

Date: 7/19/24

*Virtual Meeting*

**RECEIVERSHIP LAW (E) WORKING GROUP**

July 24, 2024

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

**ROLL CALL**

Kevin Baldwin, Co-Chair	Illinois	Robert Wake	Maine
Laura Lyon Slaymaker, Co-Chair	Pennsylvania	Christopher Joyce	Massachusetts
Michael E. Surguine	Arkansas	Tom Mitchell	Michigan
Joe Holloway / Jack Hom	California	Shelly Forrest	Missouri
Rolf Kaumann	Colorado	Tadd Wegner	Nebraska
Jane Callanan	Connecticut	Alexander S. Adams Vega	Puerto Rico
Lorrie Arterburn/Yamile Benitez-Torviso	Florida	Jessica Barta	Texas
Kim Cross	Iowa	Charles Malone	Washington
Tom Travis	Louisiana		

NAIC Support Staff: Jane Koenigsman

**AGENDA**

1. Hear a Brief Overview and Update on States' adoption of Receivership Law Provisions for FHLB Exemption to Stays and Injunctions Attachment One  
– *Kevin Baldwin (IL)*
2. Hear a Presentation and Discuss Outcome of Recent Litigation of Penn Treaty Network America Ins. Co. Attachment Two  
– *Laura Slaymaker (PA) and Michael Broadbent (Cozen O'Connor)*
3. Discuss Any Other Matters—*Kevin Baldwin (IL)*
4. Adjournment

# FHLB Exemption Legislation in States' Receivership Laws

(As of July 17, 2024)

## Legislative Status by State:

- Enacted Legislation (29): AL, AZ, CO, DE, GA, IL, IN, IA, KS, KY, MD, MI, MN, MO, MS, NE, NC, NH, NJ, OH, OK, PA, RI, SC, TN, UT, VT, WI, WV
- Pending Legislation (2): CT, MA

State	Bill Number / Link	Status
ALABAMA	HB 370	Law Enacted 5/11/16
ARIZONA	SB 1049 (part of a larger omnibus bill)	Law Enacted 2/9/21
COLORADO	<a href="#">H. 1215</a>	Law Enacted 3/21/14
CONNECTICUT	SB 323	Introduced 2/29/24
DELAWARE	<a href="#">S. 154</a>	Law Enacted 4/8/14
GEORGIA	HB 552 (originally HB 624)	Law Enacted 5/5/15
ILLINOIS	SB 1297	Law Enacted 8/11/17
INDIANA	<a href="#">S. 1486</a> ; <a href="#">27-9-3.1-12</a> ; <a href="#">27-9-3.1-17</a> ; <a href="#">Title 27</a>	Law Enacted 4/6/11
IOWA	<a href="#">S. 2133</a>	Law Enacted 3/14/14
KANSAS	<a href="#">H. 2514</a>	Law Enacted 3/25/14
KENTUCKY	HB 171	Law Enacted 3/30/22
MARYLAND	HB 504; SB 458	Law Enacted 5/30/21
MASSACHUSETTS	SB 641 ( <a href="https://malegislature.gov/Bills/193/S641">https://malegislature.gov/Bills/193/S641</a> )	Introduced 1/19/23
MICHIGAN	<a href="#">S. 937</a>	Law Enacted 6/14/12
MINNESOTA	HF 3255 (part of a larger budget bill)	Law Enacted 6/2/22
MISSOURI	SB 932	Law Enacted 7/1/16
MISSISSIPPI	SB 2227	Law Enacted 3/10/23
NEBRASKA	<a href="#">L. 337</a>	Law Enacted 3/20/13
NEW HAMPSHIRE	SB 66	Law Enacted 7/28/23
NEW JERSEY	A 1746	Law Enacted 11/20/23
NORTH CAROLINA	HB 440	Law Enacted 7/21/17
OHIO	SB 169	Law Enacted 12/22/17
OKLAHOMA	<a href="#">S. 697</a>	Law Enacted 4/22/13
PENNSYLVANIA	HB 2353	Law Enacted 10/14/14
RHODE ISLAND	<a href="#">H7432</a> ; <a href="#">S2270</a>	Law Enacted 6/17/24

State	Bill Number / Link	Status
SOUTH CAROLINA	<a href="#">S. 693</a>	Law Enacted 5/26/16
TENNESSEE	HB 673	Law Enacted 5/21/19
UTAH	SB 31	Law Enacted 3/13/24
VERMONT	SB 95	Law Enacted 6/6/23
WASHINGTON	SB 5400	Introduced 1/10/22. Died upon adjournment.
WEST VIRGINIA	HB 2461	Law Enacted 4/1/15
WISCONSIN	AB 822	Law Enacted 4/16/18

**History:**

In the fall of 2012 the Federal Home Loan Banks (FHLB), at the request of its regulator (the Federal Housing Finance Agency—FHFA), sent a request to the Receivership and Insolvency (E) Task Force with a legislative proposal that would have FHLB collateral relating to loans made to its insurer-members treated the same in receivership as FHLB collateral relating to loans made to its FDIC-insured member banks is treated in a federal bankruptcy. Specifically, the FHLB proposal offered draft language to the *Insurance Receivership Model Act* (IRMA Model #555) or equivalent state statutes, to include pledges, security and collateral relating to a FHLB security agreement within the exemptions to its stays and injunctions (IRMA Section 108) and voidable preferences and liens (IRMA Section 604).

