a domiciliary receiver of an insurer and any related proceedings in another state shall be given full faith and credit in this state.

The proposed language would clearly be subject to challenge under the United States Constitution. In 1945, Congress enacted the McCarran-Ferguson Act, 15 U.S.C. § 1011, by which Congress stated the following as a declaration of policy: "Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of the Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States." Section 1012(a) of the McCarran-Ferguson Act provides that "[t]he business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business." The empowerment of each state with respect to the business of insurance was reinforced by Congress in 1999 with the enactment of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6701 *et seq.* In that Act, Congress stated that the McCarran-Ferguson Act "remains the law of the United States" and that "the insurance activities of any person...shall be functionally regulated by the States."

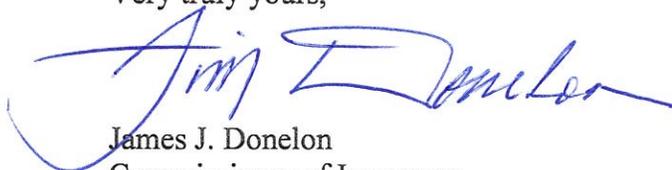
Further, regulation of the insolvencies of insurance companies is also indirectly delegated to the states by virtue of the inability of insurance companies to seek bankruptcy relief under the United States Bankruptcy Code. See 11 U.S.C. 109(b) and (d) (providing that a “domestic insurance company” may not be a debtor under Chapter 7 or 11 bankruptcies). Thus, there is no Federal law or regulation that governs the rehabilitation of insurance companies.

The suggested accreditation standard could have the unintended consequence of creating a nationalized insurance receivership and rehabilitation process, which could either create issues among the states or invite a federal bankruptcy solution. This matter requires careful study and analysis as it proposes a “fix” for a system that has served the state based system of insurance regulation extremely well for many decades.

The LDI does not believe the referenced provision of Section 1002 of the Insurance Receivership Model Act allows the necessary flexibility in receivership and rehabilitation cases and could interfere with the rights of the respective states to regulate policy rates and benefits. The LDI would oppose the adoption of Section 1002 as an accreditation standard.

With best wishes and kindest personal regards, I remain

Very truly yours,



James J. Donelon
Commissioner of Insurance

Texas Department of Insurance

Key Provisions Identified in Comments	Related Model Section	Is it critical to a multi-jurisdictional receivership?	Should it be considered as an accreditation standard?
<p>Conflicts of Law:</p> <ul style="list-style-type: none"> The receivership act and insurance guaranty association acts prevail if there is a conflict with other laws, which ensures that these laws control over general laws. 	#555 § 102	No. It is useful as it resolves conflicts between receivership acts and other laws, but is not necessarily critical.	No.
<p>Stays & Injunctions</p> <ul style="list-style-type: none"> Provides automatic stay of actions against receivership estate and insureds. Court may issue any stays, injunctions, or other orders as necessary or appropriate. 	#555 § 108	Yes. Inconsistencies in laws governing stays create hurdles in receiverships involving multiple states.	Yes. A stay in a receivership serves a vital purpose.
<p>Continuation of Coverage for life and health policies:</p> <ul style="list-style-type: none"> Governs the continuation of policies when a liquidation order is entered. Specifies that policies or annuities covered by a life and health insurance guaranty association continue in force after the entry of a liquidation order. 	#555 § 502	Yes. Receivership laws and guaranty association laws should be consistent regarding the continuation of coverage.	Yes. Receivership laws should clearly specify whether coverage continues.
<p>Priority of Distribution:</p> <ul style="list-style-type: none"> Priority scheme for distribution of assets must comport with the Supreme Court’s decision in <i>United States Department of Treasury v. Fabe</i>. 	#555 § 801	Yes. A priority scheme must protect policyholders while complying with this U.S. Supreme Court decision.	Yes. <i>Fabe</i> established conditions under which a priority scheme is not subject to preemption.
<p>Ancillary Conservation of Foreign Insurers:</p> <ul style="list-style-type: none"> Limits scope of ancillary receiverships. 	#555 § 1002	No. It is useful as it avoids unnecessary ancillary receiverships, but is not necessarily critical.	No.
<p>Domiciliary Receivers in Other States:</p> <ul style="list-style-type: none"> Other states’ receivership laws and are given full faith and credit, which promotes the consistent application of laws and orders and avoids conflicting reciprocity standards. Provides for the disposition of deposits, and ensures that they are available to the receivership estate or guaranty associations, as applicable. 	#555 § 1001	Yes, with respect to recognizing stays, which is essential in receiverships involving multiple states.	Yes, with respect to recognizing stays. A standard should encompass laws that differ from § 1001.
<p>Treatment of Large Deductible Workers Compensation policies:</p> <ul style="list-style-type: none"> Procedures govern parties’ rights regarding large deductible policies in liquidation. 	#555 §712 or pending alternate guideline	Yes, if insurers writing large deductible workers compensation policies are domiciled in a state.	No.
<p>Designated court for receivership proceedings:</p> <ul style="list-style-type: none"> Court may order that one judge hears all matters in a delinquency proceeding. 	#555 § 105 K	No. Rules of procedure generally permit this.	No.
<p>Limitation on judicial discretion regarding a receivership petition:</p> <ul style="list-style-type: none"> Court must enter judgment on petition within 15 days of conclusion of the evidence. If grounds for receivership are established, the court must grant the petition. 	#555 § 205 #555 § 208	No. While these requirements can be helpful, they are not necessarily critical.	No.
<p>Timing of Proceedings:</p> <ul style="list-style-type: none"> Limit how long receivership proceeding can remain open (e.g., deadline for filing of rehabilitation plan). Address the timing of liquidation orders. 	#555 § 105 L #555 § 403 #555 § 404	No. While these requirements can be helpful, they are not necessarily critical.	No.
<p>Reinsurance:</p> <ul style="list-style-type: none"> Align receivership and life / health guaranty association laws regarding reinsurance. 	#555 § 611, 612, #520 8.N.	No. While a clarification of these provisions is helpful, it is not necessarily critical.	No.

