



NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Date: 11/3/2021

Virtual Meeting

RECEIVERS’ HANDBOOK (E) SUBGROUP

Thursday, November 18, 2021

3:00 – 4:00 p.m. ET / 2:00 – 3:00 p.m. CT / 1:00 – 2:00 p.m. MT / 12:00 – 1:00 p.m. PT

ROLL CALL

Kevin Baldwin, Chair	Illinois	Leatrice Geckler	New Mexico
Toma Wilkerson, Vice Chair	Florida	Donna Wilson/Jamin Dawes	Oklahoma
Joe Holloway	California		
Jared Kosky	Connecticut	Laura Slaymaker/ Crystal McDonald	Pennsylvania
Jim Gerber	Michigan	Brian E. Riewe	Texas

NAIC Support Staff: Sherry Flippo

AGENDA

1. Adopt the minutes from June 14, 2021. —*Kevin Baldwin (IL)* Attachment One
2. Consider Exposing Chapters 1 & 2 of the *Receivers’ Handbook for Insurance Company Insolvencies*—*Kevin Baldwin (IL)* Attachment Two
3. Discuss Any Other Matters Brought Before the Subgroup —*Kevin Baldwin (IL)*
4. Adjournment

W:\National Meetings\2021\Winter\TF\RHS Agenda 111821.docx

Draft: 6/15/21

Receiver's Handbook (E) Subgroup
Virtual Meeting
June 14, 2021

The Receiver's Handbook (E) Subgroup of the Receivership and Insolvency (E) Task Force met June 14, 2021. The following Subgroup members participated: Kevin Baldwin, Chair (IL); Toma Wilkerson, Vice Chair (FL); Joe Holloway (CA); Jared Kosky (CT); James Gerber (MI); Donna Wilson and Jamin Dawes (OK); Laura Lyon Slaymaker and Crystal McDonald (PA); and Brain Riewe (TX).

1. Adopted its May 26 Minutes.

The Subgroup met May 26 and took the following action: 1) discussed its charges; and 2) planned the review process for the *Receiver's Handbook for Insurance Company Insolvencies* (Receiver's Handbook). Mr. Baldwin noted that the minutes from the May meeting were in the meeting materials.

Mr. Gerber made a motion, seconded by Ms. Wilkerson, to adopt the Subgroup's May 26 minutes (Attachment 1). The motion passed unanimously.

2. Discussed the Drafting Group Volunteers and Process

Mr. Baldwin thanked the volunteers that have agreed to participate in the drafting group and discussed the process for the drafting group. He said that the drafting group would have a primary drafter for specific pages of Chapter 1. The other group members would add comments and/or revisions to the Word document. The drafting group would schedule a meeting(s) to discuss the comments or revisions. Once completed, the drafting group would present the document to the Subgroup for public exposure. Once the document has been publicly exposed, the public comments received would be considered by the Subgroup and the document would be revised as warranted. After public exposure, the Subgroup would consider adoption of Chapter 1. This would be the same process for all the other chapters of the Receiver's Handbook.

3. Demonstrated SharePoint Collaboration Software for Drafting Groups

Mr. Baldwin introduced Sherry Flippo (NAIC) and Amy Lopez (NAIC). They demonstrated the SharePoint website that would be used for collaboration among the drafting group members.

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

OVERVIEW

Each state and territory have a statute that provides for the appointment of the state's insurance regulator as the Receiver of an insurer that is placed in a delinquency proceeding. This Handbook is intended as a guide for insurance regulators and others who assist with carrying out the Receiver's duties.

The Handbook is organized by subject matter. Each chapter contains an introduction to the subject, followed by an in-depth discussion. In some chapters, checklists are included as an aid to implementing the actions described in the chapter.

References are provided to the applicable provisions of the NAIC model receivership laws and relevant case law in each chapter. As the legal references reflect the NAIC models and case law existing at the time the Handbook was drafted, a practitioner should always review the current state of the law.

While receiverships typically share essential principles and elements, there are important variances:

- Each state's receivership statute may contain unique provisions that are not derived from an NAIC model act or shared with other states.
- Case law interpreting the statutes governing receiverships can vary between states.
- A receivership is a court proceeding, and the judicial process is governed by the state's court system and rules of procedure.
- Each state insurance department is structured to meet the circumstances of the particular state, and the administrative process for handling receiverships may differ between the states.
- As receiverships vary in size and complexity, a range of approaches may be appropriate.

A practitioner should be aware of the process for handling a receivership in the relevant state, and how it may differ from the examples provided in this Handbook. As described above in the Disclaimer, this Handbook is not an instructional manual for handling a receivership but should be viewed as guidance.

Contents

I.	INTRODUCTION	6
II.	FORMS OF PROCEEDINGS	6
	A. Administrative Supervision	6
	B. Receivership Proceedings Generally.....	7
	1) Control of the Insurer.....	8
	2) Preparation for the Hearing.....	8
	3) Contents of the Order.....	8
	4) Duration	9
	5) Review	9
	6) Conservation of Property of Foreign or Alien Insurers	9
	C. SEIZURE AND CONSERVATION ORDERS	9
	1) Seizure Orders.....	10
	D. Rehabilitation.....	10
	1) Coordination with Guaranty Associations	10
	E. Considerations Common to Both Conservation and Rehabilitation	12
	1) Issues to be Addressed	12
	2) Operational Issues.....	14
	3) Possible Sale of Insurer.....	14
	F. Liquidation.....	15
	1) Order of Liquidation	15
	2) Effect on Policies	15
	3) Powers and Duties of the Liquidator	15
	4) Triggering of Guaranty Associations.....	16
	5) Notice.....	17
	6) Deadline for Filing Claims.....	17
	7) Ancillary Proceedings.....	17

III.	INTERESTED PERSONS	18
	A. Guaranty Associations	18
	B. Parent Company and Affiliates.....	18
	C. Government Agencies	18
IV.	RECEIVERSHIP ADMINISTRATION.....	19
	A. Planning.....	19
	1) Identify Problems.....	19
	2) Identify Key Transitional Elements.....	19
	3) Working Business Plan.....	19
	4) Monitoring and Progress Report.....	20
	B. Receivership Order	20
	C. Notices	21
	D. Implementation of the Order	22
	E. Assets	22
	1) Initial Asset Control.....	22
	2) Administration and Ongoing Asset Management.....	23
	F. Take Control of Books and Records.....	25
	G. Inventory	25
	H. Move to Consolidate.....	26
	I. Coordination With Ancillary Receivers	26
	1) Receivers' Agreement.....	27
	2) Claims Handling	28
	3) Ancillary Proceedings Without a Domiciliary Receiver.....	28

V.	ACCOUNTING.....	28
	A. Secure Assets.....	28
	B. Inventory Accounting Records.....	28
	C. Investigation of Insurer’s Financial Statements.....	28
	D. Financial Reports	29
VI.	INFORMATION SYSTEMS AND TECHNOLOGY.....	29
	A. Evaluating Hardware/Software	29
	B. System Shut Down.....	29
VII.	CLAIM OPERATIONS	29
	A. Take Control of Claim Processing and Payment.....	29
	B. Develop an Understanding of Claim Operations.....	30
	C. Review of Claim Handling.....	30
	D. Review Outside Involvement in Claim Handling	30
	E. Claims Handling in Conservation/Rehabilitation	30
	F. Uniform Data Standard	31
VIII.	REINSURANCE	31
	A. Location of Reinsurance Documents	31
	B. LETTERS OF CREDIT AND TRUST AGREEMENTS	31
	C. Role of Intermediaries.....	31
	D. Identification of Funds Held.....	32
	E. Payments to Reinsurers	32
IX.	HUMAN RESOURCES.....	32
	A. Open Lines of Communication	32
	B. Personnel, Payroll and Benefits	32
	C. Staffing Plan.....	32
	D. Retention of Legacy Staff.....	32
	E. Legacy Staff Retention	33
	F. Other Personnel Issues.....	33
X.	CLOSURE OF THE ESTATE	33

A. Guaranty Associations	33
B. Ancillary Receiverships	34
C. Tax Returns	34
D. Final Accounting Matters	34
1) Adjusting and Closing Entries	34
2) Reserving Final Expenses	34
E. Abandoned Assets and Causes of Action.....	34
F. Final Reports and Applications or Motions.....	35
G. Final Claims Matters.....	35
1) Final Distribution.....	35
2) Former Insureds with Unsettled Litigation.....	35
3) Reducing Reserves or Recorded Allowances on Claims	35
4) Unclaimed Dividends and Escheated Funds.....	35
H. Closing the Office	36
I. Post Closure Matters.....	36
J. Potential Reopening of Estate.....	36

CHAPTER 1 – COMMENCEMENT OF THE PROCEEDING

I. INTRODUCTION

Insurer receiverships are governed by state law rather than federal bankruptcy law. Although the proceeding is governed principally by the law of the state in which the insurer is domiciled, the laws of the various states and other jurisdictions in which an insurer conducted business, has assets, or has creditors, may also be implicated. Consequently, during the commencement and administration of a troubled or insolvent insurer, it is important for the receiver to consider the laws of those states and jurisdictions.

Most states have enacted statutes that govern the conservation, rehabilitation and liquidation of insurance companies that are patterned at least in part after one of three model acts that have been adopted by the NAIC over the years: the Uniform Insurers Liquidation Act (“Uniform Act”); the Insurers Rehabilitation and Liquidation Model Act (“Liquidation Model Act”); and the Insurer Receivership Model Act (“IRMA”)¹. In this handbook, the model acts will be referred to collectively as the “NAIC Model Acts.”² Because of their widespread influence, the NAIC Model Acts are basis for discussion of issues involved in the commencement and administration of troubled or insolvent insurers. Even so, the laws of the individual states may deviate from the models, in whole or part. In some jurisdictions, affiliated service providers (e.g., agencies, premium finance companies, administrative service providers) whose purpose is to provide services solely to the insolvent insurer may be subject to the laws that apply to impaired or insolvent insurers.³

Receivership proceedings⁴ are usually commenced against an insolvent, financially impaired or otherwise troubled insurer in the insurer’s domiciliary state (the state in which the insurer is incorporated) and in specific courts within that state, generally either the court in the judicial district encompassing the state’s capital or the judicial district of the insurer’s principal office. The NAIC Model Acts require that the chief insurance regulator of the insurer’s domiciliary state be appointed receiver of the insurer to administer the receivership under court supervision. The chief insurance regulator in the individual state may be referred to as commissioner, treasurer, superintendent, or director. For purposes of this handbook, the term “regulator” is used to encompass all such officials. If the insurer is an “alien” insurer admitted to the U.S. market through a “port of entry,” the state through which the insurer was admitted will administer the receivership.

See Chapter 9 – Legal Considerations for each type of proceeding.

II. FORMS OF PROCEEDINGS

A. ADMINISTRATIVE SUPERVISION

Most states authorize the regulator to issue short-term administrative supervision orders against insurers operating in a manner that poses a hazard to policyholders, creditors, or the public. Under such orders, the regulator or their special deputies serves as administrative supervisor of the insurer. In states where administrative supervision orders may be issued without formal court proceedings, the orders are subject to administrative review and are often confidential. Administrative supervision can enhance

¹ Refer to Appendix XXX for a chart outlining key differences between the Uniform Act, IRLMA and IRMA.

² Refer to NAIC website for state charts that provide state law citations to determine which version of IRMA a state has adopted. <https://content.naic.org/model-laws>. Note that some states that have not adopted IRMA in full; but may have adopted specific provisions from IRMA.

³ In 2021, the NAIC adopted revisions to the *Insurance Holding Company System Regulatory Act* (#440) and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450) that bring 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.

⁴ The NAIC Global Receivership Information Database provides publicly available information about insolvent insurers including receivership orders (conservation, rehabilitation, and liquidation). <https://isiteplus.naic.org/grid/gridDisc.jsp>

regulatory oversight while the insurer overcomes what is envisioned as a temporary challenge, such as a crisis in the broader economy. It is also useful in temporarily stabilizing a deteriorating situation prior to the entry of an order of rehabilitation or liquidation. Where administrative supervision is authorized, statutes typically empower the regulator to prohibit the insurer from doing any of the following during the period of supervision, without the prior approval of the regulator:

- Dispose of, convey, or encumber any of its assets or its business in force;
- Spend over specified spending limitations;
- Close any of its bank accounts;
- Lend any of its funds;
- Invest any of its funds;
- Transfer any of its property;
- Incur any debt, obligation, or liability;
- Merge or consolidate with another insurer;
- Enter into any new reinsurance contract or treaty;
- Terminate or cancel reinsurance;
- Terminate, surrender, forfeit, convert, or lapse any policy or contract of insurance (except for nonpayment of premiums due) or to release, pay or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy or contract;
- Make changes in the senior management team; and
- Make extraordinary changes in staff.

In addition, supervision orders frequently impose heightened regulatory reporting requirements, such as monthly financial reporting, increased market conduct reporting, and specified special reporting such as changes in reinsurance or performance of invested assets. Supervision is often also a vehicle for more intense analysis of an insurer's affairs and condition. If the insurer fails to comply with the order of administrative supervision, other grounds exist under the applicable statute, or the company is found to be insolvent, the regulator may petition for a receivership order.

B. RECEIVERSHIP PROCEEDINGS GENERALLY

IRMA incorporates three distinct receivership actions—conservation, rehabilitation, and liquidation. In many states, the statutes only contemplate receivership proceedings for rehabilitation or liquidation.

A receivership order authorizes the receiver to conserve, rehabilitate or liquidate the insurer, with various statutory and judicially imposed restrictions that may vary from state to state and case to case. Subject to these restrictions and to the supervision of the court, the receiver controls all aspects of the insurer's operations, from the initial order until the receiver is discharged. The receiver's responsibilities extend to policyholders, creditors, regulators, and other interested parties. The receiver should communicate with these parties and keep them informed of the progress of the receivership.

IRMA §207 lists 22 independent grounds, any one of which suffices for the issuance of a receivership order. Many of the same grounds support such orders in most states. A troubled company does

not move systematically from one form of receivership to another, but rather, the regulator may choose to petition for the form of receivership appropriate to the circumstances at any given time.

Receivership proceedings are commenced at the behest of the regulator. In some states, creditors and other interested persons may also request that the commissioner be appointed receiver. Such proceedings may seek rehabilitation or liquidation of the insurer or may initially seek conservation, deferring election of one of these other paths until a later day.

1) Control of the Insurer

Per IRMA §104.X the Receiver in a receivership proceeding means liquidator, rehabilitator, conservator, or ancillary receiver, as the context requires. IRMA §209.C states a receiver may appoint special deputies that have all the powers and responsibilities of the receiver.

A seizure, conservation, or other receivership order that vests in the receiver control of the insurer also has the effect of making the receiver responsible for the company. Even while conducting further analysis to ascertain the company's financial condition and prepare for any hearing, the receiver must implement measures to safeguard the insurer's property and affairs. Such measures include:

- Providing for physical security for the insurer's facilities, including proper controls and limits on staff access;
- Establishing security for information systems and obtaining a forensic backup of company information;
- Familiarization with company staff responsibilities, capabilities, and potential to interfere with receivership proceedings;
- Identification of cash flow pressures;
- Control of company investment, financial institution accounts, and other assets;
- Notification of policyholders, claimants and other interested parties as ordered by court or allowed by statute;
- Communication with landlords and other providers of essential services;
- Court filings necessary to impart notice to the public, and
- Other measures identified as necessary for the preservation of the *status quo*.

2) Preparation for the Hearing

Apart from relying on documents in the insurance department's control (such as filed financials and examination reports) and those available from third parties, much of the case in support of receivership may consist of the insurer's own documents. It is important that receivership or supervision staff consult with counsel about the manner of gathering and preserving such documents so that they will be admissible evidence. At the same time the key problems should be identified, and steps taken to assure that they don't worsen pending resolution of the challenge to the receivership.

3) Contents of the Order

Generally, the seizure order directs the regulator to take possession and control of the property, books, accounts, documents and other records and assets of the insurer. Further, the order usually gives control of the insurer's physical premises to the regulator. The order is usually accompanied by an injunction prohibiting the insurer, its officers, directors, managers, agents, and employees from disposing of property or transacting business, except upon the regulator's permission or

further court order. The order may enjoin anyone having notice of its provisions from interfering with the receiver or the proceedings, may suspend pending litigation involving the insurer, and may require that all claims and proceedings against the insurer be brought exclusively in the receivership court. In addition, the order may include special provisions like moratoria on cash surrenders, authority for disavowal of executory contracts, and prohibition of creditor self-help.

4) Duration

The duration of a seizure order can vary. In rare cases, the order will specifically prescribe the time period that it is to remain in effect. Typically, however, the order prescribes that it will remain in effect pending the court's further orders or for such time as the receivership court may deem necessary for the regulator to ascertain the insurer's condition, and to request authority to rehabilitate or liquidate the company.

5) Review

If the proceeding commenced with a temporary seizure order and the insurer wishes to contest the proceeding, it may petition the court for a hearing and review of the order. IRMA, §201(F), provides that the court shall hold such a hearing within 15 days of the request.

6) Conservation of Property of Foreign or Alien Insurers

Most states also authorize the regulator to apply to the court for an ancillary order to conserve the property of an alien or foreign insurer (IRMA, §1001⁵). The grounds and terms of such an order generally include those necessary to obtain a similar order against a domiciliary insurer, but there may be some differences. Usually, if the foreign or alien insurer has had property sequestered by official action in its domiciliary state or a foreign country, or if its certificate of authority in the state has been revoked or had never been issued, the regulator may seek an order of seizure or conservation.

C. SEIZURE AND CONSERVATION ORDERS

In many cases, the proceeding begins with a seizure order (see IRMA §201). Some statutes enacted prior to IRMA may use different terms for this order, such as a conservation or receivership order. In IRMA, this order is referred to as a seizure order; the term conservation order refers to an order entered under IRMA §301.

In the majority of states, the regulator may obtain a seizure order from a court of competent jurisdiction. Generally, a petition for a seizure order must allege: 1) the existence of one or more statutory grounds justifying a formal delinquency proceeding, and 2) that the interests of policyholders, creditors or the public is endangered by a delay in entering such an order. Specific requirements for obtaining a seizure order vary. The thrust of a seizure order is preservation of the insurer pending further analysis and proceedings. Such orders are not intended to be the final stage in regulatory action for a troubled insurer. In the rare case in which further analysis reveals the absence of grounds for additional proceedings, or that the problems have been corrected, the regulator will move for dissolution of the seizure order and return control of the insurer to management. More frequently, analysis leads the regulator to seek commencement of formal receivership proceedings.

Following issuance of a seizure order if the regulator determines that further court orders are necessary to protect policyholders, creditors, the insurer or the public, the court may hold hearings to extend or modify the terms of the order. However, the court must vacate the seizure order as soon as practicable or where the regulator, after having had a reasonable opportunity to do so, has failed to institute rehabilitation or liquidation proceedings.

Most state statutory schemes allow the regulator to apply to the court *ex parte* for an order of seizure. In these circumstances, the proceedings are often sequestered and remain confidential until the court orders otherwise. The *ex parte* application allows the regulator to take over the insurer without giving

⁵ Under IRMA, the proceeding is referred to as an ancillary conservation and the commissioner is appointed as conservator.

notice, thereby preventing the potential diversion of funds and dissipation of assets, while the continued confidentiality of the proceedings allows the receiver to assess the insurer's current status. Confidentiality allows the receiver to discharge the seizure and, if appropriate, return to normal business operations without public knowledge and the resultant harm to the insurer's business. A seizure order gives the regulator the power to make an immediate hands-on determination of an insurer's condition as well as preserve and protect its assets. The order is designed to maintain the status quo of an insurer while the regulator decides whether to release the insurer or initiate formal receivership proceedings, whether conservation, rehabilitation, or liquidation. State statutes may require that all records and papers relating to a judicial review of a seizure be confidential (IRMA, §206(A)).

If the regulator determines that formal receivership proceedings are not needed, or if the regulator is successful in resolving the insurer's difficulties, he or she can release control and return the insurer to its previous management without seriously damaging the insurer's business. If, however, creditors and the public become aware of an insurer's potential problems, the insurer could suffer irreparable harm even though the condition requiring seizure has been removed.

In some states, a court of competent jurisdiction may enter an order of conservation upon the petition of a regulator (IRMA, §301). An order of conservation is designed to give the regulator an opportunity to determine the course of action that should be taken with respect to the troubled insurer. Within 180 days (or up to 360 days if allowed by the court) of the issuance of the order, the regulator/conservator must file a motion to release the insurer from conservation or petition the court for an order of rehabilitation or liquidation (IRMA, §302). Unlike a seizure order, a conservation, rehab, or liquidation order constitute the commencement of formal receivership proceedings, and they are not *ex parte* proceedings.

