Draft date: 7/27/26

Virtual Meeting

RECEIVERSHIP AND INSOVLENCY (E) TASK FORCE
Wednesday, August 5, 2026
2:00 – 3:00 p.m. ET / 1:00 – 2:00 p.m. CT / 12:00 – 1:00 p.m. MT / 11:00 a.m. – 12:00 p.m. PT

ROLL CALL

NAIC Member	Representative	State/Territory
Ann Gillespie, Chair	Kevin Baldwin, Chair	Illinois
Glen Mulready, Vice Chair	Donna Wilson, Vice Chair	Oklahoma
Mark Fowler	Ryan Donaldson	Alabama
Heather Carpenter	Jeffery Bethel	Alaska
Peter M. Fuimaono	Elizabeth Perri	American Samoa
Ricardo Lara	Joe Holloway	California
Michael Conway	Rolf Kaumann	Colorado
Joshua Hershman	Jane Callanan	Connecticut
Michael Yaworsky	Yamile Benitez-Torviso	Florida
Doug Ommen	Jordon Esbrook	Iowa
Sharon P. Clark	Rodney Hugle	Kentucky
Timothy J. Temple	Tom Travis	Louisiana
Michael T. Caljouw	Christopher Joyce	Massachusetts
Angela L. Nelson	Shelley Forrest	Missouri
Eric Dunning	Tadd Wegner	Nebraska
Ned Gaines	Alexia Emmermann	Nevada
Susan Ochs	Susan Ochs	New Jersey
Mike Causey	Jacqueline Obusek	North Carolina
Remedio C. Mafnas	Maryann Borja-Arriola	Northern Mariana Islands
Michael Humphreys	Laura Lyon Slaymaker	Pennsylvania
Suzette M. Del Valle	Glorimar Santiago	Puerto Rico
Michael Wise	Ryan Basnett	South Carolina
Carter Lawrence	Trey Hancock	Tennessee
Amanda Crawford	Jessica Barta	Texas
Scott A. White	Dan Bumpas	Virginia
Patty Kuderer	Charles Malone	Washington
Nathan Houdek	Amy Malm	Wisconsin

NAIC Support Staff: Jane Koenigsman

AGENDA

1. Consider Adoption of its April 20 Minutes—*Kevin Baldwin (IL)* Attachment One

2. Receive the Report of the Receivership Financial Analysis (E) Working Group—*Donna Wilson (OK)*

3. Consider Adoption of the Report of the Receivership Law (E) Working Group—*Laura Slaymaker (PA)* Attachment Two

4. Receive Comments on the Treatment of Funding Agreement Backed Notes (FABNs) in Receivership—*Kevin Baldwin (IL)*
    - Summary of Comments Attachment Three
    - *Full comments available on the Task Force webpage.*

5. Discuss Drafting a Response to the Referral from the Macroprudential (E) Working Group—*Kevin Baldwin (IL)*
    - MPWG Referral Attachment Four

6. Discuss Any Other Matters Brought Before the Task Force — *Kevin Baldwin (IL)*

7. Adjournment

Draft: 7/7/26

Receivership and Insolvency (E) Task Force
Virtual Meeting
April 20, 2026

The Receivership and Insolvency (E) Task Force met April 20, 2026. The following Task Force members participated: Ann Gillespie, Chair, represented by Jacob Stuckey (IL); Glen Mulready, Vice Chair, represented by Donna Wilson (OK); Heather Carpenter represented by David Phifer (AK); Mark Fowler represented by Ryan Donaldson (AL); Richardo Lara represented by Joe Holloway (CA); Michael Conway represented by Keith Warburton (CO); Joshua Hershman represented by Jane Callanan (CT); Sharon P. Clark represented by Rodney Hugle (KY); Timothy J. Temple represented by Tom Travis (LA); Angela L. Nelson represented by Shelley Forrest (MO); Mike Causey represented by Jaqueline Obusek (NC); Eric Dunning represented by Tadd Wegner (NE); Ned Gaines represented by Alexia Emmermann (NV); Michael Humphreys represented by Laura . Slaymaker (PA); Suzette M. Del Valle represented by Glorimar Santiago (PR); Michael Wise represented by Ryan Basnett (SC); Carter Lawrence represented by Trey Hancock (TN); Amanda Crawford represented by Jessica Barta (TX); Scott A. White represented by Dan Bumpus (VA); Patty Kuderer represented by Charles Malone (WA); and Nathan Houdek represented by Amy Malm (WI).