Texas Department of Insurance

Property & Casualty Guaranty Fund Limits: • Establish minimum limits of guaranty fund coverage.	#540 § 8.A.(1)	No. Minimum coverage limits are not necessarily critical.	No.
Life / Health Guaranty Association Model: • Encourage states to adopt 2017 revisions to Model #520.	#520 (2017)	No. This process is ongoing.	No.
Guideline for Implementation of State Orderly Liquidation Authority: • Addresses the implementation of a receivership in the event of a proceeding under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act.	GDL # 1700	Yes, if an insurer that might be subject to the Guideline is domiciled in the state.	No.
Question: If not an update to accreditation standards, what other options do you propose for encouraging states to adopt these provisions into law?			
		<ul style="list-style-type: none"> • The insurance industry has successfully sought amendments to specific receivership laws (e.g., IRMA § 711 and the NCIGF large deductible provision). When any changes to receivership laws are sought, the critical provisions identified by the RITF could be included in the legislation. • Additional training to Commissioners and staff regarding receiverships could explain the necessity of updated receivership laws. 	
Question: What impediments, if any, do you foresee in implementing any of these provisions into state law?			
Other Comments Received	Additional Feedback?		
Create accreditation standard requiring adoption of Life and Health Insurance Guaranty Association Model Act in a “functionally consistent” manner.			
Promote cost effective resolution in early stages of receivership proceedings.			
Provide standardized judicial education on the receivership process.			
Strengthen the NAIC’s Financial Analysis Working Group (FAWG) and Receivership Financial Analysis Working Group (R-FAWG).			
Create NAIC “SWAT” team of receivership experts.			
Revise Section 7 of the Insurance Holding Company System Regulatory Act to ensure the continuation of inter-affiliate services in receiverships.	The Receivership Law Working Group is currently working on this.		
Create crisis management groups for supervisory colleges within Section 7 of the Insurance Holding Company System Regulatory Act and/or guidance such as the Receivers’ Handbook.			
Develop statutory changes to accommodate transactions under Insurance Business Transfer and corporate division statutes.			
Develop statutory changes (if needed) to permit guaranty funds to assess for administrative costs that are not tied to the volume of insolvency activity.			
Develop statutory changes as needed to prevent “orphan claims” scenarios.			



Wayne Mehlman
Senior Counsel

September 8, 2020

James Kennedy, Chair
Receivership and Insolvency (E) Task Force
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108

RE: Key Provisions and Other Recommendations to Promote the Effectiveness and Consistency in State Receivership and Guaranty Association Laws

Dear Chairman Kennedy:

The American Council of Life Insurers (“ACLI”)¹ appreciates this opportunity to provide comments on the key provisions and other recommendations that were submitted to the Receivership and Insolvency Task Force.

As we stated in our letter dated February 7, 2020, we believe that both the state receivership and guaranty association systems have operated very efficiently and effectively and that there is a high degree of consistency among the states, particularly with regard to state guaranty association laws. Notwithstanding, both systems can and should be improved, which is why we included a list of potential improvements in that letter.