1) Seizure Orders

A seizure order may be issued by the court *ex parte*—without notice—and without a hearing upon allegations of statutory grounds. However, in such cases, a hearing is typically set shortly thereafter to permit the insurer to demonstrate that seizure is not appropriate.

Commencement of the proceedings may be by agreement with company owners and management (uncontested) or may be contested vigorously when the insurer maintains that there are insufficient grounds for receivership under applicable law. Most frequently, such contested cases focus on disagreements over the insurer's financial condition and prospects. When the proceedings are contested much of the work done before the hearing will be in preparation to establish the adequacy of grounds for receivership. That work can also commence during the insurer's supervision.

D. REHABILITATION

A rehabilitation proceeding is a formal proceeding, commencing with a complaint filed by the regulator (IRMA, §401). Rehabilitation can be used as a mechanism to remedy an insurer's problems, to run off its liabilities to avoid liquidation, or to prepare the insurer for liquidation. The regulator will allege the specific statutory grounds in a complaint for placing the insurer in rehabilitation based on the grounds cited in the state's receivership act. The insurer is served with a complaint and summons. The insurer may respond and must be afforded an opportunity to be heard. When judgment is entered, the losing party may appeal. Note that in some states, the time for filing notice of an appeal may be much shorter than in other causes of action—perhaps just a matter of days.

Refer to Chapter 9 of this Handbook for further description and guidance regarding rehabilitation.

1) Coordination with Guaranty Associations

Early coordination with the life and health insurance guaranty associations and the property and casualty guaranty funds (collectively the "guaranty associations") is essential for maximizing protections and achieving optimal outcomes for policyholders and claimants whenever guaranty association covered business is involved. The importance of early coordination with the guaranty

associations is reflected in IRMA and was also the subject of a 2004 NAIC Whitepaper.⁶ Ideally, such coordination should begin as soon as it appears that there is a significant possibility of liquidation. As noted in the NAIC Whitepaper, the need for coordination among regulators, receivers and guaranty associations may occur even before the insurer is placed under administrative supervision or in conservation or rehabilitation.

At a minimum, IRMA §208 requires notice to all potentially affected guaranty associations upon issuance of any order for conservation, rehabilitation, or liquidation. IRMA also specifically contemplates and requires consultation and coordination with potentially affected guaranty associations upon entry of an order of conservation or rehabilitation *to determine the extent to which guaranty associations will be impacted by or may assist in the efforts to conserve/rehabilitate the insurer, and to provide appropriate information to the guaranty associations to allow them to evaluate and discharge their statutory responsibilities.* See IRMA §303, §404-405. Confidentiality agreements, addressed both in IRMA and in the NAIC Whitepaper, are commonly used to protect the information disclosed.

This early coordination is essential for several reasons:

- On the life and health side, advanced planning and coordination provides opportunities for guaranty associations to obtain necessary policy data and related information to evaluate, develop and implement strategies for maximizing consumer protections and avoiding disruption to the provision of policy benefits. These strategies could involve negotiated assumption reinsurance transfers of covered blocks of business, which may be timed to coincide with the liquidation order or having in place the infrastructure (including third party administrators, where applicable) needed for seamless policy and claims administration by guaranty associations immediately upon being triggered. In the case of covered health business, policy administration could involve the retention or replacement of providers, such as hospitals, health care providers and pharmacy benefit networks as well as pre-certification and other related service providers. In certain circumstances, the life and health insurance guaranty associations have created captive insurers to administer large blocks of covered business. While guaranty associations have in some cases had to respond to a liquidation with short notice, the best outcome for policyholders occurs when guaranty associations have the lead time necessary to identify, develop and prepare to implement strategies that will maximize value for policyholders and avoid any disruption in benefits. Whatever solution or approach is used, it will require time to coordinate, plan and execute the necessary steps to provide coverage to policyholders on a timely basis.
- On the P&C side, successful, secure data transition is essential for policy and claims administration. Data is typically voluminous in modern insolvencies and may reside on unique or legacy data processing systems which may be under the control of one or more third parties and in different locations. Working together, the receiver and guaranty funds can effectively transition data and work out any third party contractual or practical issues that may arise. However, this must be done well in advance of liquidation in order to avoid disruption in benefits and claims payments. The property and casualty guaranty funds and NCIGF utilize the Uniform Data System (UDS) and have developed processes to facilitate UDS data transition that may be helpful and result in cost savings for the transition process.
- Modern insurance policies and coverage programs can be complex – for example, there may be blocks of cyber liability business, large deductible policies, variable annuity policies with guaranteed living benefits or long-term care policies that have unique policy terms or servicing obligations. There may also be related, ceded reinsurance treaties in

⁶ The NAIC's Receivership and Insolvency Task Force (RITF) published a Whitepaper dated August 12, 2004, and titled "Communication and Coordination Among Regulators, Receivers, and Guaranty Associations: An Approach to a National State Based System."

place that would have to be evaluated and considered for purposes of life and health insurance guaranty association election rights to assume such reinsurance. Identifying and understanding these complex policies and programs to assure uninterrupted policy and claims handling can require extensive advance planning, coordination, and due diligence.

- The amount of lead time needed for guaranty associations to prepare for a liquidation varies based on the facts and circumstances presented in each case, including the type of insurance business written by the insolvent company. The property and casualty guaranty funds need to analyze the data to adequately protect policyholders - more in complex situations or very large cases. For complex life, health and annuity companies, the lead time needed may be substantially longer.
- In addition to the benefits of early coordination to prepare for liquidation, NOLHGA and the life and health insurance guaranty associations can provide valuable technical expertise and assistance to receivers and regulators considering possible non-liquidation solutions. This includes analyzing financial issues, evaluating reserves, and identifying potential acquiring entities for blocks of business.

See Section F(4) below for a discussion of guaranty association triggering and Chapter 6 on the guaranty associations' role and specifics of coordination and information sharing.

The threshold criteria that a proposed plan of rehabilitation must meet is that claimants against an insolvent estate will fare at least as well under the proposed rehabilitation plan as they would if the insurer were placed into liquidation. *See Neblett v. Carpenter*, 305 U.S. 297, 304, 59 S. Ct. 170, 173–74, 83 L. Ed. 182 (1938) (“The order of the Superior Court recites that the [rehabilitation] plan makes adequate provision for each class of policy holders, for the creditors, and for the stockholders; that the plan is fair and equitable; that it does not discriminate unfairly or illegally in favor of any class of policy holders; that the intangible assets conserved by the plan are worth several million dollars and that if the old company were dissolved and its assets sold their value would be substantially less than the amount which will be realized from them under the plan.”) The so-called Carpenter rule, named after the aforementioned United States Supreme decision, provides that a rehabilitation plan must be fair and equitable, and that it does not discriminate unfairly or illegally in favor of any class of policyholders; *see also, Foster v. Mut. Fire, Marine & Inland Ins. Co.*, 531 Pa. 598, 613, 614 A.2d 1086, 1093–94 (1992) (“Under *Neblett*, creditors must fare at least as well under a rehabilitation plan as they would under a liquidation,...”); and *In re Frontier Ins. Co.*, 36 Misc. 3d 529, 532, 945 N.Y.S.2d 866, 869 (Sup. Ct. 2012) (*Neblett* “requires a plan of rehabilitation to provide claimants with no less favorable treatment than they would receive in liquidation.”).

E. CONSIDERATIONS COMMON TO BOTH CONSERVATION AND REHABILITATION

1) Issues to be Addressed

The receiver’s review of the insurer’s operations should be made at least in part with a view toward identifying and developing a plan to remedy its weaknesses. Areas to be considered include:

- Undercapitalization;
- Mismanagement by directors and officers;
- Uncollectible assets;
- Assets of minimal value;
- Dishonest or incompetent agents;
- Insolvent or weak reinsurers;

- Reinsurance disputes;
- Intercompany, affiliate or subsidiary indebtedness;
- Unprofitable business;
- Long-tail or long-term liabilities;
- Rate increases needed on business and insurer's ability to secure those increases from regulatory authorities;
- Marketing;
- Deceptive or misleading practices;
- Insurance management experience;
- Claim adjustment experience for lines of business being written;
- Risky investments;
- Non-admitted assets;
- Software and hardware problems;
- Inadequate reserves;
- Reserving practices;
- Excessive operating expenses;
- Staffing problems;
- Backlog of mail and filing problems;
- Market conduct studies;
- Unfunded agents' balances or finance notes;
- Management of the insurer's assets and investments;
- Numerous/recent changes in Information Technology or software applications, particularly accounting, claims or policy management systems;
- Failure to collect all outstanding reinsurance receivables;
- Failure to collect all balances due from agents; and
- Failure to collect outstanding judgments in favor of the insurer.

In addition, the receiver may bring causes of action on behalf of the estate, including to prevent or reverse preferences; voidable transfers; fraudulent transfers; other improper conveyances; fraud; misrepresentation by directors, officers, management, and auditors; and negligence, gross negligence and mismanagement by directors, officers, management, and auditors. (*See Chapter 4—Investigation and Asset Recovery*). The receiver also may diversify the insurer's investment portfolio, coordinate with guaranty associations, and prepare the insurer for future business operations for sale or liquidation

In cases of limited liquidity, the receiver should evaluate which assets can be marshaled and which liabilities compromised in order to provide sufficient cash flow to administer the insurer's day-to-day operations. Generally, the receivership prevents the insurer from incurring further liabilities and increasing the impairment or insolvency. Conversely, it is essential that the insurer's profitable lines of business be identified and maximized for underwriting profit, cash flow and possible sale to investors. A determination should be made whether there is an opportunity for a contribution by the owner, an outside investor or purchaser to stabilize the insurer's cash flow problems pending a comprehensive corrective action plan to conserve or rehabilitate the insurer. Once the insurer's cash flow is stabilized, the receiver should continue efforts to marshal the insurer's assets and reduce outstanding liabilities.

2) Operational Issues

The receiver may need to make periodic budget projections and cash flow studies to establish whether the insurer has sufficient cash flow for its operational needs and to determine the amount of money that would be required from an investor to fund the insurer's future operations and meet statutory surplus requirements. The rehabilitation of the insurer might depend upon the valuation of certain assets or the future profitability of the insurer's book of business. It may be necessary to value those assets in accordance with Generally Accepted Accounting Principles ("GAAP") and Statutory Accounting Principles ("SAP") to determine their value in a rehabilitation, acquisition, merger, or asset sale. It may be prudent to prepare a balance sheet based on current market values. (*See Chapter 3—Accounting & Financial Analysis and the exhibits thereto.*) A determination may need to be made as to the diversification of the receivership's investment portfolio as of the date of the receivership.

The receiver should assess the marketability of the insurer or its assets, including its subsidiaries and investments in affiliates. There should be some focus on the value of the insurer's book of business and its agency network. A decision needs to be made as to whether the insurer will write or limit new or existing business. The strengths and weaknesses of the business need to be determined. Actuaries may need to be retained to perform rate studies and other evaluations, including an evaluation of whether new or pending changes in the law will affect the profitability of the insurer's products (e.g., no fault laws).

In order to preserve the value of the books of business, the payment of claims and cash surrender requests (if applicable) need to be carefully analyzed by the receiver. In some situations, claim handling may be continued in the normal course of business. In life and health insolvencies, the receiver should also consider whether a moratorium on cash surrenders, policy loans and dividends should be imposed.

3) Possible Sale of Insurer

During conservation/rehabilitation, the sale of the insurer to outsiders may be considered, if allowed by state law. A plan for the sale of the insurer should identify the areas that a receiver or investor should cover in any bid or proposal to acquire or invest in the insurer. Among those subjects that should be addressed in a proposed acquisition are the following:

- The purchaser/investor's financial stability and ability to fund the transaction from existing or readily available funds;
- The source of the funds for the acquisition;
- The identity and background of the acquiring party;
- The ability of the purchaser to comply with statutory and regulatory requirements;
- The expected impact of the transaction on the insurer's policyholders and creditors;
- The likelihood of success in completing the transaction; and

- Whether the transaction presents other regulatory or public policy concerns;
- Whether the proposed transaction would adversely impact guaranty association/guaranty fund coverage available to policyholders in the event of a future liquidation;

F. LIQUIDATION

The regulator may petition the court for an order of liquidation when any of the grounds set forth in the applicable statute exists (see IRMA §207), or, if the company is in rehabilitation or conservation, the regulator believes that further attempts to rehabilitate or conserve the insurer would substantially increase the risk of loss to policyholders or the public or would be futile. In liquidation, the liquidator must identify creditors and marshal and distribute assets in accordance with statutory priorities and dissolve the insurer.

1) Order of Liquidation

Once a petition for liquidation is filed, the company will have an opportunity to defend itself, which can result in a trial or an evidentiary hearing. If the court determines that the regulator has sufficiently established any of the statutory grounds for liquidation, it shall enter an order of liquidation, appointing the regulator as the liquidator of the insurer and vesting the liquidator with title to all of the insurer's assets and records. The order enables the liquidator to control all aspects of the insurer's operations under the general supervision of the court. Orders of liquidation may be appealed by management and/or shareholders of the insurer.

Statutes in most states provide that upon issuance of the order, all of the rights and liabilities of the insurer, its creditors and policyholders are fixed as of the date of entry of the order of liquidation. State statutes may describe the effect of the order of liquidation upon contracts of the insolvent insurer.

Upon entry of the order of liquidation, the receiver is charged with the duty to secure, marshal, and distribute the assets of the estate. The power to perform these duties is provided by the order of liquidation and the state receivership statute. It is important for the order of liquidation to include certain other items, which should be determined by applicable provisions of the law in the state of domicile of the insurer. These items typically include provisions for: the appointment of the liquidator; delineation of the powers of the liquidator as provided by state statute; the immediate delivery of all books, records, and assets of the insurer to the liquidator; and enjoinder of other parties from proceeding with actions against the liquidator, the insurer, or policyholders. In addition, it may provide for notice to policyholders and cancellation of policies.

2) Effect on Policies

The cancellation of policy obligations raises several legal issues with respect to the obligations of property/casualty insurers and the cancelable obligations of life insurers. In general, the courts enforce the statutes that provide for the cancellation of insurance policies upon liquidation. Several cases have considered the question of whether a policyholder's claim would be accepted if filed after the bar date established in the order. Courts have held that the order of liquidation effectively cancels outstanding policies and fixes the date for ascertaining debts and claims against the insolvent insurer. However, the insolvency of a life insurer presents a unique situation. The NAIC Model Acts provide for the continuation of life, health, and annuity policies. Typically, life and annuity contracts (and, to a lesser extent, health contracts) are transferred to solvent third-party insurers.

3) Powers and Duties of the Liquidator

The liquidator is granted certain powers by statute and/or court order, which include the following:

- Vesting the receiver with title to all assets;
- Authorizing the receiver to marshal assets;

- Authorizing the receiver to sue and defend in the receiver's name or in the name of the insurer;
- Enjoining lawsuits in other courts, whether in the same jurisdiction or elsewhere;
- Enjoining interference with the receivership;
- Enjoining creditor self-help;
- Appointing one or more special deputies;
- Authorizing the retention of attorneys, consultants, accountants, and other specialists as necessary;
- Authorizing the sale, abandonment, or other disposition of the insurer's assets;
- Borrowing on the security of the insurer's assets;
- Coordinating with guaranty associations;
- Coordinating with NCIGF and/or NOLHGA, as necessary; and
- Entering into and canceling contracts.

Most jurisdictions hold that the liquidator generally steps into the shoes of the insolvent insurer and possesses the rights and obligations of the insurer. There is also authority for the proposition that the standing of the receiver is broader than that of the insurer to the extent he or she also represents the interest of policyholders and creditors. Several cases have focused on the liquidator's specific duties. These cases allow liquidators to compound or sell any uncollectible or doubtful claims owed to the insolvent insurer, to disaffirm fraudulent conveyances, to disavow leases and other executory contracts, to act as statutory receiver of the insolvent insurer's property, to sell the insurer's property, to conduct business using the insurer's assets, and to control bonds and mortgages held as collateral security

4) Triggering of Guaranty Associations

As a general rule, the guaranty association laws provide for the mandatory triggering of coverage by guaranty associations upon the entry of an order of liquidation with a finding of insolvency against a member insurer. Advanced coordination with affected GA associations and/or NOLHGA (in life and health cases) or NCIGF (in property and casualty cases) with respect to the liquidation petition and proposed liquidation order will help to ensure consistency in triggering in multi-state insolvencies.

On the life and health side, there are a small number of states where mandatory triggering may also occur, under certain circumstances, during rehabilitation if the member insurer is not timely paying claims. In property and casualty cases, guaranty fund triggering normally occurs upon an order of liquidation with a finding of insolvency. There are a minority of states that can be triggered with a finding of insolvency only.

Most of the state life and health insurance guaranty association laws also provide a mechanism for permissive triggering, at the discretion of the association, where a member insurer has been placed under an order of rehabilitation or conservation. (Generally, no such permissive triggering exists in the property and casualty state laws.) These provisions are based on the NAIC Life and Health Insurance Guaranty Association Model Act, section 8(B), which provides the guaranty association discretion to provide coverage if a member insurer is an impaired insurer (i.e., placed under an order of conservation or rehabilitation). This authority is subject to any conditions imposed by the guaranty association that do not impair the contractual obligations of the impaired insurer and that are approved by the Commissioner in the guaranty association's state. Some state statutes also

provide life and health guaranty associations limited discretion to act in cases where the impaired insurer has been deemed by the Commissioner to be potentially unable to fulfill its contractual obligations. This language dates back to the original definition of “impaired insurer” in the 1970 version of the NAIC Model Act. This language was later removed from the model act as part of the 1997 amendments but still remains in a small minority of state statutes.

Given the possibility of subtle variations in triggering provisions in place from state to state, it is important to coordinate with affected GA associations and NOLHGA or NCIGF for purposes of confirming guaranty association triggering. Refer to Exhibits 1-1 and 1-2 for recommended liquidation order language to ensure consistent guaranty association triggering.

5) Notice

Most state statutes set forth the minimum requirements for notice to creditors and all persons known, or reasonably expected, to have claims against the insurer. The receiver must give notice to the regulator of each jurisdiction in which the insurer does business, affected guaranty associations, the agents of the insurer, and policyholders at their last known address. The liquidator may also be required to give notice by publication, usually in a newspaper of general circulation in the county in which the insurer has its principal place of business. Potential claimants are required to file their claims on or before the bar date specified in the notice.

Disputes may arise when the claimant alleges that he or she did not receive notice of the liquidation. The cases addressing this issue turn on the specific facts. Courts have allowed late claims where the receiver should have known of the claimant’s existence and should have provided notice.

See Chapter 5 – Claims for additional discussion

6) Deadline for Filing Claims

Unless established by statute, the court establishes a deadline for the filing of claims against the assets of the insolvent insurer. In IRMA, the date is not later than 18 months after the entry of the liquidation order, unless extended by the receivership court (IRMA, §701(A)). The liquidator may be required to permit a claimant to file a late claim under certain circumstances (IRMA, §701(B)). If a claimant does satisfy the criteria for filing a late claim, the claim will be subordinated to a lower distribution priority (IRMA, §801(I)). Some statutes enacted prior to IRMA may provide that such a claim is barred from participating in a distribution. Policyholders covered by guaranty associations typically are not required to file claims with the liquidator.

See Chapter 5 – Claims for additional discussion

7) Ancillary Proceedings

Liquidation of an insurer is conducted by the liquidator in the insurer’s state of domicile. When an insurer is licensed to do business in another state, that state may have authority to establish an ancillary receivership. Receivership statutes typically permit the commissioner of a state where an insurer is licensed to commence an ancillary proceeding if the insurer is placed in liquidation in the domiciliary state. Some statutes also require the commissioner to commence an ancillary proceeding upon the request of certain residents of the state who have claims against the insurer. If the court grants the petition for an ancillary proceeding, the commissioner of that state is appointed as the ancillary liquidator.

The ancillary liquidator is generally entitled to recover the insurer’s assets in the ancillary state and pay claims of residents in the state with such assets. Some statutes permit a claimant who resides in an ancillary state to file a claim in either the domiciliary or ancillary proceeding.