1. Adopted its Dec. 1, 2025, Minutes

Emmermann made a motion, seconded by Holloway, to adopt the Task Force's Dec. 1, 2025, minutes (*see NAIC Proceedings – Fall 2025, Receivership and Insolvency (E) Task Force*). The motion passed unanimously.

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

Wilson said the Receivership Financial Analysis (E) Working Group met March 22 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities, or individuals) of the NAIC Policy Statement on Open Meetings, to discuss companies in receivership and related topics.

Malm made a motion, seconded by Slaymaker, to receive the report of the Receivership Financial Analysis (E) Working Group. The motion passed unanimously.

3. Received a Referral from Macroprudential (E) Working Group

Stuckey said the Task Force received a referral from the Macroprudential (E) Working Group (Attachment One-A). He said the Working Group is researching activity surrounding the issuance of funding agreement-backed notes (FABNs) by insurers and the related issuance of FABNs by special purpose vehicles. The Working Group has asked the Task Force to research how FABNs, similar structures, and the notes themselves would be treated in receivership. Specifically, the Task Force is asked to review the priority treatment of these agreements and financial instruments pari passu with traditional policyholders in a receivership or insolvency. He said that at the end of the Task Force's review, a report will be drafted for the Working Group outlining the results of the review, along with any recommendations and conclusions.

Tim Nauheimer (NAIC) presented an overview of FABNs (Attachment One-B). He explained each slide of the presentation as follows:

- Slide 3: The left side of slide three is the life insurance company (depicted in blue) that would issue the funding agreement to an affiliated special purpose vehicle (SPV), and then the SPV issues the FABN (depicted in black). The SPV issues the FABN to the street. Big holders of FABNs are money market mutual funds. The cash proceeds from the issuance of the FABN (depicted in green) would flow to the SPV and then to the life insurer. The insurers would invest the cash proceeds and would list those invested assets on their financial books and the liability for the funding agreement. The left side of the picture on slide three, left of the red line, is what is reported on the insurance company's books.
- Slide 4: The slide explains foreign currency funding agreement-backed notes (FXFABNs), which work the same as the basic FABN except that they are denominated in another currency. On slide three, this is depicted by the purple text. One difference is that the foreign currency is typically hedged by the insurer through a foreign currency hedge derivative on Schedule DB. FXFABNs raised questions at the Working Group about how all FABNs would be treated in insolvency.
- Slides 5 and 6: Nauheimer said other structures worth understanding include funding agreement-backed repurchase agreements (FABRs). The process is similar to the FABNs described on slide one. The insurer issues the funding agreement to the SPV. The SPV enters into a repurchase agreement, typically with a bank. The proceeds flow from the bank to the SPV, then back to the insurer, which invests them. The difference with FABRs is that collateral is pledged and posted in a special SPV-pledged assets account. The funding agreement is on the insurer's books.
- Slides 7 and 8: Nauheimer said another structure is funding agreement-backed loans (FABLs). The insurer issues the funding agreement to the SPV. The SPV enters into a loan agreement with a bank. The bank provides the funds and cash (depicted in green). The cash is paid to the SPV, which then pays it to the insurer. The insurer invests the proceeds from that borrowing. The difference from a typical FABN is that there is a trust or SPV affiliated with the bank that provides the loan, rather than the insurer. This is also a collateral account where the insurance company posts collateral, and that is administered by the trust.
- Slides 9, 10, and 11: Nauheimer said the last structure is a funding agreement backed by a municipal pre-pay/energy bond, which can be more complex. These would be used, for example, to allow a municipality to pre-pay in advance for some type of utility, gas, or electricity, at a significant discount. The slide depicts a simplified view of a municipality issuing a tax-exempt bond. The insurer is issuing the funding agreement. The proceeds of the bond issuance go to the SPV and then back to the insurer.
- Slides 13 and 14: Nauheimer said the slides depict the level of FABN activity based on Federal Reserve data. More information will be available later in the year. Nauheimer said the Working Group has recommended an annual statement blanks disclosure for FABNs for annual 2026.