We support all of the key provisions that appear on Pages 1 and 2 of the exposed document and believe that they are critical for states to adopt and incorporate into their receivership and guaranty fund laws for multi-state receiverships. We do not, however, take a position on those provisions relating to the treatment of large deductible workers compensation policies or property and casualty guaranty fund limits.

That being said, we do not believe that any of the key provisions should be incorporated into the receivership and/or guaranty association model acts, since amending those models could turn out to be very time-consuming, difficult to achieve and delay the enactment of the 2017 revisions to the *Life and Health Insurance Guaranty Association Model Act* in the remaining 17 states and the District of Columbia. Instead, we suggest that they be included in NAIC regulatory guidance, such as the *Receivers’ Handbook for Insurance Company Insolvencies*, including Chapter 6 (*Guaranty Funds/Associations*) and Chapter 9 (*Legal Considerations*).

¹ The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI’s member companies are dedicated to protecting consumers’ financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI’s 280 member companies represent 94 percent of industry assets in the United States. Learn more at www.acli.com.

Furthermore, we do not believe that any of the key provisions should be considered as an accreditation standard. However, we do suggest that the existing accreditation standards for Receivership and Guaranty Funds be modified as follows:

Accreditation standard for Receivership:

- Include a reference to the *Insurers Rehabilitation and Liquidation Model Act* since many states have already partially or fully adopted it.
- Make the adoption of one of the receivership models suggestive instead of prescriptive, by using “such as that contained in” instead of “as set forth in”, in order to allow for the adoption of either model.
- As revised, the accreditation standard would read as follows:
State law should set forth a receivership scheme for the administration, by the insurance commissioner, of insurance companies found to be insolvent ~~as set forth~~ such as that contained in the NAIC’s Insurer Receivership Model Act or Insurers Rehabilitation and Liquidation Model Act.

Accreditation standard for Guaranty Funds:

- Include references to the *Life and Health Insurance Guaranty Association Model Act* and the *Post-Assessment Property and Liability Insurance Guaranty Association Model Act* since most states have already substantially adopted them.
- Make the adoption of the guaranty association models prescriptive instead of suggestive, by using “as set forth in” instead of “such as that contained in”, in order to require the adoption of both models.
- As revised, the accreditation standard would read as follows:
State law should provide for a regulatory framework ~~such as that contained~~ as set forth in the NAIC’s ~~model acts on the subject~~ Life and Health Insurance Guaranty Association Model Act and Post-Assessment Property and Liability Insurance Guaranty Association Model Act, to ensure the payment of policyholders’ obligations subject to appropriate restrictions and limitations when a company is deemed insolvent.

With regard to the “Other Comments Received” that appear on Page 3 of the exposed document, we believe that all of these recommendations should be considered by the Task Force.

Thanks again for this opportunity to comment. If you have any questions, feel free to contact me at waynemehlman@acli.com or 202-624-2135.

Sincerely,



Wayne Mehlman
Senior Counsel, Insurance Regulation

Arbor Strategies, LLC

Chris Petersen
703-847-3610
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September 4, 2020

Commissioner Kent Sullivan
Chair, Receivership and Insolvency (E) Task Force
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

Via email to Jane Koenigsman, NAIC

RE: Request for Comments – Key Provisions

Dear Commissioner Sullivan,

I am writing on behalf of a Coalition¹ of health carriers representing some of the country's largest major medical insurers and health maintenance organizations. Thank you for the opportunity to provide comments regarding key provisions for states to have in their receivership and guaranty fund laws for multi-state receiverships. The Coalition agrees with the Task Force that a national system of receivership and guaranty fund laws that is substantially similar from state to state is preferable to a patchwork of state laws and regulations that are difficult for regulators, industry and consumers to understand. The NAIC's Accreditation Program was developed many years ago in an attempt to create and encourage much of this uniformity.

We agree that with respect to the Life and Health Guaranty Association Model (#520), it would be preferable for all states to adopt its provisions, and we would encourage the Task Force to ensure that it is an accreditation standard. While it is not mandatory that consumers all have

¹ Anthem, Cigna, CVS Health/Aetna, HCSC, and UnitedHealthcare, who together provide health insurance and health maintenance organization coverage to more than 227 million members nationwide, are the members of this Coalition.

Arbor Strategies, LLC

September 4, 2020

Page | 2

the same financial limits from state to state, a consumer's basic right to protection should not vary by state. Consumers who purchase health maintenance organization coverage are entitled to the same safety net as consumers who purchase commercial coverages. We therefore urge the Task Force to make model #520 an accreditation standard.