Owners of secured claims can be affected when there are one or more ancillary proceedings. The owner of the secured claim is entitled to surrender his security and file his claim as an unsecured creditor. Any deficiency in the claim is treated as a claim against the insurer’s general assets on the same basis as claims of unsecured creditors.

IRMA clarified the procedures for ancillary proceedings and the handling of deposits. Under §1001 of IRMA, the need for an ancillary receivership has been curtailed. IRMA allows the appointment of an ancillary conservator under limited circumstances. A domiciliary receiver is automatically vested with title to property in any state adopting IRMA, and the test of whether a state is a “reciprocal state” has been eliminated. IRMA also clarifies the procedures for handling deposits; however, most states have not adopted §1001.

While an ancillary proceeding is required in limited circumstances, the regulator often has discretion to initiate it. When deciding whether to commence an ancillary proceeding, several issues should be considered, particularly if it involves a pre-IRMA statute. As an ancillary proceeding requires the separate administration of the insurer’s assets and claims, it generally will increase costs. It can also complicate the processing and payment of claims, and potentially confuse claimants. Separate distributions to claimants from ancillary and domiciliary receiverships may differ, which can result in disparate payments to creditors in the same class. Finally, the insurer’s debtors may be reluctant to pay amounts owed to the insurer due to the potential for competing claims by domiciliary and ancillary liquidators. To address these potential problems, the domiciliary and ancillary liquidator can enter into an agreement to facilitate the coordination between the proceedings. An agreement could cover matters such as bar dates, claims procedures, the liquidation and disposition of deposits, and the collection of other assets.

See Section E(9) of Chapter 9 – Legal Considerations for additional discussion

III. INTERESTED PERSONS

A. GUARANTY ASSOCIATIONS

Guaranty associations have been established in each state, as well as the District of Columbia and Puerto Rico, to provide a measure of protection to policyholders in the event of the impairment or insolvency of an insurer. When guaranty association covered business is involved, it is beneficial to begin coordination as soon as it appears there is a significant possibility of liquidation or that guaranty associations will be triggered.

See II(D)(2) in this chapter and Chapter 6 for additional discussion.

B. PARENT COMPANY AND AFFILIATES

An insurer may have a parent company and/or affiliates that may or may not be insurance companies. The interaction of these companies should be reviewed and analyzed carefully including any service agreements, management agreements, pooling agreements, tax sharing agreements and reinsurance agreements. Under certain circumstances, the receiver may want to obtain control of these other entities thru substantive consolidation.

See Chapter 4 – Investigation and Asset Recovery and Chapter 9 – Legal for further discussion.

C. GOVERNMENT AGENCIES

Federal, state, and local government regulations may require notice of the proceeding and are potentially creditors.

The Federal Priority Act (31 U.S.C 3713) imposes personal liability on the representative of persons or estates to the extent that other debts are paid (or otherwise compensated) prior to claims of the federal government. A 3713 Release from the United States of America through the Department of Justice may be requested. As much of the information required for the release is historical, the Receiver should start collecting the information at the inception of the liquidation.

See Chapter 5 – Claims, Chapter 9 - Legal and Chapter 10 – Closing Estates for additional discussion of federal government involvement.

IV. RECEIVERSHIP ADMINISTRATION

A. PLANNING

The regulator who expects to successfully administer a receivership action must become familiar with the insurer's operations and business as soon as possible. The checklists included in the exhibits at the end of this chapter include a list of documents that should be reviewed.

1) Identify Problems

It is critically important to meet with the regulator's staff before the receivership order is entered, to discuss the perceived causes of the insurer's difficulties and the potential for a successful rehabilitation or liquidation. While state statutes may prevent regulator's staff from sharing documents not available to the general public with non-regulators, insight from financial examiners, financial analysts, market conduct examiners and licensing agents might assist in determining the causes of the insolvency.

It is also important to meet with the insurer's officers and/or directors, when possible. These meetings are usually clear indicators of how cooperative or hostile the insurer's management will be after appointment. Hostile environments require additional personnel and security measures at the company location to secure the assets and records. In some circumstances, it may be important to maintain confidentiality about an intended action, in which case a meeting with management may not be possible.

2) Identify Key Transitional Elements

As previously discussed, coordination with guaranty associations is essential. When liquidation is reasonably foreseeable and guaranty association covered business is involved, that coordination becomes critical to maximizing protections and achieving optimal outcomes for policyholders and claimants. With proper confidentiality arrangements, this can and should occur even while liquidation is a possibility but there are still other alternatives that might salvage the company. Particular attention should be given to definitions of "covered claim" or "covered policy" for each guaranty association.

The insurer's officers, directors and employees may be willing and able to advise about the existence of service providers and outside consultants employed by the insurer, including legal counsel, accountants, and actuaries. Access to the insurer's records and contracts with all consultants and service providers should be secured and determination made which, if any, of the various service providers to retain. It should also be determined if the insurer is a member of a FHLBank and, if so, identify key individuals at the insurer and at the FHLBank.

It is also beneficial to obtain employee agreements and other documents regarding personnel arrangements. The receiver will have to develop a plan to maintain required positions and retain key staff. *See X. Personnel in this chapter for additional discussion.*

Additional steps to consider during the planning phase are in the checklists included in the exhibits at the end of this chapter.

3) Working Business Plan

During the planning phase of a receivership, it may be helpful for the receiver to develop an internal working business plan with reasonable timeline and objectives that consider multiple paths, taking into consideration claimants, policyholders, taxpayers, and stakeholders (e.g., lenders, shareholder, affiliates, etc.) The development of a multi-option plan (e.g., option A, B or C) in order of most beneficial may help in planning for and supporting each phase of the receivership process and in ultimately developing the Rehabilitation Plan required by the Rehabilitation Order.

4) Monitoring and Progress Report

Once the receivership proceeding commences, the receiver should consider maintaining weekly or monthly progress reports that serve as high level report cards of the key issues and the progress made in servicing policyholders and the effectiveness of the working business plan. The progress reports include a view of the whole insurance company—financial and operational, highlights key data about company activities of each division and also identifies critical compliance areas for financial, operational, legal, and statutory guidelines. Included in this monitoring process may be specific accomplishments and updates that should be made available to policyholders and claimants and the courts. Depending on complexity of the receivership a weekly meeting of managers/staff is recommended to exchange information between the receiver and the managers/staff.

B. RECEIVERSHIP ORDER

A receivership order may be issued because the insurer is impaired (generally, a conservation and rehabilitation) or insolvent (liquidation or, in special circumstances, a rehabilitation). The order may also be issued to protect an insurer operating under severe financial impairment, as evidenced by a variety of factors, such as investments in an undiversified portfolio of stocks or bonds, writings to surplus in excess of the allowable amount, issuance of total insurance business by one MGA or TPA or entering into non-risk bearing surplus relief contracts. A receivership may also be instituted if current management is found to be detrimental to the management and/or financial stability of the insurer.

Some common issues addressed in receivership orders are:

- Writing of new or renewal business;
- Handling of reinsurance;
- Dividends or transfer of assets without the receiver’s approval;
- Payments to affiliates;
- Limitations on new investments;
- Seizure of physical and liquid assets;
- Liquidation of certain investments;
- Change or dismissal of officers and/or directors;
- Ownership of records and data of the insurer or related entities;
- Cancellation of certain MGA, TPA or general agency agreements;
- Limitations on funding by premium finance companies;
- Injunctions;
- Payment of loss and loss adjustment expense, etc.;
- Triggering of the guaranty associations, if intended;
- Provisions to pre-pay ongoing claims benefits such as workers compensation indemnity benefits while claims data is being transitioned to the guaranty associations;
- Moratoria on claims, cash surrenders, withdrawals, policy loans, etc.;
- WARN (Worker Adjustment and Retraining Notifications) State and Federal - if layoffs of existing staff are anticipated; and

- Hardship Provisions (refer to state statutes, state guaranty associations or to www.ncigf.org and www.nolhga.com).

Once the receivership order is entered, the receiver is empowered to operate the insurer. Officers may be retained or terminated, and directors may be relieved of duties, though these actions must be carefully evaluated because of possible adverse effects on litigation involving directors and officers. In fact, a careful evaluation prior to termination of any employee is recommended. An immediate determination may be made as to the need for outside consultants or professionals, such as accountants, actuaries, computer specialists, attorneys, investment counselors, etc.

The insurer may remain in receivership for a fixed period of time or until the occurrence of specified events, e.g., the rehabilitation of the insurer or the liquidation of the estate and the discharge of the receiver.

C. NOTICES

Notice of the insurer's status should be in accordance with the receivership court's direction. The court may direct the notice to be issued by mail and/or by publication in a newspaper of general circulation. In the case of a conservation (under IMRA) or rehabilitation, the notices may be issued to assist the receiver in informing the policyholders and sustaining the business of the insurer. Notice may be sent to the following persons, among others, when the court requires, as their rights or interests are affected:

- Policyholders and beneficiaries;
- Agents;
- Guaranty associations;
- State insurance departments;
- Third-party claimants;
- NAIC;
- Internal Revenue Service;
- U.S. Department of the Treasury;
- U.S. Department of Justice;
- State and local offices;
- Banks;
- Brokerage or investment banking firms;
- Managing general agents, general agents, and all agents of record;
- Reinsurers;
- Intermediaries;
- Creditors, including secured creditors; (including the Federal Home Loan Bank, if applicable)
- Claim adjusters;
- Third-party administrators;
- Premium financiers;

- Vendors;
- Accountants, actuaries, lawyers and other professionals;
- Landlords and tenants;
- Officers and directors;
- Stockholders and other equity holders; and
- Other necessary parties.

Notice may vary depending upon whether the insurer is in rehabilitation or liquidation. Under IRMA, conservation is similar to rehabilitation, and the notice requirement is the same. If the notice is pre-approved by the court, it will avoid potential claims of non-disclosure or omission of material facts.

D. IMPLEMENTATION OF THE ORDER

The order typically includes provisions that enable the receiver to prevent additional financial drain. Throughout this period, the receiver should pay particular attention to preventing illegal preferences, unauthorized set-offs, fraudulent transfers and improper conveyances or distributions.

It is vital that the order be served immediately on the insurer. The receiver should take steps to maintain the integrity of the insurer's assets, books, and records as of the date of the order and to control the insurer's operations so that the assets, books, and records are not removed, dissipated, or destroyed. The checklists at the end of this chapter include some of the initial steps that may be taken to ensure the receiver's control.

E. ASSETS

1) Initial Asset Control

A principal objective in the initial phase is to identify and secure the assets and determine the liabilities of the insurer. The insurer's annual and quarterly statements, along with the current general ledger and chart of account listings, should help in locating some of the assets.

Once the assets have been identified and secured, the short-term emphasis shifts to the cash and invested assets, those being the most liquid. These assets should be tightly controlled to prevent any theft or misappropriation. Examples of the various types and forms of assets, as well as immediate actions that can be taken, are provided in the checklists at the end of this chapter. However, as stated, the primary emphasis at this stage should be assets easily converted to cash, such as petty cash, operating bank accounts and investments. Usually, the remaining illiquid assets will be addressed in the ongoing management and administration of the estate. These types of assets will be the focus of various accounting, collection, and legal efforts in the endeavor to marshal all assets of the estate.

It is important to immediately institute appropriate controls and procedures for the processing of cash and cash receipts. The objective of controlling all cash receipts and subsequent processing is to ensure that cash, the most liquid asset, does not disappear. This requires more stringent controls, including immediate deposit of all cash and an accurate daily accounting. Therefore, the receiver should immediately institute procedures for routing of daily cash receipts (create receipt log). With respect to life and health insolvencies (including HMOs if covered by the triggered guaranty association), consideration should be given to coordination with the guaranty associations and/or NOLHGA regarding the treatment of premium billings, reinsurance payments and any other matters necessary to keep the policies in force, pending the sale of the business or assumption of the business by the guaranty association(s). In the case of an HMO insolvency, direct coordination with the entities providing health care protection to the members is crucial. The receiver may find it necessary to open bank accounts in the name of the receivership in order to have complete control of the cash. In a health insurance related insolvency, the receiver should check on the status of

coordination of benefits (cob) receivables, hospital credit balances and check the state's treasury department to see if any providers have escheated funds on behalf of the health insurer. In order to ensure no misappropriation of funds, the receiver must also institute effective controls over disbursements. This includes instituting new check issuance procedures, including the establishment of new check signing and wire transfer authority, and the issuance of new passwords for electronic banking.

The valuation and control of the remaining assets in the estate will necessarily fall into the continuing management and administration stages. Those assets are less liquid in nature and are, therefore, more difficult to value, marshal and misappropriate.

2) Administration and Ongoing Asset Management

Once the initial phase has been accomplished and control has been instituted over the liquid cash and other invested assets, attention should be directed toward the remaining assets and potential assets of the estate. Immediate identification of some of the remaining assets may be accomplished by reviewing the balance sheet, general ledger, and chart of accounts. The identification of these assets has been accomplished to a degree in the initial phase. The receiver should take a physical inventory including laptops and mobile devices, office equipment, computer hardware and office furniture. The various checklists at the end of this chapter provide details of types of assets to look for and steps to take with those assets.

Aside from the traditional or listed assets on the balance sheet, insurer operations need to be reviewed to identify any potential non-traditional assets. Simply stated, the receiver is responsible for identifying value in the operations and evaluating the potential for the recovery or collection and conversion of this value. This concept will become clearer as the various categories of assets are revealed. Some of the issues to be considered include the following:

3) Reinsurance

With respect to life insolvencies, it is critical that the receiver immediately analyze whether to continue or cancel ceded reinsurance contracts. The Life and Health Insurance Guaranty Association Model Act, the life and health guaranty association statutes in most states and IRMA give the life and health guaranty associations the authority to continue ceded reinsurance contracts that relate to covered obligations of the associations in order to facilitate a sale of the business or to minimize the association's exposure. The affected guaranty association must make the election to allow a particular treaty to expire or continue within a statutorily established time. If the treaty is continued, the guaranty association becomes liable for the payment of the ongoing premiums. The guaranty association may transfer the reinsurance agreement to a solvent insurer that assumes the underlying policies. (See IRMA §612 and NAIC Life and Health Insurance Guaranty Association Model Act §8N.)

4) Audit premiums

Certain property/casualty premiums are based on loss experience, sales volumes, or payroll amounts. This criteria will differ depending on the type of policy being issued. For example, a "minimum" or "deposit premium" is paid upon issuance of the policy. Final premiums are billed after audit on the basis of loss experience. The additional premium generated is known as audit premium or retro-rated premium and may represent a significant asset of the estate.

Life insurance premiums may be affected by the amounts of dividends paid or by the difference between current billed premiums and maximum billed premiums allowed by the contractual guarantees in the policies. In life insurance insolvencies, the receiver should consider the possibility of Phase III tax liability. (See Chapter 3—Accounting and Financial Analysis, Section VIII.)

5) Taxes

Value to the estate may be generated through the sale of the corporate charter or shell. An analysis of any net operating loss situation and qualification under IRS rules should be made with the advice of tax experts, both in the accounting and legal fields.

Also review the validity and correctness of other state and local taxes paid. A review of prior returns and state tax authority records may uncover overpayments and possible recoverable amounts.

Tax sharing agreements with affiliates and any prior consolidated tax returns should be secured, if possible, and reviewed to determine if any refunds paid to the parent should be remitted to the estate.

6) Property/casualty salvage and subrogation

With respect to property/casualty insurers, a determination should be made as to how the insurer identified and recovered salvage and subrogation. This amount will not be readily identifiable from the statutory statements, as statutory principles prohibit the recognition of salvage and subrogation until it is collected. However, many insurers maintain salvage/subrogation logs, which are a good source for identification of such receipts or potential recoverables. Salvage and subrogation on claims where reinsurance has been received may be held in a segregated account. Because these aggregated funds may be subject to setoff, a portion of the funds may be due the reinsurer.

7) Indemnity

A surety, prior to issuing a bond, will usually require indemnity agreements from the principal and other indemnitors in order to secure the surety from any claims that may be made against the bonds. The agreement is a contractual obligation that provides security for the surety. The indemnity agreement sets forth and expands upon the separate common law obligations between the principal and the surety. A separate indemnity agreement may be issued for each bond. However, more frequently, the parties enter into a general indemnity agreement covering any bonds that the surety may issue to that principal.

Accordingly, all indemnity agreements should be secured and reviewed to identify potential recoverables.

8) Deductibles

Many property and casualty insurance policies contain deductibles that are to be paid by the insured. If the insurer (or a guaranty association) pays the full amount of the loss to an injured third party, the amount of the deductible becomes a claim against the insured. The receiver should evaluate the likelihood and cost of collection, and if appropriate, attempt to recover the amount paid within the deductible. It is important that the collection process be resumed as quickly as possible. Most often the receiver is best situated to continue the collection process as he or she is in possession of the related records. In some cases, the insured will have posted some form of collateral to secure its obligations under the deductible. Pursuant to statute in some states, or agreement between the receiver and the applicable guaranty associations, the amount collected is delivered to the associations that paid the claim. For a fuller discussion of large deductibles, see Chapter 6—Guaranty Associations.

9) Excess expense payments, especially over-billed loss adjustment expenses

A complete review of historical expense payments should be made, paying close attention to the rates charged, hours worked, necessity of work performed and supporting documentation for expenses itemized in defense attorney bills. Reimbursement should be sought, as appropriate.

10) Voidable preferences/fraudulent transfers

Early in the administration of an estate, the receiver should review the insurer's recent pre-receivership transactions for purposes of determining whether potential voidable preferences or

fraudulent transfers of assets were made. See Chapter 9—Legal Considerations, Section VIII, C and D for a discussion of voidable preferences and fraudulent transfers.

F. TAKE CONTROL OF BOOKS AND RECORDS

One of the receiver's first steps should be to locate, control and organize certain files. Securing and organizing the records of an insurer in receivership is of paramount importance to successfully completing the receivership.

A plan to deal with records, including all electronic records, should be developed. The plan should provide for the creation of a records inventory. The plan should identify the data to be captured from the insurer's records, i.e., the names and locations of insureds, reinsurers, etc., and should deal with both the location and maintenance of the files.

It is best to have experienced personnel and legal counsel with an insurance operations background develop this plan. In crafting the plan, the receiver should consider:

- Establishing a central clearing house for all records or having the receiver's staff review records in each department to identify and secure key records. In this manner, the receiver will be able to ensure that all records are recovered, reviewed, and appropriately maintained for further use.
- Determining the location of various records, such as those of MGAs, TPAs, agents, independent adjusting firms, attorneys, branch offices and subsidiaries.
- Determining the various categories of documents—such as policies, claims, data processing, banking, accounting, corporate, state, and federal tax, marketing, personnel files, reinsurance files, and administrative files—and how they should be maintained.

Checklists found at the end of this chapter identify items that should be secured and organized under each area.

It is important to limit access to the premises or other facilities to preserve the integrity of the books and records and to prevent the dissipation of receivership assets. It is also essential to provide notice to consultants used by the insurer—such as accountants, actuaries, and lawyers—of the receivership order, demanding that all records of the insurer in their possession be turned over to the receiver. Failure to turn over the insurer's records to the receiver is a violation of most state statutes (IRMA §118A). In the event a consultant is unwilling to turn over records of the insurer, the receiver should consult with legal counsel.

G. INVENTORY

The receiver should inventory the assets, books, and records as soon as possible. This inventory may not only be required by state law, but it may also be useful in determining whether items have been misplaced or were later removed from either the insurer's premises or the receiver's offices and facilities. The inventory should be conducted at the insurer's offices. The items listed in the checklists included in the exhibits at the end of this chapter should be itemized and secured.

While conducting the inventory of books and records, the receiver should begin identifying documents relative to the cause of the insurer's insolvency. Statute of limitations vary by state. The receiver may have a limited amount of time to file actions against other parties. The NAIC and FBI have developed a questionnaire to be used by a receiver in reporting fraud and other white-collar crimes to the United States Department of Justice for the purposes of initiating a criminal investigation (See Exhibit 1-3). Among the typical causes of insurer insolvency are:

- Undercapitalization;
- Uncollectible, illiquid, or inflated assets;
- Insufficient loss reserves for risks assumed;

- Misappropriation or conversion of insurer funds by management, affiliates, agents, TPAs, or others;
- Commitment to unprofitable business by uninformed or undisciplined agents;
- Collectability of reinsurance;
- Negative cash flows due to unprofitable lines of business;
- Poor underwriting;
- Unnecessarily risky investments;
- Fraudulent transactions;
- Other forms of mismanagement.

