



# NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Date: 10/12/21

*Virtual Meeting*

## RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE

Thursday, Oct 21, 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	Northern Mariana Islands
		Guerrero	Oklahoma
Dana Popish Severinghaus	Illinois	Glen Mulready	Pennsylvania
Doug Ommen	Iowa	Jessica K. Altman	Rhode Island
Vicki Schmidt	Kansas	Elizabeth Kelleher Dwyer	South Carolina
Sharon P. Clark	Kentucky	Raymond G. Farmer	Utah
Eric A. Cioppa	Maine	Johnathan T. Pike	
Gary D. Anderson	Massachusetts		

NAIC Support Staff: Jane Koenigsman

### AGENDA

1. Consider Adoption of its Summer National Meeting Minutes—*Brian Riewe (TX)* Attachment One
2. Consider Exposure of draft Referral to the Financial Regulation Standards and Accreditation (F) Committee—*Brian Riewe (TX)* Attachment Two
3. Consider Exposure of draft Memorandum to States on Receivership and Guaranty Fund Laws—*Brian Riewe (TX)* Attachment Three
4. Discuss Any Other Matters Brought Before the Task Force—*Brian Riewe (TX)*
5. Adjournment

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## Draft Pending Adoption

Draft: 8/3/21

Receivership and Insolvency (E) Task Force  
Virtual Meeting (*in lieu of meeting at the 2021 Summer National Meeting*)  
July 27, 2021

The Receivership and Insolvency (E) Task Force met July 27, 2021. The following Task Force members participated: Doug Slape, Chair, represented by James Kennedy (TX); James J. Donelon, Vice Chair, represented by Nick Lorusso (LA); 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); 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 Cara Toomey (MA); Eric A. Cioppa represented by Robert Wake (ME); Anita G. Fox represented by James Gerber (MI); Chlora Lindley-Myers and Shelley Forrest (MO); Mike Causey represented by Jeff Trendel (NC); Eric Dunning and Lindsay Crawford (NE); Russell Toal (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); and Raymond G. Farmer represented by Daniel Morris (SC).

### 1. Adopted its May 20 Minutes

The Task Force met May 20 and took the following action: 1) adopted its March 12 minutes; and 2) adopted amendments to the *Insurance Holding Company System Regulatory Act* (#440) and the *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450).

Superintendent Toal made a motion, seconded by Mr. Baldwin, to adopt the Task Force's May 20 minutes (Attachment One). The motion passed unanimously.

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

Ms. Wilson said the Receivership Financial Analysis (E) Working Group met March 1, in lieu of the Spring National Meeting, in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities, or individuals) of the NAIC Policy Statement on Open Meetings, to discuss companies in receivership. The Working Group plans to meet Aug. 5, in lieu of the Summer National Meeting, in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities, or individuals) of the NAIC Policy Statement on Open Meetings.

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

### 3. Adopt the Report of the Receiver's Handbook (E) Subgroup

Mr. Baldwin said the Receiver's Handbook (E) Subgroup met June 14 and May 26. During these meetings, the Subgroup formed drafting groups to begin work on developing edits to each chapter of the *Receiver's Handbook for Insurance Company Insolvencies* (Handbook) to make it more user friendly and concise without diminishing its value to seasoned and new receivers. The drafting group has begun work drafting revisions to the first chapter.

Superintendent Toal made a motion, seconded by Ms. Wilson, to adopt the Subgroup's report (Attachment Two). The motion passed unanimously.

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

Mr. Baldwin said the Receivership Law (E) Working Group met May 4 to adopt amendments to Model #440 and Model #450. The amendments address the Working Group's charge related to the continuation of essential services by affiliates of an insurer in receivership, as well as receiver's access to data and records held by affiliates belonging to the insurer in receivership. Given that the work of the Receiver's Handbook (E) Subgroup has begun, the Working Group recommended the development of guidance related to the model changes by the Subgroup as part of its charge to update the Handbook. These actions complete the Working Group's current charge related to the Macroprudential Initiative (MPI).

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

## Draft Pending Adoption

Mr. Kennedy said that once the Executive (EX) Committee and Plenary adopts the amendments to Models #440 and #450, the Financial Standards and Accreditation (F) Committee will ask the Task Force for a recommendation regarding the accreditation requirement for these models, which have a “substantially similar” standard. He said that NAIC staff will send out a memo requesting input from members after the Summer National Meeting.

Mr. Wake recommended that the Task Force continue to monitor the Penn Treaty Network America Insurance Company liquidation, given the recent opinion from the Pennsylvania court.

### 5. Adopt its 2022 Proposed Charges

Mr. Kennedy discussed the 2022 proposed charges of the Task Force and its working groups and subgroup. The proposed charges would remain the same, with one exception. The charges of the Receivership Law (E) Working Group related to the MPI will be deleted, as this has been completed.

Superintendent Toal made a motion, seconded by Ms. Wilson, to adopt the Task Force’s 2022 proposed charges (Attachment Four). The motion passed unanimously.

### 6. Heard an Update on International Resolution Activities

Mr. Kennedy said the International Association of Insurance Supervisors (IAIS) Resolution Working Group completed the *Application Paper on Resolution Powers and Planning*. The Working Group will begin work on an application paper on policyholder protection schemes in September.

### 7. Heard an Update on the Status of MPI Recommendations

#### a. Training and Outreach to State Insurance Departments

Mr. Kennedy said the Task Force will plan more training on receivership matters to educate state insurance departments, specifically their legal and legislative staff. He said the NAIC staff will include new model and guideline amendments in upcoming meetings with legislative liaisons. He asked for volunteers from Task Force members to present on these topics during zone meetings in the fall.

#### b. Monitor the Work of Other NAIC Groups

Mr. Kennedy said the Group Solvency Issues (E) Working Group is in the process of reviewing comments on draft updates to financial analysis guidance, including guidance regarding crisis management groups, recovery planning, and resolution planning for internationally active insurance groups (IAIGs). The Working Group is meeting Aug. 4, and will hear from commentators on the draft guidance.

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

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Date: [Insert Date], 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)*

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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: [Insert Date], 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

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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.<sup>1</sup> States are encouraged to review their receivership laws, and consider the following:

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<sup>1</sup> [https://content.naic.org/sites/default/files/inline-files/cmte\\_e\\_receivership\\_related\\_170717\\_committee\\_recommendation.pdf](https://content.naic.org/sites/default/files/inline-files/cmte_e_receivership_related_170717_committee_recommendation.pdf)

- 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.<sup>2</sup>

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.<sup>3</sup>

#### 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.<sup>4</sup>

For further resources or information about these Model Laws and Guidelines, states may contact NAIC staff, [jkoenigsman@naic.org](mailto:jkoenigsman@naic.org).

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

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

<sup>4</sup> [https://content.naic.org/sites/default/files/inline-files/committees\\_e\\_receivership\\_related\\_rev\\_memo\\_520.pdf](https://content.naic.org/sites/default/files/inline-files/committees_e_receivership_related_rev_memo_520.pdf)