With respect to the continuation of life and health policies when a liquidation order is entered, we note that the HMO Subcommittee of the Health and Managed Care (B) Committee recently voted to remove the continuation of benefits section (Sec. 14) from the Health Maintenance Organization Model Act (#430). We urge the Task Force to maintain consistency between the receivership and guaranty association models and this model, with respect to health insurance and HMO contracts.

We do not believe that Section 7 of the Insurance Holding Company System Regulatory Act needs to be revised. Regulators have significant authority already over the activities within holding company systems, including the ability to enforce existing contracts. No additional regulatory powers are needed, or appropriate.

While we do not have comments at this point in time regarding any changes to accommodate transactions under Insurance Business Transfer or corporate division statutes, we remain concerned that these transactions could negatively impact the guaranty association system. We therefore reserve our comments until further details about the proposals are available.

Thank you for the opportunity to provide our comments. We look forward to continuing this discussion in the near future.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Chris Petersen".

Chris Petersen
Arbor Strategies, LLC

Cc: Jane Koenigsman

JOINT SUBMISSION OF NOLHGA AND NCIGF REGARDING THE RITF REQUEST FOR FEEDBACK

September 8, 2020

Thank you for the opportunity to provide feedback on the Receivership & Insolvency Task Force’s (“RITF” or “Task Force”) consideration of important statutory provisions in receivership and guaranty fund laws. Many questions raised in the request for comment involve priorities for the national state-based guaranty system.

NOLHGA and NCIGF appreciate the inclusion and partnership that has been extended by the Task Force in addressing important operational and policymaking issues for the national state-based resolution system. Because of RITF leadership, the goals of communication and pre-planning continue to progress, both for the system in general and on individual insolvencies. Our ability to speak in a coordinated way as one resolution system has increased our collective effectiveness on a range of priorities both domestically and internationally. That partnership has produced tangible results on high-stakes and complex matters – for example, achieving a consensus on the funding for Long-term Care Insurance guaranty coverage, strengthening regulator guidance on pre-planning and coordination with the guaranty system, and correcting international standard proposals that would have materially conflicted with the U.S. resolution system. We approach this workstream from that same point of view of collective commitment to an effective resolution system and partnership with receivers in supporting that goal.

We have two general comments as the project moves forward, as well as initial feedback on several of the specific areas identified by the request.

General Comments

We encourage the Task Force to continue to define the standard by which it identifies and evaluates statutory provisions and practices. In December 2017, the Financial Stability Task Force referred to the RITF consideration of the resolution elements of the Macro-prudential Initiative (“MPI”), which focuses on financial stability. The referral to the RITF had three components, as described by the RITF chair in March 2018:

- examining recovery and resolution planning;
- addressing mismatches between federal and state law (on which some relevant items are now pending with the Receivership Law Working Group (“RLWG”)); and
- “[u]ndertak[ing] an evaluation of our current recovery and resolution laws, guidance, tools, etc. to evaluate whether they incorporate best practices regarding the above areas identified as important to financial stability.”

We suggest that continuing to take stock of the specific goals of the project is important here. If the questions under consideration relate to the MPI, then that initiative’s focus on financial

stability may inform the standard for ultimately adopting and advancing a proposal. If the current request for feedback is a more general examination of best practices, then the standard for inclusion may be different. The question of where to place the focus is one we suggest the Task Force continue to discuss and articulate in coordination with stakeholders.

We suggest considering routes as an alternative to accreditation standards to achieve the Task Force goals. There are several routes as an alternative to accreditation to promote policy and practices in the receivership area, and there are notable successes from deploying those routes. On topics where there is a broad consensus among stakeholders and regulators, the receivership community – with RITF leadership – has been able to accomplish change on a state-by-state basis, even where the stakes are high. Good, practical proposals related to identified significant goals seem to be at least as achievable on a state-by-state basis as would proposing that elements be an accreditation requirement.

However, on issues as to which there is no consensus, arguably it would be as unachievable to establish an accreditation standard, as it would be to have it adopted widely. As you know, accreditation includes a long exposure period and a super-majority requirement at the F Committee, Executive Committee, and plenary level, followed by two years of implementation. Instead of that high hill, we encourage resolution leaders to continue to explore guiding improvements in U.S. policy through guidelines, the Receiver’s Handbook, other regulatory handbooks, and developing best practices. NOLHGA and NCIGF continue to offer partnership with receivers on those efforts.