Any indication of fidelity bonds, directors and officer's policies, error and omission policies or other indemnification coverage should be identified, segregated, and made accessible to the receiver and receivership counsel. The documents should be reviewed immediately, and carriers placed on notice to preserve the rights of the estate.

H. MOVE TO CONSOLIDATE

Consolidation of the receivership's offices and storage facilities could result in increased productivity and reduction of labor and storage costs. For that reason, an assessment of the value of maintaining the insurer's offices and storage sites should be made in the early days of the receivership. Consolidation of the books and records should take place only after: 1) an inventory is completed; 2) the receiver has considered the impact upon the insurer's ability to handle claims in an orderly and efficient manner; and 3) the receiver has considered the potential impact upon the insurer's relations with any existing agency network. If the insurer is in conservation or rehabilitation, the receiver should weigh the effect a consolidation might have upon the insurer's marketing program.

I. COORDINATION WITH ANCILLARY RECEIVERS

Any assets of an insurer in liquidation that are held by a non-domiciliary state should be returned to the domiciliary receiver of the insurer. Under §1001 of IRMA, the need for an ancillary receivership has been curtailed. IRMA allows the appointment of an ancillary conservator under limited circumstances. A domiciliary receiver is automatically vested with title to property in any state adopting IRMA, and the test of whether a state is reciprocal has been eliminated. IRMA also clarifies the procedures for handling deposits.

The NAIC models prior to IRMA permit reciprocal states to establish receiverships ancillary to the domestic state's receivership. Typically, an ancillary receivership would be established to distribute assets in the ancillary state (i.e., statutory deposits) to claimants residing in that state. However, an ancillary receivership may be established for purposes unrelated to claims handling. In certain instances, the domiciliary receiver may request that an ancillary receivership be established for a variety of reasons, e.g., to assist the domiciliary receiver in selling real property located in the ancillary state or to assist the domiciliary receiver in handling litigation pending in the ancillary state.

State statutes based upon NAIC models prior to IRMA allow or may require ancillary receiverships under certain circumstances. If an ancillary receivership is not required by statute, it should be opened only after carefully evaluating the additional administrative costs that would be incurred by the insolvent insurer. The activities of the domiciliary and ancillary receivers should be coordinated to minimize the cost of the ancillary proceedings.

Domiciliary receivers must consider the following issues, which commonly occur between the domestic and ancillary receivers:

- The security of the insurer's assets and records;
- The security of the insurer's out-of-state offices or storage facilities;
- Consistency and reciprocity of authority;
- Coordination of the transfer of policy/claim files to guaranty associations;
- The need for a receivers' agreement (see discussion below regarding receivers' agreement);
- The need for local counsel in other jurisdictions;
- The status of litigation by the ancillary receiver; and
- The method of funding and payment of approved ancillary claims.

To facilitate coordination, the ancillary receiver should request copies (certified, if available) of all domiciliary pleadings and orders, together with the names, addresses (including e-mail addresses), and phone and fax numbers of personnel in the domiciliary state.

Legal counsel for the domiciliary receiver should review the proposed ancillary petition and order as soon as they are received to assure that: 1) under the order, the rights of the ancillary receiver are subordinate to the rights of the domiciliary receiver; and 2) the ancillary receiver's bar date is no later than the bar date established by the domiciliary receiver. Some state statutes permit ancillary receivers to establish shorter claim filing periods but prohibit claims deadlines that exceed those established by the domiciliary receiver.

In the event that the proposed ancillary order is not acceptable to the domiciliary receiver, the domiciliary receiver should request a revision. If the ancillary receiver refuses, the domiciliary receiver may be required to file an objection in the ancillary proceeding, asserting that the ancillary order violates the law of either or both states.

1) Receivers' Agreement

In some situations, it may be possible to negotiate a receivers' agreement, with the goal to consolidate functions and to clarify the authority and obligations of the domestic receiver and the ancillary receiver concerning:

- Coordinating the preparation of a jointly acceptable proof of claim form;
- Filing and processing proofs of claims;
- Funding and maintaining an account for payment of approved claims;
- Identifying and locating TPAs and MGAs licensed by the insurer in each state;
- Identifying and locating all bank and financial accounts;
- Locating outstanding claims files and arranging for shipment of files between states;
- Coordinating policy cancellation and impairment order dates;
- Collecting agents' balances;
- Controlling director and officer litigation by the domiciliary state;
- Administering and closing out-of-state offices;
- Marshaling assets located in the ancillary receiver's jurisdiction;

- Determining the disposition of assets collected by the ancillary receiver;
- Controlling and securing information (e.g., claim files, policy files, premium volume in the ancillary state, etc.) that is essential for the orderly administration of the estate; and
- Coordinating the oversight of the insurer's out-of-state litigation.

2) Claims Handling

When there is no ancillary receivership, citizens of non-reciprocal states should file their claims in the domiciliary state. Some pre-IRMA state statutes provide that a resident of an ancillary state has the right to file a claim in either the domiciliary or the ancillary proceeding. Other states leave the decision to establish a claims procedure in the ancillary state to the discretion of the ancillary receiver.

3) Ancillary Proceedings Without a Domiciliary Receiver

Ancillary receiverships are usually established only after a domiciliary receiver has been appointed. However, some states do not have the limitations imposed by IRMA and, even when no domestic receiver has been appointed, do permit the establishment of an ancillary conservatorship or liquidation, provided that the non-domestic regulator can prove one or more of the grounds required to establish a domestic receivership. Nonetheless, the ancillary receivership order operates only upon the assets found in the ancillary jurisdiction.

V. ACCOUNTING

Please refer to Chapter 3—Accounting and Financial Analysis and Chapter 4—Investigation and Asset Recovery when reviewing this section.

Upon taking control, one of the receiver's primary responsibilities is to secure the insurer's assets—particularly the most liquid assets, such as cash and securities. This responsibility includes identifying lines of credit, limiting, or removing access to company credit cards and preparing an inventory of all accounting records and documentation as soon as possible. The accounting area will also be responsible for financial statement analyses to determine the true status of the insurer and the continued reporting of financial information for internal decision-making processes.

A. SECURE ASSETS

Because cash and securities are liquid, the receiver must quickly identify, locate, and secure assets. The receiver should immediately notify all depositories and custodians of the receivership order, provide the new authorized signatories, and establish the procedures to be implemented for all financial transactions. Letters of credit should be identified and secured by the receiver. Once the assets are secure, the receiver will evaluate and value them.

B. INVENTORY ACCOUNTING RECORDS

As soon as practical, the receiver should identify and secure the on-site and off-site books, records, systems, and documents necessary to maintain and review the accounting functions of the insurer and to determine the actual financial condition of the insurer. These should include most recent insurance department examination workpapers if allowed under state law and CPA audit workpapers.

C. INVESTIGATION OF INSURER'S FINANCIAL STATEMENTS

The receiver should develop an understanding of the accounting organization, including evaluation of the staff. Flowcharts and narratives of the accounting procedures should be obtained or completed with particular attention to the areas of cash receipts and cash disbursements focusing on decision points and internal controls. To the extent procedures need to be modified to protect the assets, new procedures should be put in place as quickly as possible. From the information developed here, the receiver should begin to investigate the make-up of the balance sheet line items, validate the existence of the assets, and value them.

D. FINANCIAL REPORTS

Accounting and financial reporting by the insurer will continue to be necessary and important. Financial reports will be required by the receivership court, and cash flow and budget information will be essential for the day-to-day operations of the receivership. Continued filing of the various types of tax forms is mandatory (although some may be eliminated) during the existence of the estate. Additionally, the continued reporting of paid claim information for reinsurance billing and actuarial reserving will also be crucial.

At the beginning of the receivership, the appropriate parties should determine the type of information to be reported to various entities, the frequency of the reporting and the formats the information should take.

VI. INFORMATION SYSTEMS AND TECHNOLOGY

Please refer to Chapter 2—Information Systems when reviewing this section.

This section highlights the activities that should take place for a receiver to understand and take control of the insurer's systems. To the extent possible, the receiver should not allow anyone access to the insurer's computer system until a complete backup of the system is complete. It is not uncommon for the insurer's computer systems to be intertwined with that of its affiliates; therefore, legal consultation is advised prior to taking any action that may impact the affiliates' operations.

Detailed tasks are listed in the checklist included in the exhibits at the end of this chapter.

A. EVALUATING HARDWARE/SOFTWARE

For any hardware/software owned by the insurer, the receiver should determine whether to maintain it or sell it. Prior to the sale of any equipment, the receiver should determine if that equipment is required to support any ongoing or contemplated litigation. A sale may require court approval.

B. SYSTEM SHUT DOWN

The receiver should arrange for the orderly shutdown of the computer system. Prior to shut down, the receiver should ensure that all records have been updated and all final reports have been run. It is suggested that a data processing checklist of all reports and programs to be run be completed prior to the shutdown period.

With all data updated, the receiver should make certain the information systems department performs a full system backup prior to the clearing of all files on the system. Once completed, the system may be powered down.

VII. CLAIM OPERATIONS

A. TAKE CONTROL OF CLAIM PROCESSING AND PAYMENT

A receiver should plan to put in place appropriate controls over claim processing and payment authority of the insurer's claim department and establish the capability to control and review the insurer's claim records. Claim records may be contained in hard copy files, electronic records, or a combination of both, and may be under the control of the insurer's claim department at its main office, branch offices, or by a TPA.

Some of the initial goals in establishing control may include a review of claim policy and procedure manuals, the coverage confirmation process, claim reserving methodology, settlement practices, and applicable electronic claim processing systems. If written documentation of the insurer's claim policies and procedures does not exist, a receiver may wish to interview key claim personnel to develop and document claim processing procedures.

[For Health receiverships address prior authorization requirements, capitated arrangements and referrals and outside claims handling by PBM mental health and or durable medical equipment]

B. DEVELOP AN UNDERSTANDING OF CLAIM OPERATIONS

A receiver needs to understand the operations of the claim department, including its organization and workflow, processing systems and data, type, and nature of claims, and gather key information on the number of pending claims and outstanding reserves by category of business.

C. REVIEW OF CLAIM HANDLING

A receiver may wish to review the claim handling process by obtaining or preparing an overview of the typical workflow for processing a claim. This workflow might include a summary of all key interactions between claim personnel and other departments. If workflows vary by claim type and product line, the preparation of a separate workflow summary for each product line may be necessary.

The receiver should determine whether the insurer uses an active diary system for claims. Such a system monitors the claim handling process and records the dates of each step in the process. As part of the claim diary system investigation, obtain an overview of the diary functions, including the relationship between the manual and the electronic elements of the processing system.

With a basic understanding of claim handling policy and procedures, a receiver may wish to determine whether there are any constrictions in the claim resolution process such as:

- Setup of new claims;
- Correspondence files;
- Claim diaries;
- Indemnity payments;
- Loss adjustment expense payments;
- The handling of insurance department complaints;
- Reinsurer claim inquiry;
- Reporting to reinsurers;
- Subrogation and salvage recovery; or
- inventory of unprocessed claims including those claims not yet entered on the claims system.

D. REVIEW OUTSIDE INVOLVEMENT IN CLAIM HANDLING

In addition to TPAs, several other types of outside parties may participate in claim handling, e.g., legal counsel, independent adjusters, appraisers, investigators, etc. A receiver should review these roles and determine whether to confirm or reject contracts with such vendors.

E. CLAIMS HANDLING IN CONSERVATION/REHABILITATION

Depending upon the insurer's financial position and liquidity, circumstances may require a receiver to impose a moratorium on the continued ordinary payment of claims, defense of insureds, cash surrenders, policy loans or dividends. In such circumstances, consideration may be given to hardship exceptions for claims that meet certain established criteria for continued payment or partial payment, such as claim category or payment percentage. Hardship exceptions to a claim payment moratorium should be approved by the supervising court and based on exigent circumstances such as disability of an employee or policyholder, the impoundment of an automobile undergoing repairs, or the future availability of guaranty association coverage.

For detailed information on how to handle claims in a liquidation, see Chapter 5—Claims.

F. UNIFORM DATA STANDARD

In December 1993, the NAIC adopted the Uniform Data Standard (UDS) for use in reporting policy and claim information between property and casualty guaranty associations and receivers for property and casualty receivership estates. UDS is a defined series of electronic data file formats that facilitate data exchange between receivers and guaranty associations related to the insurer's unearned premium, claims, and loss adjustment expense. The UDS Operations Manual provides an explanation of the current reporting format. A copy of the Uniform Data Standard Operations Manual P&C ("Claims manual") can be downloaded from the National Conference of Insurance Guaranty Funds website (ncigf.org) for free.

Refer to Chapter 2—Information Systems and Chapter 6—Guaranty Funds for further information on UDS.

VIII. REINSURANCE

Please refer to Chapter 7 - Reinsurance when reviewing this section.

Understanding reinsurance is critical to the receiver's ability to marshal this asset. With respect to property/casualty insurers, reinsurance receivables usually represent the largest asset of the estate. With respect to life insurers, reinsurance may be critical to the rehabilitation or liquidation proceeding, and generally all ceded reinsurance agreements should be continued. See §612 of IRMA and Section 8(N) of the Life and Health Insurance Guaranty Association Model Act. This asset may require immediate attention upon commencement of the receivership.

A. LOCATION OF REINSURANCE DOCUMENTS

Before the receiver can begin to marshal reinsurance receivables, it is necessary to understand the reinsurance relationships of the insurer. To accomplish this, the receiver must first locate and categorize the various documents reflecting the reinsurance arrangements of the insurer. The receiver should take control of original reinsurance contract documents. These records should be secured, copied, or scanned and then inventoried. The receiver may create working copies for use during the receivership. The integrity of the original records should be maintained in the event they are needed in the future.

B. LETTERS OF CREDIT AND TRUST AGREEMENTS

Letters of credit (LOC) and trust agreements must be located and placed in a secure area. These documents should be reviewed as soon as possible to determine whether any immediate action is necessary to ensure the continuation of the LOC or trust agreement. Under certain forms of letters of credit, the LOC may expire by its own terms, although it is more common that they renew automatically. In some instances, the original LOC must be presented to the issuing financial institution to draw against the letter of credit.

C. ROLE OF INTERMEDIARIES

It may be in the best interests of the receivership to continue working with intermediaries. The intermediary has at its disposal detailed information that the receiver may not have. The intermediary should be notified of the insolvency proceedings immediately and instructed as soon as possible on duties and responsibilities it should continue to perform for the receiver.

The duties of the intermediary need to be clarified. The receiver may decide to instruct the intermediary to take one or more of the following actions:

- Advise all reinsurers or cedents of the status of the insolvent insurer;
- Turn over all funds in their possession due the insurer;
- Turn over original LOCs;
- Continue to render accounts to receivers and reinsurers;
- Assist in the collection of funds from reinsurers;

- Transmit claims and other notices to the receiver and the reinsurers;
- Establish procedures for the handling of reinsurance inquiries; and
- Cease netting of accounts among insurers.

Under certain circumstances, the receiver may find it preferable to discontinue the use of the intermediary. In this event, the receiver should deal directly with the reinsurers, with appropriate notice to the intermediary.

D. IDENTIFICATION OF FUNDS HELD

The receiver should prepare a list of insurers that are holding funds of the insolvent insurer, as well as a list of insurers for which the insolvent insurer is holding funds.

E. PAYMENTS TO REINSURERS

One of the key issues facing the receiver in the short term is whether to continue to pay reinsurers on a current basis and/or cure prior defaults. This may be necessary to continue the reinsurance in effect, particularly if there have been pre-receivership defaults. This is a legally intensive problem, and the receiver needs to engage legal counsel on these matters as soon as possible. The decision will depend on an array of factors, including the terms of the reinsurance agreements, applicable state law, and the payment status of the contract.

IX. HUMAN RESOURCES

A. OPEN LINES OF COMMUNICATION

The commencement of a receivership can be difficult for an insurer's employees. Many employees are not aware of the circumstances that have led to the receivership. Productivity and employee morale often decline. Meetings with employees at the commencement to explain the receivership process as well as the receiver's current objectives can be very important. Establishing an open dialogue and clear lines of communication will minimize the spread of misinformation and can mitigate untimely staff departures.

B. PERSONNEL, PAYROLL AND BENEFITS

It is important that a receiver assume oversight of an insurer's direct employees, payroll, and employee benefits with minimal disruption to existing processes. A receiver may also need to assume oversight of pension or 401(k) plans, over time, establish new benefit programs for direct employees, and consider whether to continue, replace, and wind-down existing employee benefit programs. A summary of the critical human resource tasks is contained in the checklists included in the exhibits at the end of this chapter.

Employees may be employed by an affiliate or holding company, rather than as direct employees of the insurer. In such cases, a receiver will need to review existing cost-sharing arrangements or contracts for reimbursement with the affiliate. In such instances, a receiver typically would not have direct responsibility for the employee benefit programs pertaining such employees.

C. STAFFING PLAN

One of the receiver's responsibilities will be to develop a staffing plan for the receivership that identifies both short- and long-term personnel requirements. A receiver may wish to develop an organizational chart, comprehensive job descriptions, and personnel files for receivership staff. As responsibilities and job functions may change during the receivership process, including transitions from conservation, rehabilitation, and liquidation, a receiver may be required to periodically assess and update the receivership staffing plan.

D. RETENTION OF LEGACY STAFF

Legacy staff can be well positioned to provide a receiver with institutional and operational knowledge that will benefit the future operations of a receivership estate. A receiver may accordingly wish

to look to legacy staff to augment the short- and long-term receivership staffing plan.

E. LEGACY STAFF RETENTION

Staff resignations and reductions in force are typical during a receivership as certain operations begin to wind-down and the insurer is no longer perceived to be a going concern. A receiver's staffing plan may also include the retention of certain legacy employees until their requisite knowledge and expertise are no longer necessary for the operation of the receivership estate. In such instances, retention incentives may be required to achieve the receiver's staffing objectives. Retention incentives may include one or more of the following:

- Maintenance or adjustment of existing benefits , including severance;
- Performance and salary review process;
- Retention bonuses;
- Educational or tuition reimbursement;
- Providing outplacement services.

F. OTHER PERSONNEL ISSUES

The receiver should identify any personnel related litigation and other disputes to include equal employment opportunity complaints, workers' compensation claims and wage and hour complaints, etc. These matters should be managed by the receiver's personnel consultants and/or legal counsel.

X. CLOSURE OF THE ESTATE

Please refer to Chapter 10 – Closing Estates when reviewing this section.

The best time to start planning for closure is at the start of the receivership. Since the receivership process may take several years, the receiver may wish to prepare a closure task list or checklist. A partial list can usually be developed through a review of the receivership statute of the domiciliary state. The following are some of the general tasks that should be accomplished before a liquidation estate can be closed:

- All assets have been marshaled;
- Litigation has been resolved;
- Ancillary proceedings have been closed or resolved to a point that will not impede closure of the domiciliary receivership;
- Guaranty association claims against the estate are finalized to the extent that a final distribution can be made to the associations;
- All claims have been allowed or disallowed by the supervising court;
- Appropriate distributions have been made to creditors;
- Where appropriate, the dissolution of the corporate entity has been resolved; and
- Final tax returns have been prepared and filed with the federal government and financial settlements prepared as required.

A. GUARANTY ASSOCIATIONS

The claims of guaranty associations may not be completely certain at the time non-guaranty-association-covered claims (including contested claims) are adjudicated by the liquidator. The covered

claims that the guaranty associations handle are subject to a number of variables. Prior to making a final distribution, the liquidator may, where appropriate, consider policy reserve calculations as a basis for valuing guaranty association policy level claims (e.g., through the use of present value method). If early access payments were excessive, overages will have to be returned prior to processing the final distribution.

For a discussion of guaranty associations, see Chapter 6—Guaranty Associations.

B. ANCILLARY RECEIVERSHIPS

Closure of an ancillary receivership is generally less complicated than closing a domiciliary proceeding. Ancillary receiverships should be closed before the domiciliary receivership begins closure proceedings. Some state statutes provide that special deposits are established for the benefit of the policyholders in that state, who will either be paid in full or will share *pro rata* in the special deposit. If excess special deposit assets exist, the excess should be returned to the domiciliary receiver for distribution to the creditors.

Distributions to ancillary special deposit claimants are subject to the rule that all claims at that priority level share at the same percentage to the extent possible. If distributions in the ancillary proceeding will be made beyond the policyholder claimant level, the domiciliary liquidator should arrange for the excess unpaid portion of the ancillary special deposit funds to be returned to the domiciliary estate.