Nauheimer said the Working Group's referral is asking the Task Force to look at the treatment of FABNs in an insolvency, which are a liability for an insurer, and whether FABNs should be pari passu with other insurance products.

Stuckey asked whether, on slide three, state regulators should focus on items to the left of the red line, while everything to the right is outside the purview of a receivership. Nauheimer agreed. Stuckey then asked whether regulators should also consider how any eligible securities held in a collateral account would be handled in receivership. Nauheimer agreed.

Malm asked if the funding agreements would be considered policies. She said policyholder claims would be class three. Funding agreements are with sophisticated individuals. She asked whether there are policy forms with funding agreements. Nauheimer said that one of the questions to be explored is whether, as he has seen in some legal opinions, they are treated as policies and receive pari passu priority. He said the New York Department of Financial Services has an Office of General Counsel opinion on its website from eight years ago.

Stuckey suggested several survey questions to gather input for the Task Force's research. He requested that members, interested regulators, and interested parties respond to the survey. Malm suggested the question on guaranty fund coverage be addressed by guaranty funds and the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA). Mark Bennett (Cantilo and Bennett LLP) suggested adding a reference specifically to ask whether receivers would continue to fund executory contracts. Stuckey agreed. Hearing no objection to sending a survey to regulators and interested parties, Stuckey said responses to the survey (Attachment One-C) are due May 20.

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

Draft: 7/7/26

Receivership Law (E) Working Group
Virtual Meeting
May 26, 2026

The Receivership Law (E) Working Group of the Receivership and Insolvency (E) Task Force met May 26, 2026. The following Working Group members participated: Kevin Baldwin (IL), Co-Chair; Laura Lyon Slaymaker, Co-Chair (PA); Joe Holloway (CA); Keith Warburton (CO); Theresa Calderone (CT); Yamile Benitez-Torviso (FL); Tom Mitchell (MI); Amy Hoyt (MO); Tadd Wegner (NE); and Jessica Barta (TX).

1. Heard a Presentation from Cantilo & Bennett on Medicare Secondary Payer Issues in Receivership

Slaymaker said that at the December 2025 meeting of the International Association of Insurance Receivers, J. Alex Martin (Cantilo & Bennett) presented on issues regarding Medicare Secondary Payer (MSP) in receiverships. She said it is a relevant topic for receivers and guaranty funds, as laws and procedures are different across states.

Martin presented on the topic of MSP framework and issues for insurance receivers (Attachment Two-A).

Martin said that in the current MSP environment for insurance receivers, there is a risk of extreme, long-tail personal liability for receivers and estate representatives if MSP issues are not considered and addressed. Receivership does not relieve associated obligations. Receivers have inherent responsibility for an insurer's pre-receivership MSP failures. Recent court rulings abrogate what little federal Centers for Medicare & Medicaid Services (CMS) guidance exists, which has not been updated to reflect recent court rulings or the associated trend. CMS has not provided useful go-forward guidance and has failed to answer questions directly or to confirm understanding. Otherwise, little practical or operational guidance exists for receivers. Some modern case law is dismantling the traditional assumption that guaranty associations bear MSP obligations. CMS has not replaced that framework with operational guidance, leaving receivership estates exposed to uncertainty in reporting and reimbursement.

Martin said the consequences of this current environment include uncertain reserves, delayed distributions, increased callback risk, contractor reluctance, hesitancy to close the estates, and higher administrative costs. The Department of Justice's (DOJ's) position concerning MSP and the Federal Priority Statute (FPS) is that, because the MSP Statute specifically relates to the business of insurance, the McCarran-Ferguson Act does not apply to Medicare claims. Therefore, the FPS does apply, and the MSP claims must be paid before policyholder-level claims. The FPS says that, outside of bankruptcy, a claim of the U.S. government shall be paid first when a debtor is insolvent and further provides that a representative who pays other debts before satisfying government claims is liable to the extent of the payment for unpaid government claims.