Initial Comments on Select Specific Topics

We have suggestions about a number of specific areas identified for comment. We expect that we will have an opportunity to provide additional and more detailed input on areas that affect the guaranty system, the fulfillment of its obligation to policyholders, and its role in the overall resolution process. Generally, we have noted at this stage a few areas where (1) evaluating the importance of adopting statutory provisions may be particularly valuable, (2) work is already underway and progress toward identified goals is happening, or (3) regarding the judicial framework, we have observations on pursuing legislative or process changes.

Evaluating the importance of statutory provisions in certain areas

We have noted a few areas that were raised in your request for comments where we think evaluating the importance of broader adoption of model language or other precedent will be worthwhile:

- (1) Stays and injunctions are important to the administration of a receivership and to the receivers’ authority over assets and liabilities.
- (2) Continuation of coverage for life and health policies upon liquidation is an important element of a life and health receivership.

- (3) Where a priority scheme for distribution of assets does not reflect the Supreme Court's decision in *United States Department of Treasury v. Fabe*, a statutory change to accomplish a "*Fabe* cure" would make sense.
- (4) Evaluating the alignment of receivership and life and health guaranty association laws regarding reinsurance is also valuable.

Productive action and deliberations are underway on several topics

Several of the following identified topics have rightly been recognized as areas for NAIC consideration, and therefore are being addressed on an ongoing basis.

Large Deductible: NAIC staff has acknowledged that "[h]aving the necessary statutory authority specific to large deductible workers' compensation products in receiverships is key to the successful resolution of these insurers." (November 12, 2019 Staff Memo to Receivership Large Deductible Workers Compensation (E) Working Group.) We therefore suggest that large deductibles in resolution are already acknowledged as a priority. There is more to do, and NCIGF continues to work with the Working Group on an acceptable guideline that most states would consider adopting.

Title II: Seven states have adopted the Title II implementation guideline, and any stalled progress may have been on account of new priorities rather than opposition to the guideline. The Title II guideline also may not need to be adopted in every state to ensure national readiness for a theoretical Title II receivership.

Uniformity: The question of additional uniformity for the guaranty system has been discussed by the NAIC, Congress, and the Federal Insurance Office. Both the life and health guaranty system and property casualty guaranty system operate with a functional consistency. Most states are following NAIC models; and to the extent there are inconsistencies among states, there is a rational basis that reflects state-specific conditions. State legislatures can adapt their guaranty fund laws to local conditions, and we would expect states to defend that authority.

FAWG and RFAWG Role: We commend the RITF and its Receivership Financial Analysis Working Group ("RFAWG") for leadership driving further coordination and planning. The RITF also has enhanced communication between RFAWG and the Financial Analysis Working Group ("FAWG") in order to promote pre-planning for receiverships where possible. NOLHGA and NCIGF have commented on the importance of those goals on several occasions. We see the good and ongoing progress made by receivership leaders and stakeholders as being driven by RITF, RFAWG, and FAWG leadership.

Other Workstreams: Meanwhile, some comments under consideration appear to be being managed as parts of other NAIC workstreams, and the Task Force may want to consider whether they are ripe for additional input as part of this process. RLWG is considering changes to the Model Holding Company System Regulatory Act to help provide continuity of services from an

affiliate in receivership. And the Restructuring Mechanisms (E) Working Group will be evaluating statutes that would accommodate restructuring transactions. That Working Group's charge includes examining the impact of restructuring mechanisms on guaranty associations and policyholders, on which we assume the RITF will have input. NOLHGA and NCIGF have been commenting to the Working Group about identified concerns and potential solutions.

Observations on addressing the judicial framework for resolution

Several areas relate to the judicial framework for overseeing an insurance receivership, including limits on discretion and deadlines for ruling on a petition, closing a receivership, or filing a rehabilitation plan. Generally speaking, our experience is that receivership courts exercise discretion in an appropriate way, and that their discretion can be a valuable tool given the unique circumstances and lack of predictability around any particular receivership.

Where judicial discretion arguably has disserved policyholders and the guaranty system, statutory changes are unlikely to prevent those results, and in any event face an uphill battle given the broad range of stakeholders that have interests in the statutory framework for a state judicial system. We view opportunities for judicial education and coordination to be worthwhile where possible, and of course will continue to work in coordination with receivers toward good results on individual receiverships and the development of precedent that serves policyholders and the protections afforded by the guaranty system.

Thank you again for the opportunity to provide feedback at this stage. We look forward to the chance to contribute to this important workstream as it moves forward.

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