C. TAX RETURNS

When the receivership is required to file tax returns, scheduling the filing of the final return may be difficult. The filing of the final return will follow the application and order for closure. Counsel and tax advisors should be consulted to determine the best method for handling the filing of a final return for a particular receivership. The timing of the dissolution of the entity should be carefully considered because valuable tax attributes may be lost.

See Chapter 3, Section VIII for further discussion.

D. FINAL ACCOUNTING MATTERS

1) Adjusting and Closing Entries

Timing adjusting and closing entries with regard to the final report can be difficult. Generally, the liquidator will want to have the accounting books closed prior to the issuance of the final report and the filing of an application for closure with the supervising court. But there usually will be some accounting activity that must take place after either the final report or closure order.

During the early phases of the receivership, efforts are centered on determining what the assets and liabilities of the insurer were on the liquidation date. After the liquidator has written off any uncollectible assets, marshaled all the available assets, and distributed all the monies that can be paid, there may remain assets to be written off and unpaid claims as unsatisfied liabilities. Provision should be made for dealing with outstanding checks, escheat funds and post-closure recoveries that do not justify reopening the estate.

2) Reserving Final Expenses

Expenses may be incurred after the closure order has been issued; therefore, funds may need to be reserved for administrative expenses. These expenses may include final lease payments; employee withholding and taxes; storage charges; transportation charges; final tax preparation; bank charges; legal, accounting and data processing consulting expenses; postage; court costs; and salaries. In preparation for closure, it is necessary to have all administrative expenses current.

E. ABANDONED ASSETS AND CAUSES OF ACTION

There may be both assets and causes of action that may not be cost-beneficial for the liquidator to pursue. Since the duties of the liquidator include marshaling the assets and liquidating them for the benefit of the creditors of the insolvent insurer, it is advisable for the liquidator to obtain court approval of any decisions regarding abandonment. The liquidator may also wish to consider negotiating with guaranty

associations for the transfer of assets and causes of action to the guaranty associations as distributions in kind, potentially reducing their claims against the state.

F. FINAL REPORTS AND APPLICATIONS OR MOTIONS

A final report on the liquidation must be made to the supervising court. This final report may be filed before, after or with the application or motion for closure of the estate. (*See Chapter 9—Legal Considerations.*) Prior to closure, there may be a need to have the supervising court approve, to the extent it has not already done so, the following actions:

- Expenditures;
- Reserves set for final and post-closure expenses;
- Amounts to be paid in final distribution to creditors;
- Arrangements for destruction or storage of records;
- Valuation of any distributions of assets-in-kind to any claimants; or
- Any other significant transactions or procedures.

G. FINAL CLAIMS MATTERS

1) Final Distribution

The final distribution percentage is calculated by dividing the assets available for distribution by the amounts allowed for claims filed and approved by the supervising court. The receiver must reserve sufficiently for administrative expenses that may be incurred after the distribution has been made.

There may have been interim distributions from the estate that will need to be considered when calculating the distribution percentage applicable to the final distribution. Also, early access payments made to guaranty associations should, by order of the supervising court, be treated as distributions and taken into account when the final distribution is made. If there is a need to have guaranty associations return any portion of the early access payments, it must be identified when the receiver starts calculating the final distribution percentages.

2) Former Insureds with Unsettled Litigation

Ongoing litigation of non-guaranty-association-covered claims may impede closure of an estate. Some states provide that the insured's claims can only be paid based on the lower of: (1) the recommended and allowed amount assigned to the claim; or (2) the amount established in the underlying claim against the insured. This may require that the receiver waits for all claims against former insureds be settled or barred before making final distributions and moving the estate to closure.

3) Reducing Reserves or Recorded Allowances on Claims

After a distribution has been made, the record of allowed claims may need to be adjusted for tax purposes or to enable additional distributions to be made.

4) Unclaimed Dividends and Escheated Funds

The receiver may not be able to locate all claimants. Also, there are claimants who will refuse to accept their liquidation distribution because they are involved in litigation and believe that accepting payment would prejudice their case. State statutes may require special treatment of funds related to unclaimed distributions. Further, after a certain time period, funds held for unclaimed distributions will escheat to the treasury of the domiciliary state. (*See Chapter 9—Legal Considerations, Section III.*)

H. CLOSING THE OFFICE

After all the records have been either destroyed or sent to the appropriate archives, any separate office maintained for the liquidation will need to be closed. One of the items related to closing the office may be cancellation of any remaining lease term and insurance coverage on staff, equipment, and the office space itself. In many cases during a liquidation, the office will have been closed early in the receivership process to reduce expenses.

I. POST CLOSURE MATTERS

There may be inquiries for records and information made by former agents, insureds, and other interested parties after the closure of the estate. Usually, these will be referred to the domiciliary insurance department, and basic insurer information may be posted on the domiciliary insurance department's website. If the request is for pre-insolvency financial data, the request will probably be handled by the department. Arrangements should be made to brief someone on the permanent receivership staff or in another division within the department of insurance so that post-closure questions can be answered.

J. POTENTIAL REOPENING OF ESTATE

Some statutes provide for the reopening of an estate upon the occurrence of certain events. For example, assets not previously discovered or written off may become available, making an additional distribution possible. However, a careful analysis should be made to determine whether an additional distribution would be cost-effective.

CHAPTER 2 – INFORMATION SYSTEMS

I.	INTRODUCTION	129129
	A. Information Systems – Requirements and Considerations	129129
	B. Overview	129129
II.	TAKING CONTROL	130130
	A. Assurance of Data Maintenance and Availability.....	130130
	B. Security and Data Privacy.....	131131
	C. Systems Processes for Conservation, Rehabilitation and Liquidation.....	135134
	D. Staff.....	135134
	E. Hardware.....	136135
	F. Systems Software and Application Software.....	137136
	G. Internet/Intranet/Web site	138137
	H. Newer Technologies	138137
	I. New Business Strategies	139137
	<u>J. Remote Work</u>	
III.	SYSTEM MANAGEMENT AND CONTROL	139137
	A. Systems Operations.....	139138
	B. Input/Output Controls	140138
	C. Maintenance/Updates.....	140138
	D. Networks	140138
	E. System Location	140138
	1. Outsourced Operations / Hosted Systems	140138
	2. Shared System	141139
	3. Affiliate Functions.....	141139
	F. System Ownership	141139
	G. Conversion	141139
	H. Common Systems Applications.....	142140
	1. General Ledger and Accounting Books	142140
	2. Claims.....	142140
	3. Accounts Current.....	142140
	4. Premium Financing	143140
	5. Marketing	143141
	6. Investments.....	143141
	7. Reinsurance	143141
	8. Email	143141
	9. Other	144141
	10. <u>Other</u>	<u>Large Deductible</u>
	11. <u>End User Computer (EUC) Applications</u>	
IV.	INFORMATION SYSTEMS DELIVERABLES	144142
	A. Considerations Regarding the Insurer’s Historical Business Practices.....	145142
	B. Volume and Geography of Business.....	145142
	C. Types of Business Written	146143
	D. Corporate Structure.....	146143
	E. Sources of Production	146143
	F. Claims Handling	147143
	G. Affiliated Companies	147144
	H. Foreign Exchange Considerations	148144
	I. Existing Systems.....	148144
	1. Systems Documentation.....	149145

Receiver's Handbook for Insurance Company Insolvencies

2.	Process Documentation	149145	
3.	User Documentation.....	149145	
J.	Data Validation	149145	
K.	Hardware Requirements.....	149145	
1.	Data Storage Requirements and Sizing	150145	Application Servers
2.	Printer Requirements and Sizing	150145	Networks
L.	Additional Considerations	150146	
1.	PCs, Laptops and Terminals.....	150146	
2.	Environmental Considerations (Climate Control).....	150146	
3.	Environmental Considerations (Power Consumption).....	151146	
M.	Liquidation Considerations	151146	
1.	1.	Property and Casualty	Guaranty Association Information <u>151146</u>
	<u>A. Compliance with UDS</u>		
	<u>B. Insolvency Data Transfers</u>		
	<u>i. Evaluation</u>		
	<u>ii.Extractions</u>		
	<u>iii. Processing</u>		
	<u>iv. UDS Production</u>		
	<u>C. Priority of UDS Records</u>		
	<u>2. Life and Health Guaranty Association Funds</u>		
	<u>A. Specific Data Needs</u>		
	<u>B. Timing Considerations</u>		
	<u>C. Secure Data Transfer</u>		
	<u>32. Compliance with UDS</u>	<u>152147</u>	
V.	IMPLEMENTATION	156147	
A.	Retention.....	156147	
1.	Verify Capabilities	157148	
2.	Verify Condition of Hardware and Adequacy/Integrity of Software	157148	
3.	Assure Adequate Security and Disaster Recovery	157148	
4.	Devise Assessment Methodology.....	157148	
B.	Enhancement.....	157148	
1.	Determine Availability of Enhancements	157148	
2.	Plan and Schedule Implementation	158149	
3.	Devise Enhancement Testing Methodology	158149	
C.	System Replacement.....	158149	
D.	Third party Vendors	159150	
1.	Prepare Detailed Needs List	159150	
2.	Identify Possible Vendors	159150	
3.	Contract with Vendor	160150	
4.	Operating Protocols	160151	
5.	Assessing Operational Results	160151	
6.	Document and Back Up Old System	160151	
7.	Shut Down and Disposal of Old System	160151	
D.E.	General Concerns	<u>160151</u>
F.	Implementation of UDS.....	161151	
G.	Information Systems Report	161152	

I. INTRODUCTION

A. Information Systems – Requirements and Considerations

The management of an insurance company in receivership is, to a great extent, the management of information. To successfully perform receivership functions and fulfill all obligations and responsibilities, the receiver must effectively utilize system resources.

The nature of the receivership, conservation, rehabilitation or liquidation will affect systems requirements. The type of business written by the insurer, whether Life, Annuity, Accident & Health, Property, Casualty, Liability, Surety, Title, Workers' Compensation or other lines, will also affect systems requirements for the receiver. Systems needs, and the timing of those needs, will be different in a conservation or rehabilitation process than in a liquidation process.

Because of the importance of securing the data of any company subject to a receivership, immediate attention must be given to obtaining a backup of the data, and consideration given to obtaining a complete backup of the systems.

In all conservation and rehabilitation efforts, the immediate focus is ongoing insurance company operations and the changes necessary to help ensure the viability of the company. A priority focus will be on analysis and management of information to support decision-makers. Realizing potential opportunities such as mergers, divestitures and loss portfolio transfers will require considerable information on all aspects of the business. Throughout the conservation or rehabilitation process, it is necessary to continually consider potential future requirements, such as release of the company to existing management, transferal to new owners (of the insurance business or the entire company) or transition to liquidation. In doing this, the receiver will need to look ahead to what systems requirements may be needed in the future and make arrangements so they are in place when needed.

Liquidation processes will require a focus on timely conclusion of normal operations and an accurate final statement of assets and liabilities. Systems support will be required for estate liquidation processes, including interfaces with guaranty associations, management of claims against the estate, recovery of all receivables, pursuit of causes of action to benefit the estate, and disposition of physical assets. Compliance with all legally required processes and documentation to support compliance are crucial.

B. Overview

The chapter has been divided into the following parts:

- Taking Control
- System Management and Control
- Information System Deliverables
- Implementation

These sections are in the order that anticipated issues, requirements and issues may be anticipated, arise during the receivership process. Insurers will vary in size and the degree of system sophistication. Each insurer will present varied problems and issues dependent on the situation. In general, companies going into receivership have often neglected internal controls which may have resulted in many control issues related to the company, its systems, and completeness and accuracy of its data. The guidelines, considerations and checklists provided herein are very broad in nature. Management judgment will best determine the appropriate degree of applicability or whether alternate processes are required.

Generally, though, the receiver will first have to gain full control over the systems. Then the receiver can develop a more in-depth knowledge of processes to determine the best manner to meet the needs of the receivership.

This chapter provides suggestions and guidelines as to management of systems, issues resolution and problem avoidance in support of receiverships. While this chapter is intended to be as comprehensive as possible, it is not all-inclusive. Other methodologies may be employed to achieve the same goals in a satisfactory manner, and issues not addressed here may arise. In every receivership, no matter the size or characteristics, the receiver must exercise judgment beyond that which can be given by texts and checklists. Still, the materials provided here should assist in the exercise of that judgment.

This chapter focuses on issues primarily related to automated information systems. When considering the scope of information systems, however, it is important to apply a holistic perspective that considers systems as being made up of processes and procedures—both automated and manual, including human judgment—in performing tasks.

Other chapters of this handbook, specifically the accounting, claims and reinsurance chapters, address many issues related to information and manual processes. Information systems are an integral part of the operations of an insurance company and any receivership. However, not every system need must be met with a fully automated solution. Costs and benefits must be carefully analyzed.

There are detailed information systems checklists in Chapter 1 that should be consulted in advance if possible and then throughout the receivership process.

II. TAKING CONTROL

This section covers the activities necessary for a receiver to take control of an insurer's information systems in an effective manner. Generally, the checklists provided address a ~~worst-case~~ worst-case scenario: an information systems department that lacked control, where many key people have departed, and where documentation is incomplete, inaccurate or non-existent. The checklists should be completed for documentation purposes, noting those areas of the checklist that do not require action.

A. Assurance of Data Maintenance and Availability

The insurer's data will be in records and files stored within the computing infrastructure. It is important for the receiver to determine location, purpose, structure and content of data files related to all business applications. Given the complex and detailed nature of this information within the context of a contemporary liquidation as well as the security concerns that have increased significantly, it is desirable that the receiver have relevant background information prior to the signing of a liquidation order if possible. Ideally, this information would be shared with the affected guaranty funds in advance of liquidation. These steps will greatly enhance efficiency once liquidation is underway and result in even more dependable and timely protection of policyholders. A good starting point to gather pre-~~takeover~~ information is the systems summary grid and any IT related workpapers from the company's most recent financial examination. Reviewing this information in advance of takeover will give the receiver a head-start for what to expect. It is essential that the receiver's information systems personnel work with the other departments within the insurer to assure that all the available information has been captured and can be retrieved and reviewed at a later date. All system storage devices, including database servers, Web servers, file servers, application servers and related storage media should be reviewed as sources of company information. End-user computing (EUC), such as spreadsheets, databases, etc., ~~tee~~. That are maintained by business departments should also be considered. EUC applications can easily fall through the cracks if there is no central repository of the EUC applications and there is turnover of personnel who maintain the EUC.

Regardless of system ownership issues, it should be the practice to immediately back up all available data on all systems. Where possible, employee workstations, including laptops, should be backed up as well.

At a minimum, key employee workstations and laptops as determined by receivership management should be backed up.

For each major application, the receiver should obtain the following information:

- Name of application program;
- Vendor contact information, if applicable;
- Vendor contracts
- Sources of data (automated or manual);
- References to and storage of source data;
- Complete tables of all codes used (database schema and data dictionary, when available);
- Type and frequency of processing cycles;
- Narrative descriptions, in non-technical language, of capabilities and use;
- Administration procedures, including responsibilities of staff;
- Administrative user names and passwords for the application (also, if administration is restricted to a particular workstation or terminal);
- Systems error messages and appropriate actions;
- Distribution of output reports and samples if possible;
- Usage and control of reports;
- Links to other system modules; and
- Backup procedures including storage and retention schedules.

B. Security and Data Privacy

One of the highest priorities of the takeover phase of systems operation should be the review or initiation of system and data security procedures. The existing data may be the most reliable or only record of the assets and liabilities of an estate, and the need for securing this information is vital. In general, when the receiver takes control of the insurer's IT systems, access should be restricted until the receiver is confident that data cannot be altered by unauthorized parties. The receiver should identify the levels of access given to employees and any third parties for all applications and limit access as necessary. Remote access should be restricted to authorized users and only to users with encrypted laptops from trusted networks, such as corporate offices, virtual private networks (VPNs), etc.-

In conducting a security review, the receiver is cautioned that relevant and important data records may reside on mainframe computers, servers, PCs, tablets, cellular phones on the systems of contractors or any combination of all of these. Historical information systems records in the form of backup tapes, which may be stored off-site, may be of equal or greater importance and should not be overlooked. The insurer may also maintain a Web-site (see section G—Internet/Intranet/Web-site), which should also be included in the security review.

Receiver's Handbook for Insurance Company Insolvencies

One of the primary purposes of the security program is to obtain and safeguard all required data records, which entails the identification and securing of this data. Such a program should include the creation and implementation of a plan to limit access to the systems and data to those with a proven need. The program should enable the receiver to identify changes made to the system and the individual responsible for these changes. The ability to track changes to systems may be limited by the existing company software applications. The information systems checklist in Chapter 1—Takeover will provide the receiver with an overview of the most important aspects of a proper system security program.

In addition to securing the data of the company for conservation, rehabilitation or liquidation information, it is essential to ensure the secure handling of non-public personal information. Insurance companies and other financial institutions are subject to a variety of state and federal statutes and regulations regarding the protection and non-disclosure of non-public personal financial and health information. Some specific requirements are imposed by federal statutes such as the Gramm-Leach-Bliley Act and the Health Insurance Portability and Accountability Act, among others. Additional requirements may be found in state statutes, data security breach laws and in state insurance regulations, including those based upon the NAIC Privacy of Financial Information Regulation 2000. Ongoing compliance with applicable data privacy and security laws and regulations is essential to help further the primary goal of all insurance receiverships—the protection of insurance consumers.

Accordingly, the receiver should take steps to ensure the security and confidentiality of customer records and information; protect against any anticipated threats or hazards to the security and integrity of such records; and protect against unauthorized access to or use of such records, any of which could result in substantial harm or inconvenience to insureds or claimants.

The company may have included cyber security self-assessment or audits/ review as an integral part of its enterprise risk management program. If so, the receiver can obtain recent IT audits/ reviews such as: e-commerce areas, self-assessment and IT related reviews of significant third-party vendors. These reports could be in the form of audits/reviews (e.g. internal audit, external audit, SOC type I and II reports, or other contractor affiliate audit reviews. In the absence of a company policy that meets these criteria, it is essential that the receiver implement a data security policy and procedures suitable to the particular receivership. The procedures should be appropriate for the size, complexity and structure of the company and its data. There is guidance contained in the NAIC Receivership Data Privacy and Security Procedures for Property and Casualty Insurers in Liquidation, should address potential security threats in three areas: administrative, technical and physical.

See http://www.naic.org/committees_e_receivership.htm https://content.naic.org/cmte_e_receivership.htm for this document and other helpful receivership tools, such as the NAIC receivership Data Privacy and Security Procedures policy. Since staffing is often not available to write a new data security policy specific to each receivership, the NAIC's security policy and procedures document referenced above may serve as a guideline which could be edited for purposes of individual receiverships.

Administrative Safeguards

- Designate an individual who is responsible for oversight and compliance with security procedures.
- Publish a written policy statement setting forth the company's (receiver's) intention to protect the confidentiality of sensitive customer data from anticipated threats or hazards. The receivers' policy should include two important components, namely incident handling and communications protocols should an incident occur. Incident handling – General and specific procedures and other requirements to ensure effective handling of incidents, including prioritization, and reported vulnerabilities. Determine if there are procedures related to handling cyber-security

Chapter 2 – Information Systems

incidents. 2) Communications – Requirements detailing the implementation and operation of emergency and routine communications channels amongst key members of management.

- Prepare and distribute written procedures to appropriate personnel and service providers outlining specific steps that must be followed in storage, transmission, retrieval or disposal of sensitive customer information.
- Require all employees and other users to sign an agreement to follow the data privacy and security standards.
- Evaluate potential security threats from existing staff, e.g., disgruntled employees.
- Evaluate service providers regarding the handling of sensitive customer information.
- Train and instruct employees as to their individual responsibilities regarding data privacy and security.
- Train staff to recognize potential security threats, including intentional or inadvertent downloading of ~~viruses, worms, Trojan horses or e-mail bombs.~~ malware.
- Check references and criminal backgrounds prior to retaining new staff.
- Periodically test and monitor the effectiveness of the security procedures.
- Evaluate and adjust the security procedures in light of changing circumstances.
- Use appropriate oversight or audit procedures to detect improper disclosure or theft of customer information.
- Implement procedures for notifying appropriate authorities and affected individuals if non-public personal information was subject to unauthorized access.
- Impose disciplinary measures for breaches of privacy and security rules.
- For laptops that are used outside of the office require encryption and the use of a VPN to connect
- Establish a remote work policy for remote workers which includes policies for where work is to be performed with a secured network connection only and safeguards that must be in place associated with their computer and other data (paper files, etc.) used outside of the office.
- Add multi-factor authentication where possible, including email, application servers and company networks.
- Disable USB ports on all company laptops and computers.