Martin said some related observations include a credible argument that receivers and estate representatives may face personal exposure under the FPS and MSP frameworks, and that prudent receivers should assume the risk exists until clarified otherwise. Receivers and receivership estate representatives risk personal liability under the FPS, and they make policyholder-level distributions prior to repaying federal government MSP liabilities in full. Receivers should assume that the federal government's MSP claims take precedence over policyholder-level claims under the FPS until they receive updated guidance from the DOJ or a contrary court ruling.

Martin said slide seven of his presentation is an excerpt from the traditional FPS release agreement, which shows that MSP-related liabilities are carved out from the FPS release. He said he has never seen MSP liability released

in the federal release. It has always been expressly excluded, as it is in this excerpt. Despite the exclusion, what slide eight shows is that MSP liabilities are asked about in the FPS release application, and the red box on the slide is a requirement that an affidavit be provided by the liquidator stating that it is compliant with all reporting requirements of the MSP statutory framework and that the receiver has likewise reimbursed the U.S. government under that same framework. These inquiries appear to be used to put receivers on notice, secure their cooperation, and assess potential liability.

Martin said slide nine is a data collection. This is the most recent data available from the Commercial Repayment Center (CRC), and it demonstrates that collections are actively pursued. The CRC collects MSP debts from entities such as insurers, with other organizations collecting from Medicare beneficiaries and providers. The chart shows $260 million in gross proper collections. The CRC reported having sent 85,523 demand letters that year, relating to 94,587 individual beneficiaries. An important note is that this is a free civil money penalty assessment. Those started being assessed in 2025. Current amounts should be expected to be much higher.

Martin said the MSP rule is that Medicare is secondary to any liability insurance, no-fault insurance, workers' compensation law or plan, or group health plan. Medicare cannot pay for services to the extent that payment has been made or can reasonably be expected to be made by the primary payer; however, it can make conditional payments to the extent that payment has not been made and cannot reasonably be expected to be made by the primary payer.

Martin said under the statutory framework, there are two foundational obligations. The first is the duty to report. There are three different duties, depending on the circumstances and type of insurer. The first two relate to liability, no-fault, workers' compensation, also called "non-group health plan" (NGHP) reporting. The first is claims payment-based, or "total payment obligation to the claimant" (TPOC) reporting. The second is claims responsibility-based for "ongoing responsibility for medicals" (ORM) reporting. For TPOC-based reporting, reporting is triggered when a claim involving and/or releasing responsibility for medicals is resolved, in whole or in part, by settlement, judgment, or other payment. Under current CMS guidance, however, the reporting obligation does not mature until there is a determination of when the claim will be funded or dispersed. Payments under a defined threshold, currently $750, are also not reportable. The second ORM-based reporting is triggered when responsibility for medical treatment is accepted in whole or in part, explicitly or implicitly, going forward. According to CMS guidance, that is when it is learned through normal due diligence that the beneficiary has received or is receiving medical treatment related to the injury or illness sustained. The reporting obligation matures immediately and is independent of payment. This often applies to no-fault or workers' compensation claims.

Martin said that "group health plan" (GHP) reporting is coverage-based, not claim-based. Reporting obligations arise from enrollment and coordination of benefits (COB) rules, independent of claims resolution. They require reporting of data indicating whether the individual is in a period when the plan is primary to Medicare. After-the-fact reporting is also required. If it is demonstrated to a primary payer that CMS has made a Medicare primary payment for services for which the primary payer has made or should have made a primary payment, it must provide notice to CMS.

Martin said that, to determine whether reporting is needed, CMS provides a query tool that checks whether an individual is a Medicare beneficiary. For NGHP querying, the responsible reporting entity (RRE) should use the CMS query process to confirm Medicare beneficiary status before submitting TPOC or ORM reports. This will prevent reporting errors and avoid triggering unnecessary recovery activity. With respect to GHP querying, he advised submitting only a query-only input file to confirm whether an individual is a Medicare beneficiary without reporting coverage data. This is useful for verifying Medicare status before COB reporting, obtaining the CMS-

validated Medicare beneficiary identifier, auditing or reconstructing historical enrollment, and checking whether prior reporting may have occurred. It can also be a critical tool for reconstruction as needed in receivership. It is important to note that this is not a substitute for reporting. Slide 12 of Martin's presentation contains certain required data elements for querying CMS. CMS will respond with a match or no match. If a match is found, CMS will confirm whether that individual is a Medicare beneficiary as of a certain date, along with the Medicare beneficiary identifier, which must be used for MSP reporting.