**The FHLB proposal is posted to the NAIC website at:**

[https://content.naic.org/sites/default/files/committee\\_related\\_documents/committees\\_e\\_receivership\\_related\\_fhlb\\_exec\\_summary.pdf](https://content.naic.org/sites/default/files/committee_related_documents/committees_e_receivership_related_fhlb_exec_summary.pdf)

In 2013, the NAIC's Federal Home Loan Bank Legislation (E) Subgroup and Receivership and Insolvency (E) Task Force concluded its review of the proposal and issued a report which states that it does not support or oppose the FHLB's legislative proposal. However, the report did offer several recommendations to the states, including the need for states to assess their own laws; suggested alternative language to address communication by a FHLB, at the request of the receiver, of the process and timing for the release of excess collateral, payment of fees and available options for an insurer-member to renew or restructure an advance to defer associated prepayment fees, and etc.; and the need for regulatory oversight and pre-receivership planning of insurer's use of FHLB agreements.

**The Task Force Memo is posted to the NAIC website at:**

[https://content.naic.org/sites/default/files/committee\\_related\\_documents/committees\\_e\\_receivership\\_related\\_fhlb\\_1311\\_sg\\_report.pdf](https://content.naic.org/sites/default/files/committee_related_documents/committees_e_receivership_related_fhlb_1311_sg_report.pdf)

**To:** Laura Slaymaker, Deputy Commissioner, Pennsylvania Insurance Department  
**From:** Michael Broadbent, Cozen O'Connor  
**RE:** Receivership Law Working Group; IRMA  
**Date:** July 19, 2024

This Memorandum briefly summarizes the provisions of Insurance Receivership Model Act (“IRMA”) addressed to benefits in excess of guaranty association limits on claims arising more than thirty days after the entry of a liquidation order (the “OTL Benefits”).

The OTL Benefits issue was specifically highlighted in the liquidation of Penn Treaty, where the court held that Pennsylvania law automatically terminated all insurance policies and the coverage associated with those policies no later than thirty days after the entry of a liquidation order, except to the extent the policies or coverage was transferred to another insurer or the guaranty associations. *See* 40 P.S. § 221.21. The rights and liabilities of the parties were fixed as of the liquidation order, except to the extent coverage was continued under § 221.21 or certain “Special Claims” language applied. Taken together, these provisions and prior case law precluded policyholders with OTL Benefits claims arising post-liquidation from receiving distributions together with other covered claims in second priority class for “[a]ll claims under policies for losses wherever incurred.” 40 P.S. § 221.44(b).

IRMA provides one possible method for addressing the issue as presented in *Penn Treaty*, although other alternatives may be available to meet specific state needs. Under the header of “Continuation of Coverage,” IRMA § 502B carves out “life, disability income, long term care or health insurance or annuities” from the standard no-more-than-thirty-days cancellation provision. Instead, the coverage provided by such policies is continued (1) to allow for guaranty association coverage, *and* (2) to the extent approved by the court for policies or portions of policies not covered by guaranty associations. *See* IRMA § 502D. In this way, IRMA makes a logical distinction between the automatic continuation of benefits within guaranty association limits (because such coverage is required to allow the associations to fulfill their obligations) and the permissive continuation of uncovered benefits (because OTL Benefits may appropriate in some cases but not in others).

IRMA expressly authorizes the liquidator to continue the uncovered portion of coverage until “a date proposed by the liquidator and approved by the receivership court to cancel coverage.” *See* IRMA §§ 502B, D; *see also* IRMA § 501B (rights and liabilities to be fixed on set date).<sup>1</sup> IRMA also provides guidelines for the use of reinsurance for uncovered policies and uncovered portions of policies that are continued by court approval under the process described in § 502. *See* IRMA § 612.

Importantly, the distribution scheme in IRMA § 801 also provides that claims “incurred during the extension of coverage provided for in Section 502” are in the same priority class as nearly all other policyholder loss claims under the category of “[a]ll claims under policies of insurance.” As a result, the Liquidator may request and obtain court approval for continuing coverage on the portion of policies not covered by the guaranty associations, and, having obtained such approval, the Liquidator may use estate assets to pay the OTL Benefits within the class of policyholder claims arising pre-liquidation.

Relevant portions of IRMA § 502 appear below with key language emphasized in bold.

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<sup>1</sup> The liquidator can propose a period that is more or less than thirty days. *See* IRMA § 502 Drafting Note (referencing shorter period of time); § 502B (permitting “further exten[sion]” of time); *see also* §§ 502D, 801C.

## Section 502

**B. Notwithstanding any policy or contract language or any other statute, all policies, insurance contracts** (other than reinsurance by which the insurer has ceded insurance obligations to another person), surety bonds or surety undertakings, **other than life, disability income, long term care or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force as provided in this section**, unless further extended by the receiver with the approval of the receivership court, until the earlier of:

- (1) Thirty (30) days from the date of entry of the liquidation order;
- (2) The date of expiration of the policy coverage;
- (3) The date the insured has replaced the insurance coverage with equivalent insurance with another insurer or otherwise terminated the policy;
- (4) The date the liquidator has effected a transfer of the policy obligation pursuant to Section 504A(5); or
- (5) The date proposed by the liquidator and approved by the receivership court to cancel coverage.

**D. Policies of life, disability income, long term care or health insurance or annuities covered by a guaranty association or portions of such policies covered by one or more guaranty associations, under applicable law, shall continue in force, subject to the terms of the policy (including any terms restructured pursuant to a court-approved rehabilitation plan) to the extent necessary to permit the guaranty associations to discharge their statutory obligations. Policies of life, disability income, long term care or health insurance or annuities, or portions of such policies, not covered by one or more guaranty associations shall terminate as provided under Subsection B**, except to the extent the liquidator proposes and the receivership court approves the use of property of the estate, consistent with Section 801, for the purpose of continuing the contracts or coverage by transferring them to an assuming reinsurer.