Technical Safeguards

- Use password-activated screensavers.
- Use strong passwords unique and independent of any personal passwords.
- Change passwords periodically.
- Prohibit posting of passwords ~~near employee's work station or computer~~ anywhere except for a secure password manager.

Receiver's Handbook for Insurance Company Insolvencies

- ~~Encrypt sensitive information when it is transmitted electronically over networks or stored online.~~ Sensitive information must be encrypted both in transit and at rest.
- Limit or do not allow storage of sensitive information on portable devices such as laptop computers or removable drives or other storage media; if sensitive information is stored on mobile devices, it must be encrypted.
- Limit access to customer information to employees who have a business reason for seeing it.
- Store electronic customer information on a secure server that is accessible only with a password.
- Avoid storage of sensitive information on a machine with an Internet connection.
- Transmit data electronically only through secure, encrypted connections.
- Implement procedures for the prevention, detection and response to attacks, intrusions or other system failures.
- Regularly check with software or systems vendors to update security patches.
- Maintain up-to-date firewalls.
- Back up all customer information regularly.
- Ensure that former employees do not have access to any information systems.
- Ensure that remote access to all information systems is limited to authorized users.

Physical Safeguards

- Lock rooms and cabinets where sensitive data or data storage equipment is kept.
- Ensure the area where data storage equipment is kept is well ventilated, is capable of maintaining an appropriate temperature for the equipment is free from water hazards, and is not visible through a window to the outside the office.
- Allow access to information storage areas only to those individuals with a need for access.
- Require employees to secure sensitive information in their work areas whenever they are not present.
- Dispose of sensitive information in a secure manner.
 - Hire or designate a records retention manager to supervise the disposal of records containing non-public personal information.
 - Shred sensitive information recorded on paper.
 - Destroy or effectively erase all data when disposing of computers, diskettes, magnetic tapes, hard drives, copy machines, fax machines, flash drives, or other storage media containing sensitive information.
- Ensure that storage areas are protected against physical hazards such as fire, flood or physical intrusion.

- Maintain a current inventory of all computer equipment.
- Collect keys, computer equipment and other storage devices from employees and disable employee access to company systems prior to termination.
- Develop a computer disposal policy/procedure which includes a strategy for the maintenance and tracking of hard drives.

C. Systems Processes for Conservation, Rehabilitation and Liquidation

Systems emphasis for a conservation or rehabilitation effort typically focuses on timely and accurate processing, resolution of issues and providing information for management. The additional considerations regarding liquidations outlined below may apply in some conservations or rehabilitations.

In a liquidation action, beyond timely processing and termination of operations, there are additional considerations related to accurate identification and valuation of all assets and liabilities of the insurer:

- Liquidation notices and proof of claim processes;
- Policy cancellation and/or non-renewal notices;
- Unearned or return premium calculation;
- Agents' balances calculation and collection;
- Unearned commission calculation and collection;
- Policyholder contract assessment calculations, where applicable;
- Reinsurance recoverable tracking and collection;
- Transmission of claims data between guaranty associations and receivers See Section IV. M. in this chapter for unique standards such as UDS and others that apply to the different types of insurers. (UDS);
- Salvage and subrogation accounting and collections;
- Inventory and liquidation of physical assets; and
- Transmission of policyholder records and data to assuming insurer for life and health insurer receiverships.

Some systems will have built-in capabilities for creation of the above items, others may not and an extract from the system may need to be taken and manipulated to achieve desired results. Also, when using Company data to create reports, it is important to discuss the completeness and accuracy of the data with company staff since often companies in receivership may have issues where systems are not working properly or other reasons why it is known that the data on the system may not be complete and accurate.

D. Staff

Assuming control of the insurer's information systems is critical to a successful receivership. Gaining control of the information systems usually will be most cost-effectively accomplished through use of the existing staff. Since it is important to gain control of these areas at the onset of the takeover process, it is best to assess the staff at the inception of the receivership to determine how they can assist in the receivership process. In some cases, a plan may need to be devised to provide information systems

personnel with incentives to continue their employment as the receiver requires. Even so, it is often difficult to retain IT personnel, so it is important to perform as much knowledge transfer as possible at the onset of a receivership.

After assessing the experience, potential contribution, commitment and cost of the staff in the context of the goals of the receivership, the receiver may choose to reduce staff. The allegiance of the systems staff, as with other functional areas, may be questionable, and the possibility of sabotage exists. Sabotage of information systems is hard to detect and may be extremely expensive to repair. Because of the potential exposure to loss of critical data, the systems staffing decisions should be made quickly and decisively. Where possible, restrict full access to any systems, equipment or work areas until staffing decisions have been made and implemented.

E. Hardware

In taking control of systems operations, frequently the first concern of the receiver is to inventory and secure the hardware. The hardware may be owned, leased or shared, and arrangements should be made for continued use to the extent the receiver finds necessary to maintain continuity, especially at the onset of the receivership. The receiver will also want to identify collateral equipment located at branch operations, the homes of employees, related entities, storage facilities, other insurers and agencies. All equipment should be inventoried, including all types of portable computers, tablets, cellular phones, and communication equipment.

Contingency plans may need to be developed in case the receiver must cease use of the systems in order to liquidate components.

Maintenance of the hardware should be done on schedule, and the environment should be maintained to prevent loss of data or system outage.

The configuration of the hardware should be specifically identified and cataloged. The computing hardware environment may be made up of a combination of mainframes, mid-size computers, client servers and PC-networked equipment.

For mainframe or mid-size computers, the most important components of their configuration will be:

- CPUs (central processing units);
- Data storage devices;
- Printer(s);
- Tape drives;
- Terminals;
- Data communications equipment; and
- Any other peripheral devices.

Similarly, all PC-network configurations should be identified and may include:

- Network servers, firewalls, intrusion detection devices, routers, switches, etc.;
- Mail servers;
- Web servers;

- Imaging servers;
- PCs and laptops;
 - Make and model
 - Internal storage devices
 - RAM
 - Clock speed
- External storage devices;
- Printer(s);
- Keyboards and other input devices, e.g., scanners, microphones and pointing devices such as a mouse, track ball, touch pad or other sensor;
- Monitor(s);
- Any LAN-connected devices (high-performance cables, terminals, file servers, printers, modems, etc.);
- Data communication equipment such as cell phones, tablets, and any other internet connected devices. wireless e-mail devices (e.g., Blackberries), etc.; and
- UPS (Uninterruptible Power Sources) and generators.

F. Systems Software and Application Software

Systems software includes broad and varied types of software such as operating systems, utility systems, database management, virus protection, e-mail systems, and any other software that is not classified as business application software. These systems will be commercially available systems that are closely related to hardware components.

Application software directly supports business functions and may be licensed, commercially available software or may be custom-developed.

Taking control of the software requires a different approach than that applied to most of the other assets of the insurer. This is especially true for custom-developed software. Control of the software initially means knowledge of the software in place and its intended purpose to the insurer. For licensed software, it is necessary to have an accurate inventory of the software, to have proof of licenses and status of maintenance contracts to ensure authorized legal use, and to obtain updates from the software vendor. In the case of custom-developed software, it is necessary to identify the developer(s), whether contract or in-house, and any relationship with the insurer. It may be necessary to retain an intellectual property attorney to determine the company's rights to the software. The program source code must be physically located; whether on the company's servers or elsewhere, and rights to the source code must be determined. Succession planning information should be obtained for software developed by a sole proprietor contractor.

It will be necessary for the receiver to identify the applications that address the following functional requirements:

- Marketing and sales management;

Receiver's Handbook for Insurance Company Insolvencies

- Agency interface;
- Customer service;
- Claims management;
- Policy issuance and endorsement processing;
- Premium billing and accounting;
- Reinsurance;
- Policy receivables and payables;
- Cash receipts and disbursements;
- General financial management and reporting;
- Investment management;
- Data warehouse
- Word processing and publishing;
- Company Web site; and
- External interfaces and data sources.

G. Internet/Intranet/Web-site

Increasingly, insurers are utilizing the Web as a tool for their business and have Web-based technologies implemented. The receiver should review the company's Internet content and application processes. The receiver should also ascertain what Web services are being provided by the insurer and to the insurer by external vendors. Internet service providers should be documented and service contracts obtained and reviewed. The receiver should assume the role of Web-master or make arrangements with a third-party vendor. This may require that external Internet service providers be notified of the change and new passwords issued. Firewalls, Web servers and proxy servers, routers, and other Web- and network-related items should be reviewed for legal, data, ownership, confidentiality and security issues. Integration with the receiver's own Web usage and applications should be reviewed and considered.

If premiums are being collected over the internet the receiver should ascertain the Company is PCI compliant. PCI compliant organizations will have an annual PCI assessment. If the Company is not PCI compliant it is recommended that areas of non-compliance be mitigated or the ability to take electronic payments removed. The receiver should also understand the process for collecting electronic payments and what if any action needs to be taken by company or receiver personnel to collect and record such payments.

H. Newer Technologies

As emerging technologies become more common in the field of insurance, the receiver should be aware of newer technologies that may have been implemented by the insurer.

Imaging systems and distributed processing of underwriting, claims, collections and other operations all have special requirements that the receiver will need to address. An analysis will be needed to determine system ownership, hardware and network components used to support these implemented technologies,

and vendor involvement in the support and maintenance of these systems. These should all be reviewed by the receiver to determine risk, cost benefit of continuation, conversion and receivership issues.

I. New Business Strategies

The receiver should ascertain system ownership and system usage issues such as leased systems, outsourced contractors or vendors performing work or services for the insurer, system availability, and security. The receiver should verify that there will be sufficient access to data and functions necessary to perform the receivership processing. The receiver should identify all the involved parties, what services, hardware and software have previously been provided, what is currently being provided and at what cost.

J. Remote Work

In 2020, the COVID-19 pandemic not only created new challenges for the administration of receiverships where activities were carried out remotely from the insurer’s corporate offices, but also brought about changes in how insurance companies operate. Specifically, more insurers have allowed staff to move to remote work or hybrid (partially remote) work environments, as well as to rely more on paperless electronic records and less on (or even eliminate) hardcopy documents. This has led to the need for use of platforms that allow for secure remote access by authorized staff and enhanced data security.

A few IT considerations for the receiver, if the insurer has staff who work remotely, or if the receiver’s access to on-site IT systems is limited due to a disaster, include but not limited to:

- Review the insurer’s Disaster Recovery and Business Continuity Plan for remote access and maintenance of systems
- Identify and understand the critical automated systems that need to continue operating to support business functions, the persons responsible for critical systems, location and back-up systems (i.e., colocation data center).
- Review the insurer’s Work-From-Home Policy to gain an understanding of the roles and responsibilities of staff working remotely
- Understand which employees have remote access to systems and/or may have company owned equipment at home (i.e. laptops, monitor, printers and office furniture)
- Understand what business systems, programs, technology, (e.g., virtual private network (VPN), phone/communication systems) that have been established for employees to work remotely and the internal controls over those systems
- Understand the insurer’s cybersecurity controls and data security protocols that are in place to facilitate secure remote access to the requisite systems and data by off-site staff

III. SYSTEM MANAGEMENT AND CONTROL

The preceding section of this chapter dealt with the first task facing the receiver when taking over a distressed insurer—establishing control. This section will guide the receiver through a more detailed continuation of that process by identifying the areas of management and control.

A. Systems Operations

The hardware, software and personnel who keep systems running make up the systems operations. In many mainframe computer operations, the users of the application software may never have seen the actual data center and its various related equipment. Systems operations are typically supported by an internal or external help desk support and network administration.

B. Input/Output Controls

Many application systems both receive and send data to and from other application systems, which can be internal, external or both. This data may be in the form of removable tapes or disks that are visible, or may be in the form of files/databases that reside on non-removable disks and are created by one application system, then later input or electronically transmitted to another application system or cloud storage. The input, output and transmission of all data should be subject to controls, which may range in form from a simple notation indicating the application name/date/time to a more complex procedure (manual or automated) that balances or validates record counts and control totals. Controls may also be part of the application program and be unseen until an error or notification prompt occurs.

The receiver should verify that these internal and external controls are in place and fully documented. After the urgent control matters have been addressed, areas where these controls might be improved will be noted through the operation of the receivership.

C. Maintenance/Updates

Some licensed software is automatically maintained and upgraded by its vendor. More frequently In many instances, the end user or owner identifies the availability of, and acquires, updates. The receiver should determine be aware of the availability of updates to software used by the insurer. For some mainframe and mini-computer configurations, current maintenance costs may exceed the cost of converting to a PC-based system. The inventory made of the software and its licensing is important to ensure proper maintenance and may impact business decisions regarding continued utilization of the existing system.

D. Networks

Network systems in which an on-premises -file server, cloud server or central processing unit forms the hub of a network of interrelated PCs are now common. The age and adequacy of the networks should be ascertained and the availability of maintenance and updates determined. Networks may include not only the insurer, but other affiliates or holding company of the insurance company; thus, the ability to separate the network into independent components may be problematic. See also Section III.G. below regarding segregating commingled records and data.

E. System Location

The physical location and management of the computer system is also an important issue. Many computer systems are completely internal to the insurer. That is, all of the hardware and software components of the system are within the insurer's premises and control. The benefit of this is that the information systems operation is entirely dedicated to, and focused upon, the objectives of the insurer. However, this also requires that all aspects of the systems operation be managed and controlled by the receiver. To maintain and control an entirely in-house operation, it is vital that the receiver have sufficient systems staff in place. In instances where the receiver has determined that the responsibility and expense of an in-house information systems operation are not desirable, he or she may look to alternative arrangements, such as out-sourced operations.

1. Outsourced Operations / Hosted Systems

A service provider may have performed some or all of the data processing functions. The arrangements for this service may vary from hosted systems to a service provider maintaining the company's internal systems. The receiver's staff should perform an evaluation of the facilities and

competency of the service provider. The receiver should verify that existing contracts will provide sufficient flexibility and accessibility to meet the receiver's needs; new contracts may need to be executed.

2. Shared System

The insurer may share data processing systems with affiliates or other companies, or have its data is hosted and handled by a third party. The receiver should ascertain to what extent the system will be available and whether confidentiality will be compromised. The legal issues arising with shared systems should be carefully considered. In the event that the receiver determines that a shared system is not adequate for the receivership's needs, a plan will need to be developed to migrate the insurance company data to another system or dedicated cloud under the control of the receiver, or a host company that is independently contracted with the receiver. The receiver may wish to retain an independent consultant to assist with the migration. See also Section III.G. below regarding segregating commingled records and data. See Chapter 9, Section VII for discussion of legal issues relating to information systems and data processing.

3. Affiliate Functions

Some information systems functions may be performed internally, while others are performed by affiliates. Again, the receiver should verify that there will be sufficient access to data and functions necessary to the receivership proceeding. The receiver should also review the cost of any services provided by affiliates. See also Section III.G. below regarding segregating commingled records and data.

F. System Ownership

Systems may be owned outright by the insurer, leased from a third party, leased from an affiliate or provided by a vendor on a fee-for-service basis. Further, various combinations of these possessory interests can exist. However, regardless of the ownership of the systems, the records and data of the insurer held by an affiliate are and remain the property of the insurer and are subject to control of the insurer.

In most straightforward ownership situations, the insurer owns the hardware and software, and the insurer's employees maintain the systems. Possibly the most difficult situations to unravel are where: 1) a related party owns the hardware and leased it to the insurer; 2) another party developed the software and leased it to the insurer; and 3) the staff who operated the systems are on another entity's payroll.

The insurer may own, lease or have borrowed its software from a third party. The ownership of the software should be determined, as ownership affects the receiver's rights to use the software. A contractor may be able to provide services using certain software, but the receiver may not directly use the same software. That is, software licenses may not be assignable to the receiver. Where this is the case, the receiver may have to purchase its own license or use an information systems contractor.

The receiver should identify the service providers, the services performed, hardware and software provided, and all of the applicable costs. The receiver should also arrange for temporary continuation of the information systems services that are critical to the continued operation of the insurer (in a conservation or rehabilitation) or to protect the estate. Whatever the system ownership situation, it should be a practice to immediately back up all available data on all systems, including all active PCs.

G. Conversion

It may be desirable or necessary to relocate the insurer's systems operations or physical servers to a new facility; therefore, the ability to relocate the existing servers or systems should be ascertained. If the systems cannot be relocated, it may be possible to create a clone. If determined necessary bur are unable

to relocate, recreation, cloning or converting data to a new system into the receiver's environment may be a possibility. The receiver should determine the cost of and ability to create a clone prior to implementing a plan to relocate an office. ~~Alternatively, the receiver may elect to convert the data for use in another system.~~ Sufficient planning and testing by the receiver should be undertaken prior to any decision to move, migrate, clone and/or convert company data.

H. Common Systems Applications

The insurer or estate can put information systems to many uses. The most common are listed below. In each instance, the receiver should ascertain the adequacy of the system and the need to update or enhance it for the tasks that will be unique to the receivership.

1. General Ledger and Accounting Books

The accounting and reporting functions of the insurer or receivership are frequently handled through the information systems. The books of the insurer may not be books at all but rather entries recorded in the information systems. Chapter 3—Accounting and Financial Analysis specifically notes the types of records that may be kept electronically. The subledgers, cash receipts and disbursements records, registers, journals, ~~and claims, and reinsurance, and Tax~~ records may all be computerized. The related software system may be designed so that all of these records are integrated. Common source documentation for related records may be stored once and linked to each of the related records, cutting down on unnecessary duplication. That is, data is only entered once, and each subsystem can access that data without manual intervention. The receiver should be aware of how the system is integrated and where manual intervention can occur, and be cognizant of linked data if attempting to bifurcate or move only a subset of the existing data.

2. Claims

The claims records will likely be kept in an information system to accommodate reporting, statistics and control of the claims process. (See Chapter 5—Claims.) In a conservation or rehabilitation, control in this area is critical and systems support is vital.

In a liquidation, the claims information system is usually a key component to the notice process and may be critical to the adjudication of claims. Where the insurer has an automated claims system, data will most likely need to be extracted and imported into the receiver's claims administration system to facilitate the proof of claims process, communication with the guaranty associations and reinsurance recoveries. Where the receiver elects to use the company's existing system to process estate claims, it will need to be modified to accommodate several new data elements, including, but not limited to, proof of claim numbers, priority classifications, types of claims (third party, guaranty fund, etc.) and Uniform Data Standard (UDS) conversion when transmitting claims data to property and casualty guaranty associations. (See Chapter 2, Section IV. M. -- Liquidation Considerations.) ~~transmissions to guaranty associations.~~

3. Accounts Current

Some insurers will have systematic tracking of their agents' accounts. In a conservation or rehabilitation, prompt and efficient accounting to agents can improve cash flow. The receiver may need to evaluate blocks of business for retention or disposal. The information from the accounts current can be used to help make this determination.

Detailed electronic records of agents' balances for premium, commissions, collections, endorsements, cancellations and remittances can be extremely useful in a liquidation to determine the fixed rights and liabilities of the managing and producing agents. Collecting monies due the estate from agents is dependent on the availability of sound data supporting the amounts due.

4. Premium Financing

The receiver should examine this area for the same reasons as Accounts Current. The receiver should look for affiliate companies that use or share the insurer's information systems for premium financing. For reconciliation and UDS purposes.

5. Marketing

Marketing functions may be important in a conservation or rehabilitation, but in liquidation, there generally is no ongoing marketing function. This is not to say that the marketing database and records should be discarded. These records can be useful in determining what caused the insurer's financial distress. Further, the files and reports related to the marketing function usually are closely related to the agents' files and reports and the account current systems.

6. Investments

Information regarding the insurers' investments most likely will be found on a PC or internal drive in the accounting or executive offices. The receiver's staff should check to determine if backups or subsidiary systems exist and whether subscriptions to specific services need to be continued.

7. Reinsurance

Usually, reinsurance receivables will be the largest asset of the receivership, and collection is highly dependent on reliable premium and loss information. Use of information systems in recording and tracking this information is fairly common. Depending on the level of integration of the systems, this may be part of, or at least closely connected with, the claims system or accounting system of the insurer.

Increasingly, a third-party hosted web application or system is utilized to track reinsurance receivables. Continued use of the application or system by maintaining or modifying existing contractual relationships with third-party vendors may be utilized. Alternatively, an attempt to clone or recreate the system within the receiver's environment may be viable options.

8. Email

Virtually every insurer uses an industry standard email system. Emails are important company records that must be preserved. In addition to performing a backup of the email server at the start of the receivership, it is also good practice to extract individual email boxes of key employees at that time as well. Consideration should be given to periodically backing-up these files throughout the receivership to insure preservation of communications. Email backup restoration often requires the use of outsource computer forensic experts. Extracting email boxes in readable format at the outset of a receivership will save costs down the road should email records be required for litigation purposes.

If the insurer is part of an affiliate insurance group or pool which includes employee e-mail correspondence pertaining to other insurance companies that are not entering into receivership, the receiver may need to execute a confidentiality agreement with the surviving entity(s) in order to obtain the troubled insurance company's electronic correspondence.

9. Large Deductibles

Receiver's Handbook for Insurance Company Insolvencies

9. Large deductible recoverables can be a large asset of the receivership, and, like reinsurance, collection is highly dependent on reliable policy and loss information. Use of information systems in recording and tracking this information is fairly common. As with reinsurance, this system may be a part of, or at least closely connected with, the accounting or claims systems- , or information may be tracked in a separate application or system.

10. Other

There may be other information systems, including PC-based calendar and tickler systems, time tracking and personnel systems, salvage and subrogation systems, imaging systems and litigation support systems on either PCs or larger computers. Further, through Web sites and online services, computers now serve as important common communication devices. The company's Web site can be used to provide and gather useful information about the company in receivership.

The receiver may need to acquire utility programs to perform such functions as restoring deleted data or backing up data in a compressed format. The administration of some receiverships can be litigation-intensive. Case management or other information systems in support of legal activities should be considered for those receiverships.

Another use of information systems that is important to note is project management. Application programs for project management are widely available and understandable to the average user. This software can be put to excellent use in identifying what needs to be done to administer the receivership in the most cost-effective manner.

Finally, the use of electronic data for all documents is becoming more common. Documents may have been scanned and the originals destroyed or kept in a manner that makes them difficult or impossible to use. In the event of liquidation, the receiver may be compelled to export these electronic documents to the receiver's systems- or external hard drive for safekeeping, as they serve as the only official company records.

11. End User Computer (EUC) Applications

End user computing (EUCs) "applications" (spreadsheets, databases, etc.) are often used as part of reserving, reinsurance, investments, modeling, forecasting, and other areas.; Critical "applications" may get overlooked because they often do not fall under the IT department's management and/or control structure. Rather they are managed and updated by the business unit. Companies with good internal controls will have a centralized repository of EUC or User Developed Applications, but often troubled companies do not have this information. If an "application" is critical in producing the information needed by the receiver or guaranty association, the receiver should identify the "application," ensure that change management is in place and guard against loss of institutional knowledge loss if the business unit employees are terminated (i.e., that the receiver has staff able to run the program.) The receiver will need to inquire with personnel in the Company's various business units to identify these "applications" and should create a list of the various applications. If these applications are password protected, the receiver should also obtain the password. Before using these "applications" to make receivership decisions, the receiver should review the application to determine its accuracy, for example, checking formulas in an Excel spreadsheet.

IV. INFORMATION SYSTEMS DELIVERABLES

The purpose of this section is to assist the receiver in determining what deliverables and services will be needed from the information systems. There will be generic requirements that are applicable to all receiverships. However, to a larger extent, the receiver's information systems requirements will reflect the characteristics of the subject insurer. The receiver will need to look at the full scope of historical operations, as well as the new

requirements that are specific to the receivership proceeding, to determine the data processing tools that are essential to carry out the receiver's obligations, keeping in mind what the receiver has inherited from the insurer in terms of disposal and acquisition costs.

It may be necessary to perform a detailed study of a receiver's data processing requirements and compare this to the level of systems functionality and security provided by existing systems. If this level of functionality or security is deemed to be unacceptable, the receiver will need to modify the existing systems or replace them ~~to~~ provide the required information processing.

This section provides a checklist of the functions associated with insurance, reinsurance and receivership that should be considered when evaluating systems requirements, including software, ~~and~~ hardware and security considerations. Software considerations will include any accounting, claims, imaging or policy applications, the management of email and/or instant messaging platforms, along with any other tools that provide data capture, processing and reporting capabilities. Hardware requirements will ~~consider~~ include computing power of application servers, system sizing for central processing units (CPUs) and data storage devices, including both on premises and cloud hosted, such as DASD and tape drives, as well as peripheral equipment and related items, such as network capabilities. Security considerations will include data protection, endpoint protection, user access controls, network security and physical security.

By definition, any list of standard requirements may fail to address requirements unique to an individual estate. This checklist will serve as the basic outline of a systems requirements study that should be supplemented by the receiver and information systems staff.

A. Considerations Regarding the Insurer's Historical Business Practices

It is important for the receiver to quickly develop an understanding of the business practices of the subject insurer. This understanding will affect decisions regarding the receiver's ongoing information systems requirements and will provide the parameters for future information systems needs of the receivership.

B. Volume and Geography of Business

A preliminary task is to determine how many policies were written per year and for how many years, and in most cases, the geographic breakdown of the policies. The number of transactions (accounting, claims, reinsurance, etc.) associated with each policy should be considered along with the corresponding costs. This information is commonly requested by the receiver's staff immediately after the commencement of a receivership. The following items should be considered in determining the volume of the insurer's business:

- Policies;
- Claims;
- Claim transactions;
- Claimants;
- Premium volume;
- Reinsurance agreements;
- Reinsurance participants;
- Brokers/intermediaries/agents;
- Face value of the policies (Life);

- Cash surrender value (Life);
- Policy limits (P&C); and
- Geographic distribution:
 - by state, whether one or many;
 - territory, county or zip code breakdowns within a state;
 - by guaranty fund; and
 - worldwide (with foreign exchange requirements).

C. Types of Business Written

Initially, it will be necessary to identify general characteristics of the insurer's business practices and the insurance/reinsurance. ~~–If the insurer wrote only direct or primary insurance, the ability to process assumed reinsurance may not be of immediate concern to the receiver. However, if the insurer ceded reinsurance, the ability to track and control ceded placements may need to be considered in the systems requirements. Also, if brokers or intermediaries processed reinsurance (assumed, ceded and/or retroceded), the receiver may need to determine if these arrangements are to be continued, or if this function needs to be brought under the direct control of the receivership. If it is not brought under direct control of the receiver, the receiver should carefully monitor this function and work closely with the intermediary.~~

This analysis of insurer's business practices and the insurance/reinsurance written will provide a general idea of systems sizing and related requirements and should include an analysis of:

- Lines of business – The lines of business underwritten and the characteristics of this business may have a substantial impact on information systems requirements. If it is a business in which claims will develop quickly, the requirement may be quite different from long-tail business in which claims will take a long time to develop. If the business includes ~~ceded~~ large-deductible or loss-sensitive features such as retrospectively rated premiums, there will be additional system demands. This also will impact the amount of historical information that must be maintained in the systems.
- ~~Insurance/reinsurance/both – If the insurer wrote only direct or primary insurance, the ability to process assumed reinsurance may not be of concern to the receiver. However, if the insurer ceded reinsurance, the ability to track and control ceded placements may need to be considered in the systems requirements. Also, if brokers or intermediaries processed reinsurance (assumed, ceded and/or retroceded), the receiver may need to determine if these arrangements are to be continued, or if this function needs to be brought under the direct control of the receivership. If it is not brought under direct control of the receiver, the receiver should carefully monitor this function and work closely with the intermediary.~~

D. Corporate Structure

The type of corporate structure of the insurer (single stand-alone company or one of several affiliates) and how many offices it has are factors to be considered when evaluating the information systems ~~needs~~.

E. Sources of Production

The manner in which a company acquired its business (e.g., was it a direct writer, did it use MGAs, brokers or both) will have an impact on the location and source of critical data.

F. Claims Handling

The way a company handled claims will affect information systems requirements as well. Claims can be handled exclusively in or in a combination of the following:

- In-house;
- External adjusters;
- TPAs;
- Agent/MGA; and
- Other subsidiaries, related operations.

G. Affiliated Companies

Different companies with a common parent often use a single, centralized system, which can result in data security ~~problems and privacy concerns~~. ~~Certain data of the insurer and the affiliate may be comingled within the same systems. As a consequence, the receiver or the affiliate, may be required to separate~~ should segregate the data of the company in receivership from the affiliates' data.

On Aug. 17, 2021, the NAIC adopted revisions to the *Insurance Holding Company System Model Act* (#440) and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450) addressing data and records of the insurer that are held by an affiliate¹. Specifically, the Model Act #440 revisions clarify the following:

- All records and data of the insurer held by an affiliate are and remain the property of the insurer, are subject to control of the insurer, are identifiable, and are segregated or readily capable of segregation, at no additional cost to the insurer, from all other persons' records and data. The affiliate may charge a fair and reasonable cost associated with transferring the records and data to the insurer; however, the insurer should not pay a cost to segregate commingled records and data. Therefore, if records and data belonging to the insurer is held by an affiliate (e.g., on the affiliate's systems), upon request, the affiliate shall provide that the receiver can:
 - obtain a complete set of all records of any type that pertain to the insurer's business
 - obtain access to the operating systems on which the data is maintained
 - obtain the software that runs those systems either through assumption of licensing agreements or otherwise
 - restrict the use of the data by the affiliate if it is not operating the insurer's business
- The affiliate shall provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement.

¹ Although in 2021 the NAIC adopted revisions to the *Insurance Holding Company System Regulatory Act* (#440) and *Insurance Holding Company System Model Regulation with Reporting Forms and Instructions* (#450) related to receivership matters including records and data, these revisions may not yet be adopted in every state; therefore, receivers should refer to the applicable state's law.

- The Model #440 and #450 revisions also describes that records and data that are otherwise the property of the insurer, in whatever form maintained, include, but are not limited to, claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, financial records or similar records within the possession, custody or control of the affiliate.
- Model Regulation #450, Section 19 revisions update and expand on provisions that should be included in agreements for cost sharing services and management services between the insurer and an affiliate.
 - Revisions specific to records and data clarify, similarly to that of the revisions to Model Act #440, that records are data of the insurer are the property of the insurer, are subject to the control of the insurer, are identifiable, and are segregated from all other person's records and data or are readily capable of segregation at no additional cost to the insurer.
 - If the insurer is placed into receivership, a complete set of records and data of the insurer will immediately be made available to the receiver or the commissioner, shall be made available in a usable format and shall be turned over to the receiver or commissioner immediately upon the receiver or the commissioner's request, and the cost to transfer data to the receiver or the commissioner shall be fair and reasonable.

H. Foreign Exchange Considerations

If a significant amount of the subject insurer's business is international, it may be necessary to include foreign currency exchange considerations in a systems requirements study.

I. Existing Systems

The receiver's staff (or an independent consultant) needs to determine if the existing systems adequately process the business or if those systems must be supplemented with ~~manual~~ additional processing. If it is the latter, the receiver should then determine whether the level of supplemental ~~manual~~ processing required is acceptable, in terms of accuracy and the cost of processing. This will establish whether the existing system(s) are adequate to provide the receiver with the amount and types of information required.

The receiver may require various types of information in the administration of an estate. Especially with systems that do not permit online inquiry, it is imperative that reports which are adequate for the receiver's purposes be produced. At a minimum, the existing systems should have the capability of generating a wide variety of reports. The receiver's staff should carefully examine the available reports to determine whether they are adequate or if custom reports need to be developed, assuming the data stored in the systems can support custom reports. Reports are normally required for the following types of information:

- Policies and contracts;
- Accounting;
- Claims;
- Accounts receivable/payable;
- Cash;
- Reinsurance;

- Guaranty fund claims counts and reserves by state; and
- Earned and unearned premium.
- Large Deductible Collections and Collateral

The following types of documentation should exist for all of the company's systems:

1. Systems Documentation

Systems documentation shows how the system operates from a technical perspective. Documentation should include file structures, record layouts, data model and related data dictionary and systems administration information pertinent to running the system and producing reports.

2. Process Documentation

Process documentation consists of narratives and diagrams of the processes involved in the major functions of the systems—imaging, policy administration, claims administration, reinsurance reporting, accounting and billing, etc. Documentation should include the interaction of various systems and feeds to and from outside entities.

3. User Documentation

User documentation shows users how to operate the system to perform their jobs. Documentation should include sections that are specific to particular functions, e.g., claims, accounting, etc. Note that in many off-the-shelf systems, the only user documentation that exists is the online help.

J. Data Validation

The systems should perform basic data verification functions, such as ensuring that the date of loss falls within the coverage period. The system should also provide some form of validation to ensure that data entered conforms to predetermined values and formats (e.g., all dates or dollar values are numeric, etc.). This helps ensure the accuracy of the data and allows the receiver to predetermine acceptable data standards.

K. Hardware-System Requirements

The performance characteristics of the information systems as they relate to the processing requirements of the receivership need to be analyzed. If the system does not have sufficient resources to process the volume of data required, it may be necessary to enhance or replace the related computer hardware with higher capacity hardware. Conversely, if the computer system exceeds requirements, the receiver may wish to consider the cost benefit of system sharing or, provided company data is appropriately segregated, downsizing.

1. Application Servers

Company systems run on application servers, which must be analyzed to ensure sufficient computing performance. Further, because servers are prime targets for malware, technical staff should analyze company servers to make certain patching is current, malware protection is implemented, the local

firewall only permits the minimum necessary services and that all servers are being backed up out-of-band². On premises servers should be physically secured with least privilege³ access applied.

2. Networks

Company switches, routers and firewalls will need to be analyzed to ensure sufficient performance when systems and users access web-related services, such as a cloud-based hosted email service. Network tools are an essential layer of defense for the security of company systems. Technical staff should review network protocols to verify that entries onto the company network is properly authenticated (two-factor authentication strongly preferred) and that data is being backed up out-of-band.

43. Data Storage Requirements and Sizing

Modern storage devices can be managed on premises or in public/private cloud-hosted environments. The technical staff needs to consider the volume of historical, current and anticipated future records that will need to be stored on the computer system. Note that imaged records like PDFs and JPEGs are significantly larger than other document types, which can increase storage requirements as a company reduces its reliance on paper processes. Technical staff must ensure company data repositories are secure, encrypted, and that access is administered on a least privilege basis. Backups of company data should follow similar protocols and should be tested by technical staff to ensure viability in the event of a data loss.

2. Printer Requirements and Sizing

Many factors will impact how the receiver assesses the number and type of printers required to efficiently disseminate critical information. These include type of system (batch systems are more report dependent than online systems), office layout (are there multiple floors or locations) and anticipated volume of report production.

L. Additional Considerations

Other systems considerations to address in assessing systems requirements include:

1. PCs, Laptops and Terminals

To operate the system, an adequate number of PCs, laptops or terminals need to be available. The determination of that number will be affected by the type of system as well as the number and functions of staff members required to process the volume of business. Technical staff should determine whether endpoints are encrypted, properly patched, limited by the company firewall and malware protection is applied.

2. Environmental Considerations (Climate Control)

Computers, whether mainframe, mini, or PC-based servers, generally require a stable temperature and humidity-controlled environment in which to operate. Failure to provide adequate air conditioning and/or heating can cause catastrophic systems failure. Incorrect humidity can cause excessive static,

² Communication between parties utilizing a means or method that differs from the current method of communication (e.g., one party uses U.S. Postal Service mail to communicate with another party where current communication is occurring online). Sources: NIST SP 800-32 under Out-of-Band.

³ The principle that a security architecture should be designed so that each entity is granted the minimum system resources and authorizations that the entity needs to perform its function. Source: NIST SP 800-12 Rev. 1 under Least Privilege.

which is especially dangerous due to static discharge. It is therefore necessary to balance the computers' thermal output with a temperature control system capable of maintaining the operating temperatures and humidity specified by the computer manufacturer(s). A water alarm is also a good investment, especially if raised floors are used. Physical access to the computer room should also be restricted and carefully monitored.

3. Environmental Considerations (Power Consumption)

Data processing and networking equipment is sensitive to the quality of the electrical power supplied to it. Surges, spikes and brownouts of any kind can damage equipment, cause systems to crash or, in some cases, corrupt data. Most data centers and their attendant equipment are equipped with power conditioning of some type. (PCs usually have surge suppressors for this reason.) Power conditioning can take various forms, but data centers usually have as a minimum an Uninterruptible Power Source (UPS) that filters the power before distributing it to the equipment. A UPS may also have a backup battery that will power the equipment for a short interval while waiting for power to stabilize, or allow a graceful shutdown. Emergency lighting should be provided with enough battery time to allow a safe shutdown and evacuation of the area, if necessary. Emergency shutdown procedures should be available to personnel. Finally, a UPS may be coupled with an auxiliary generator which will supply electricity during a power outage.

In addition to special power and heating, ventilation and air conditioning, many dedicated data centers have fire suppression systems. These systems may be stand alone or tied into a building fire detection panel. The receiver should become familiar with how the fire suppression system operates and how it should be tested. Failure to keep these systems in good working order and to follow procedures could be deadly. It is important that testing and training be carried out regularly and that procedures be posted and read by data center personnel. Additionally, the fire suppression system must, at a minimum, comply with local fire and safety codes.

M. Liquidation Considerations

In liquidation, there are several special considerations as a result of the fixing of rights and liabilities and the involvement of guaranty associations. In nearly all liquidations, guaranty associations are the initial direct handlers and payers of most policyholder claims or other policyholder contractual obligations. In certain instances, guaranty associations are required to provide some level of continuing policyholder coverage. The receiver should consider the ability of the information systems to supply information required by guaranty associations. Most of the data should already be in the company records, but the information systems will need to accommodate the unique needs of the insolvent insurer and the guaranty associations.

1. Guaranty Association Information

~~In nearly all liquidations, guaranty associations are the initial direct handlers and payers of most policyholder claims or other policyholder contractual obligations. In certain instances, guaranty associations are required to provide some level of continuing policyholder coverage. The receiver should consider the ability of the information systems to supply information required by guaranty associations. Most of the data should already be in the company records, but the information systems will need to accommodate the unique needs of the insolvent insurer and the guaranty associations.~~

1. Property and Casualty Guaranty Funds

For property and casualty insolvencies, this information must be in compliance with the Uniform Data Standards (UDS) in order to allow the guaranty associations to meet their statutory obligations. Therefore, UDS expertise is needed to determine whether the systems meet all of the applicable UDS record requirements. The receiver may elect to have an analysis of the system data

elements performed by a representative of one or more of the guaranty associations or outside consultants.

A2. Compliance with UDS

The UDS is a precisely defined series of data file formats and codes used by receivers and property/casualty guaranty associations to exchange loss and unearned/return premium data electronically. These formats were developed by a group of personnel representing both receivers and guaranty associations and submitted to the NAIC. The NAIC originally endorsed the use of UDS effective March 31, 1995. The formats were revised and updated during 2003/2004 with an implementation date of January 1, 2005. Since this time, several additional updates have occurred. UDS and the UDS Manuals are managed by the UDS Technical Support Group (UDS-TSG).

The National Conference of Insurance Guaranty Funds (NCIGF) developed a secure process for transferring UDS data from the property and casualty insurance guaranty associations to insurance receivers. The concept proposed by the California Liquidation Office in 2005 and the process advanced by the NCIGF in 2007 is known as Secure Uniform Data Standards (SUDS) (Secure Uniform Data Standards System)—utilizes Secure File Transfer Protocol (SFTP). SUDS provides cost savings by creating greater uniformity and efficiency in how UDS data is transferred from guaranty associations to insurance receivers. SUDS also provides privacy protection through the use of a secure server. In 2012, the NCIGF developed a web-based application that allows receivers to quickly and easily create UDS records for distribution to the guaranty associations through SUDS. The application is known as the UDS Data Mapper⁴. The NCIGF, through its subsidiary, Guaranty Support, Inc. (GSI), maintains both SUDS and the Data Mapper and makes them SUDS is available at no charge to insurance receivers or the guaranty associations at no charge.

~~For further details about the implementation of UDS, please refer to the UDS Operations Manual. Both the NAIC and the National Conference of Insurance Guaranty Funds (NCIGF) maintain updated copies of the complete UDS Manual. The Financial Information formats are contained in a complete and separate manual. The NCIGF maintains both manuals, in electronic form, on their Web site, www.ncigf.org, under the Uniform Data Standards tab. Information is also included relative to individuals that may be contacted for further information or with questions about UDS.~~

The NCIGF maintains and provides updated copies of the UDS Manuals. For further details about UDS as it applies to claim records or the implementation of UDS, please refer to the UDS Operations Manual⁵. Information and formats relating to UDS financial reports from the guaranty associations are contained in the UDS Financial Manual⁶. The site also includes a helpdesk request form, which emails questions to members of the UDS-TSG⁷.

B3.—Insolvency Data Transfers

Guaranty associations become statutorily obligated to pay covered claims when the court enters an order of liquidation with a finding of insolvency. The goal of every insolvency is to transmit relevant company claims and policy data to the guaranty associations on the date of liquidation. The guaranty associations and their coordinating body, the NCIGF, have established experts and tools to assist receivers with the transmission of insolvent company data.

⁴ The UDS Data Mapper is available at <https://udsdatamapper.com>

⁵ <https://www.ncigf.org/resources/uds/uds-claims-manual/>

⁶ <https://www.ncigf.org/resources/uds/uds-financial-menu/>

⁷ <https://www.ncigf.org/resources/uds/>

(i)A.—Evaluation

Company data will be spread across multiple information systems (claims, policy, accounting, imaging, etc.) oftentimes managed by third party administrators. Each information system is a unique source of data requiring independent attention to extract, process and convert to UDS. On average, each source takes roughly two weeks to process. Getting access to company data managed by third parties can be complicated when it is commingled with noncompany data. Working with information system administrators to segregate company data pre-insolvency can save precious time when an insolvency is imminent. In the event policy and claims data cannot be transmitted to the guaranty associations on the day of liquidation, providing remote access to those systems can help them address hardship claims and other urgent matters.

(ii)B.—Extraction

Beyond the generation of reports, most information systems are not designed to export significant portions of data. This is especially true of imaging applications, which are used in “paperless” offices. Extracting the relevant data from these systems requires specific technical training and oftentimes server access. Data extraction by competent IT professionals can take days or even weeks to complete though various factors can increase the extraction time. If the system is administered by a third party, several factors can add additional delay, such as the administrator not having been paid, company data being commingled with third party data, or the administrator has insufficient staff to extract company data in a timely manner. Obtaining regular backups of all company data from the administrator can help ameliorate some of these concerns. Technical staff should examine the backup data to determine if it is sufficient to create usable UDS records upon liquidation. Further, if company data is segregated pre-insolvency, technical staff or third-party vendors can extract the relevant data without inadvertently accessing or disclosing non-company data.

(iii)C.—Processing

Once extracts of company claims and policy data are obtained, technical staff will need to process the files before they can be loaded into the UDS Data Mapper. Data must be formatted into comma-separated values (CSV). Date and currency values must be normalized to a single format per file. The CSV files must use latin1 encoding and have characters outside the scope of this encoding removed or replaced. The receiver will then create a map that coordinates fields from the source data with their corresponding field in the UDS standard. The UDS Data Mapper will report errors encountered while ingesting data to guide other necessary cleaning steps.

(iv)D.—UDS Production

After the data is ingested by the UDS Data Mapper it may then be reviewed and edited within the application, then sent to the relevant guaranty associations. This process creates the UDS files and notifies the guaranty associations that they may pick up their files, which are provided via SUDS. For the receiver's own purposes, CSV files of the produced UDS records are also provided via SUDS.

C4.—Priority of UDS Records

All UDS records serve a valuable purpose and are important. However, the timing of some of the UDS records is more critical than others because guaranty associations need them to perform their statutory responsibilities of covered claims. Below is a general guide regarding the level of criticality of the various UDS records.

Highest Priority

Receiver's Handbook for Insurance Company Insolvencies

A Record (Claim File) - confirms the existence of policy with insolvent insurer; necessary to confirm coverage.

F Record (File Notes) - adjuster's claims notes; needed to quickly grasp essential nature of claim and current issues.

G Record (Transactions) - necessary to understand what has already been paid to timely continue any future payments owed and avoid duplication.

I Record (Images) - contains the contents of the insurer's claim file including report of incident, claim history, investigation notes, treatment history, photos, medical records, and other essential information.

Very High Priority

C Records (Guaranty Fund Loss Claims) - guaranty association monthly reporting; typically commences within 30 days of the association's receipt of critical claim information.

High Priority

B Records (Unearned Premium) - the importance of unearned premium reimbursement may vary depending upon the nature of the insolvency; in a liquidation with substandard auto insurer, timely refund of unearned premiums is often critical because many insureds cannot afford to purchase replacement coverage. In such instances, the production of the B Record should be assigned a higher priority.

Medium Priority

D Records (Guaranty Fund Expenses) - important for the reimbursement of the guaranty association's administrative expense claims but secondary to the records that are essential to the timely payment of covered claims.

Low Priority

E Records (Closed Claims) - important to enable guaranty associations to re-open claims; can be managed on a case-by-case basis until higher priority records are delivered.

M Records (Medicare Secondary Payer Reporting) - allows parties to verify that pre-liquidation MSP reporting was made by company; assists guaranty associations in identifying open or re-opened files where guaranty associations will become responsible for future MSP reporting.

2. Life and Health Insurance Guaranty Associations

The life and health insurance guaranty associations do not utilize the UDS reporting system because the data needs of the life and health GAs are much different than those of the property and casualty funds, both in terms of timing and the types of data needed. This is due both to the types of contracts covered and the particular nature of the statutory obligations of the life and health GAs. Because the life and health GAs continue coverage, they need the data and the lead time necessary for putting in place the agreements and infrastructure required to either *transfer* or *continue administration* of the insolvent company's business. In either event, NOLHGA and its member GAs need data files at the earliest possible opportunity, and well in advance of liquidation, in order to evaluate options and develop a

plan for meeting GA statutory obligations while minimizing disruption to policyholders. Policyholders are best served if the GAs can be ready to implement a plan for assumption transfer or for seamless administration of the business immediately upon entry of a liquidation order.

If preliminary data suggests that an assumption transfer may be feasible, a NOLHGA task force will develop a Request for Proposals (“RFP”), which will be sent to prospective carriers, subject to their execution of a Confidentiality Agreement. The RFP will include a description of the business to be assumed, along with summary policy, claims, and financial information. Policy-level detail is not typically required at this stage.

If assumption transfer is not feasible, the GAs must prepare for runoff administration. This typically requires contracting with a TPA and, in the case of health business, retention of the company’s health care provider networks, pharmacy benefits providers, and all related service providers. Policy-level data is essential for policy and claims administration for all lines (life, health, annuity, disability, LTC).

Getting this information can be particularly challenging if the insolvent company has been using one or more outside TPAs. Data may reside on different platforms and systems and can take longer to gather. Other challenges arise when a company has been using one or more legacy systems with outdated software or hardware, making data extraction and transfer more difficult. In those cases, some consideration may need to be given to keeping the legacy systems in place, if short term data conversion is impractical. It may be necessary to contract for access to the existing administration platform, at least on an interim basis, which in many cases will involve the receiver as successor to the insolvent company’s operations, but may also include affiliates of the insolvent company or the company’s outside TPAs.

A. Specific Data Needs

Specific data needs will depend on the facts and circumstances of each case, as well as the types of business involved. Initial, critical data needs typically include all relevant summary policy and reserve information. Typically, if the policy master /eligibility records can be provided, that file may contain sufficient information for preliminary coverage determinations and to consider the potential feasibility of an assumption transfer.

Other data needed for runoff administration, depending on the lines of business involved, typically includes the following:

- o In-force files/counts (by state and by line of business)
- o Policy values (face amounts, cash surrender values, policy loans, interest crediting rates, rate crediting history, etc.)
- o Policy forms
- o Claim files/claims history (including plan of care and related information for LTC lines)
- o Premium files (and status indicators such as Reduced paid up, or Waiver status for LTC)
- o Rate files/history
- o Reserves, by line
- o Provider/vendor agreements

B. Timing Considerations

Initial data files (Policy Master records) are needed at the earliest possible opportunity, but preferably at least 6 months in advance of liquidation, so that the GAs can evaluate the business and any coverage issues, assess the feasibility of one or more assumption deals, initiate an RFP process for assumption of the business, and negotiate and prepare to implement related agreements.

The lead time needed for policy level data will vary depending on the size and complexity of the business, as well as the lines of business involved. Typically 4-6 months minimum lead time is needed in order to evaluate the business, negotiate TPA agreements, and get claims reporting and funding arrangements made for runoff administration. In the case of health lines, additional time is needed to evaluate, retain or replicate healthcare provider networks and related services. If an RFP process is needed to find a replacement TPA, additional lead time may be required for that as well.

C. Secure Data Transfer

To ensure secure data transfer, receivers or insurance department personnel typically establish a secure website portal or FTP site to provide NOLHGA and its member associations secure access to the data needed. Otherwise, NOLHGA (or a designated TPA or consultant) will establish a secure file portal where designated users can securely upload records.

V. IMPLEMENTATION

This section describes various courses of action to meet the receiver's needs once it has taken control of the insurer's information systems. The course of action selected will vary according to many factors, including the size and needs of the insurer and whether the insurer has its own information systems staff.

The receiver will be faced with several options as to how to meet the needs of the receivership. These may include: extraction or bifurcation of comingled system data; retaining the present system; enhancing the present system; replacing the system with either a new system or the receiver's system; or relying on a third-party vendor. The receiver must be prepared to justify a cost-benefit basis expending limited estate assets in pursuing any option other than retaining the present system. The following should be of assistance to the receiver in the formulation of a plan to select and implement the most effective option.

A. Retention

The current system's ability to meet the receiver's needs should be carefully evaluated prior to making a decision to retain it. If the system hardware is to be sold, a plan should be developed and executed to move the necessary data to a system that can be accessed by the receiver. The plan to sell existing system hardware should also include safeguards to ensure that any data on the system is erased before the sale. No sale of system hardware should take place without first determining ownership and consulting with the receiver's legal counsel. The retention policy and decisions should be consistent with the Liquidation Order.

1. Verify Capabilities

Through examination of available reports and interviews with systems staff, management and operational staff or other sources, the current capabilities of the system should be identified, listed and documented. The system's capabilities, thus identified, should be compared to the previously identified needs of the receiver. Identified needs will be considered from the Information Systems checklist. This will identify information needs that cannot be met by the existing systems and steps that should be taken to satisfy those needs. If system capabilities exceed the receiver's needs, consideration should be given to whether the configuration and size of the system should be altered to increase efficiency and control costs.

2. Verify Condition of Hardware and Adequacy/Integrity of Software

The condition of the hardware should be carefully examined to determine both its reliability and its capacity to handle anticipated growth. Suspect components should be repaired or replaced. In like manner, the existing software should be carefully reviewed to confirm adequacy, appropriate licensing and integrity. Software that is inadequate, outdated, corrupted or no longer supported by the vendor should undergo review to determine the best strategy for replacement.

3. Assure Adequate Security and Disaster Recovery

Given the likelihood of litigation and other legal proceedings that will depend upon data gathered and processed by the system, as well as the threat of a cyber attack, immediate steps should be taken to ensure its continued security. Access should be limited to those with an absolute need and in whom the receiver has utmost confidence. Consideration should be given to purchasing cyber insurance for the liquidation estate, if the company does not already have an applicable policy. A review should also be made of the current system as it pertains to the documentation and quality of data, and as to a disaster recovery plan. Many data processing centers do not have a disaster recovery plan other than having the system back up information in an off-site location. A true disaster recovery plan provides for installation of system backup information in an off-site location so that, in the event of a disaster, the system can be running within a specified time frame. That time frame may vary from a few hours to a few days.

4. Devise Assessment Methodology

Methodology should be devised for assessing the adequacy of the staff, the system, the software, security procedures and disaster recovery procedures. Weaknesses identified through this assessment should be remedied. If necessary, a third-party contractor may be brought in to make this assessment.

B. Enhancement

If the receiver has control over the system, and if it is determined that the existing system can be retained but should be enhanced in order to meet the receiver's needs, a plan should be devised for the implementation of those enhancements. After careful consideration, a list should be made of the hardware, software and applications that require enhancement. These may consist merely of the addition of hardware components or may require restructuring of the operating system or supplementation of available software. In like manner, available staff may be inadequate for the anticipated needs.

~~1. Determine Availability of Enhancements~~

Once the required enhancements are identified, availability should also be ascertained, and, if additional hardware is required, it should be determined at what cost and how quickly it can be acquired. The same is true of additional software. Where restructuring or reconfiguration of the existing system is necessary, the availability of qualified personnel should be similarly confirmed. Once the needed enhancements have been identified and their availability confirmed, a schedule should be prepared for implementation in a

manner that will not interfere with other aspects of the receivership proceeding and which will be consistent with the anticipated needs of the receiver. ~~_____This may require the operation of shadow systems on a parallel track with the implementation of the enhancements. _____Testing methodology should be implemented to confirm that the enhancements were successful and sufficient~~

~~2. Plan and Schedule Implementation~~

~~Once the needed enhancements have been identified and their availability confirmed, a schedule should be prepared for implementation in a manner that will not interfere with other aspects of the receivership proceeding and which will be consistent with the anticipated needs of the receiver. Throughout the implementation of the enhancements, the plan should ensure that receivership functions can continue without interruption. This may require the operation of shadow systems on a parallel track with the implementation of the enhancements. The plan should confirm that the enhanced system will meet all of the receiver's needs. Testing methodology should be implemented to confirm that the enhancements were successful and sufficient.~~

~~3. Devise Enhancement Testing Methodology~~

~~Testing methodology should be implemented to confirm that the enhancements were successful and sufficient. After reviewing the documentation and testing the integrity of the enhancements, the system should be reviewed to determine whether additional enhancements are needed. This can be done by assessing the results of the review done in the Information System Deliverables section of this chapter, and coordinating with the appropriate personnel from the receiver's office as to their information needs.~~

C. System Replacement

If the receiver determines that the existing system, even if enhanced, is inadequate and decides to replace it, a plan should be devised for system implementation. The first step is to select the replacement system, considering the future needs of the receiver, including how long the estate may have to remain open, and the available assets of the estate. ~~Comparison of available equipment and software should result in identifying the replacement system that can best meet the receiver's needs at the lowest cost and at the earliest opportunity. Once the replacement system has been identified, the receiver should follow the appropriate purchasing process. A target production date to complete the installation and activation of the replacement system should be set. A plan for migration from the existing system to the replacement system should be implemented, bearing in mind the following factors: In many circumstances, the replacement or enhancement is handled by a third-party vendor.~~

- ~~• Preparing migration schedule;~~
- ~~• Staffing;~~
- ~~• Hardware;~~
- ~~• Software;~~
- ~~• Data Conversion;~~
- ~~• Implementation;~~
- ~~• Testing; and~~
- ~~• Legal considerations and/or court approval.~~

~~A schedule should be set for implementation of the migration plan with the following stages clearly identified and scheduled in a manner that is consistent with other needs of the receivership:~~

- ~~● Installation of new system;~~
- ~~● Backup and conversion of data;~~
- ~~● Testing of new system;~~
- ~~● Parallel testing of operations;~~
- ~~● Erasure of all old system data;~~
- ~~● Shut down of old system; and~~
- ~~● Disposal of old system.~~

~~D. Third-party Vendors~~

~~The receiver may decide to dispense with an in-house system and rely principally on a third-party vendor-hosted system.~~

~~1. Prepare Detailed Needs List~~

To make use of a third-party vendor as a replacement for in-house systems, it is essential to prepare a comprehensive list of the receiver's anticipated needs. Because the receiver will have relatively little control of the actual operation of the system and therefore little flexibility in adjusting the ability of the system to meet its needs, it is essential that the initial list of needs provided to the third-party vendor be as comprehensive as possible.

~~2. Identify Possible Vendors~~

Once the needs have been identified, a list of potential vendors should be compiled for evaluation. Each eligible vendor should be carefully evaluated with full consideration being given to at least the following factors:

- Cyber security expertise and data safety requirements;
- Short-term and long-term availability;
- Expertise and demonstrated ability;
- Price and method of charging;
- Support and maintenance resources;
- Available warranties;
- Capability to respond to emergencies;
- Ability to preserve confidentiality and comply with security procedures;
- Existence of potential conflicts of interest;
- Ability to respond to changing needs; and
- Familiarity with the type of business involved.

13. Contract with Vendor

Once the appropriate vendor has been selected, a contract that will meet the anticipated needs of the receiver should be negotiated in accordance with the receiver's contracting policy. It should be clear that liability under the contract will be limited to estate assets and will not involve personal liability on the part of the receiver or the state. Once an agreement in principle has been reached with the vendor, protocols should be established for the operational relationship. A plan should be devised for assessing whether a third-party vendor satisfies the requirements of the contract.

~~4.—Operating Protocols~~

~~Once an agreement in principle has been reached with the vendor, protocols should be established for the operational relationship. These should include, but not be limited to, reporting procedures, billing procedures, confidentiality, consumer privacy, and comprehensiveness and timeliness of reports. Once operating protocols have been agreed upon, they should be implemented, monitored and observed.~~

~~5.—Assessing Operational Results~~

~~A plan should be devised for assessing whether a third-party vendor satisfies the requirements of the contract.~~

26. Document and Back Up Old System

As a result of the decision to use a third-party vendor, the existing system will become unnecessary. Before it is shut down and disposed of, however, it should be fully backed up, including both the software and data, and documented for future reference. ~~It is suggested that the system run in parallel with the third-party vendor's system for a period of time before it is shut down. If parallel testing reveals that the selected third-party vendor cannot meet all anticipated needs, a new third-party vendor should be selected.~~

37. Shut Down and Disposal of Old System

Once the old system has been completely backed up and documented, it should be taken out of operation and prepared for disposition. Disposal of any system, data or information related to the liquidation must meet the requirements set I the Liquidation Order and be pre-approved by the court before any action is taken. This means that components will have to be appropriately packed, safely stored, and documentation prepared and maintained through which the receiver's staff can determine the system's historical performance and capabilities. Before the system is shut down, any data must be erased. Once the existing system is shut down, it should be disposed of at maximum gain to the estate. ~~Appraisals should be obtained and court approval may be required. Hardware should be sold at auction or through private sale at the best available price.~~ Proprietary software developed solely by the insurer may also be marketable. ~~Software bought on the open market is unlikely to be marketable, and licensing agreements may require its destruction or return to the vendor.~~

DE. General Concerns

Be careful not to dispose of the system too soon. If the information is to be migrated either to the receiver's computer system or to a third-party vendor's system, steps should be taken to ensure that the integrity of the data from the insurer's old system is preserved and accessible. ~~If the information is migrated to the receiver's in-house computer system, then it is simply a matter of reviewing the data that will be needed and the method of transferring the information from one system to another. In either case,~~ Controls should be in place to ensure that the same number of records leaving one system is received by

the other system. This should be confirmed by the comparison of record counts and the cross-checking of financial data.

If any enhancements have been planned, then consideration should be given to whether the enhancements should be done by in-house staff or an outside consultant. Once again, it is usually best to get competitive bids as required by the receiver's purchasing policy.

EF. Implementation of UDS

A plan to secure the information required for UDS should be developed as early as possible in the receivership proceedings when there is an indication that liquidation is a possibility. Data availability from company to company varies significantly. In some cases, all data for UDS is located on the system; in other situations, manual coding is necessary to capture the required data. The goal is to make the information available to the guaranty associations as soon after entry of the liquidation order as possible.

The guaranty associations must be notified as soon as possible when liquidation preparations have begun, immediately upon entry of a liquidation order. The notice should include a copy of the company's Schedule T from its annual statement and the receiver's plans to supply UDS data. ~~This step is important, as it places the guaranty associations in a better position to respond to the inquiries that typically occur soon after the company is placed in liquidation. The sooner the guaranty associations are included in the analysis of the data, the more complete the UDS data will be. Additionally, the transition of claims to the guaranty associations needs to occur as soon as possible after entry of the order of liquidation to ensure continuation of critical claims such as workers' compensation indemnity payments, annuity payments, etc. Data transfer preparations should begin immediately after the notice, to be put in place immediately following receipt of the Liquidation Order. This step is important, as it places the guaranty associations in a better position to respond to the inquiries that typically occur soon after the company is placed in liquidation.~~

It is likely that the initial UDS plan will be modified as the receiver completes its review of the company's systems. (See Section IV. M. above, which expounds on UDS production and record priority.)

G. Information Systems Report

~~A detailed analysis of the inadequacies of the insurer's information system should be undertaken, including a review of past Information Systems Questionnaire responses and information systems audits. A report of this analysis should be provided to the regulatory agency to help improve future insurer audits. This report should also be included as a part of a larger review and report of the circumstances that led to the insolvency of the insurer.~~