Martin said the second foundational obligation is the duty to reimburse. Insurers with payment responsibility must reimburse Medicare when Medicare has made conditional payments or has mistakenly paid as primary when the insurer was the primary payer. Responsibility is established when a claim is resolved in whole or in part by judgment, payment conditioned on a compromise, waiver, or release of claim, with or without admission of liability, or other means, including the policy obligation itself in the first instance.

Martin summarized the consequences of failing to meet MSP obligations. A failure to report may result in civil money penalties of up to $1,000 per day, per beneficiary, adjusted upward for inflation and capped at $365,000 for NGHPs (not GHPs), also adjusted upward for inflation. These penalties started being assessed in 2025 and start once reporting is one year late. They scale for NGHPs (not GHPs), reaching $1,000 per day, per beneficiary, only after the report is three years late. There are certain safe harbors related to a defined process for good faith attempts to obtain beneficiary information, allowing for querying and reporting, and for changes in CMS policy and procedure. The scope of liability for reimbursement double damages and interest. However, double damages are only accessible if legal action is required to collect them. CMS notes in its materials that it is not bound by any allocation made by the parties, but it will normally defer to an allocation reached by a jury verdict or following a hearing on the merits. For disputed claims, CMS allows a deduction for procurement costs in whole or in part.

Martin said for civil money penalties, the federal government has five years from the date statutory reporting was required but not made to file suit. If Medicare is not voluntarily reimbursed, on the other hand, and for NGHP-related claims, the federal government has three years from the date of compliance with required reporting. It is important to note that if required reporting is never done, limitations will seemingly never run. Also important to note is that this statute of limitations applies to NGHP reporting and likely does not apply to GHP-related claims. For GHP-related claims, the federal government likely has six years from the date it learns that payment has been made or could be made by the insurer to file suit. This is the limitations period for breach of contract under the Federal Claims Collection Act, and it was applied prior to the adoption of the aforementioned statute of limitations. Courts have ruled that these claims are akin to restitution claims, which in turn are akin to contract claims. It is important to note that if reimbursement is unrelated to a claim already with the insurer, the government has, by statute, a period of the greater of the policy's notice-of-claim period or three years after payment to present its claim. Some courts apply this law only in GHP contexts; others do not apply it to affect the ability to bring suit, interpreting it not as a statute of limitations but as merely removing a potential policy-based defense.

Martin said slide 15 illustrates there is a merging MSP operational vacuum, meaning the legal landscape has changed while the operational framework has not. Slide 16 shows an excerpt from the current CMS guidance for NGHPs, taken from the policy guidance chapter of the NGHP user guide. It was last revised in April 2026. Current CMS guidance confirms an operational division of reporting responsibility in this NGHP context. The entity whose funds pay is the RRE. If the guaranty association (GA) funds the claim, the GA is the RRE for that portion. If the company funds or the estate funds the claim, the estate is the RRE for that portion.

Martin said slide 17 shows an excerpt from an affidavit filed in response to the MSP-related instructions in the FPS application instructions. This is available online and tracks the CMS guidance addressed on slide 16.

Martin said slide 18 states that there is no explicit CMS guidance for the GHP RRE role, but there is no reason to expect different treatment from NGHPs. If the GA covers obligations, the GA is the RRE for that coverage. If the company covered, or the estate is covering, the obligations, the estate is the RRE for that coverage. CMS guidance and historical treatment are helpful operationally but not legally controlling when inconsistent with statute or case law. CMS guidance can also change without notice and is irregularly updated.

Martin said that for traditional treatment of reimbursement obligations in receivership, CMS has treated RREs responsible for the associated reimbursement obligation as the entities paying.

Martin said the implications for the NGHP context are that policies are canceled, and coverage is terminated. GA covered claims accrue. GA steps into insurers' shoes for covered claims and is an NGHP payer for those claims. An insurer's estate is an NGHP payer when it pays claims directly for pre-receivership payments, conceivably when it reimburses the GA for its payment of covered claims.

Martin said the implications for the GHP context are that policies remain in effect and coverage continues. GA covered obligations accrue. GA effectively becomes the insurer for covered obligations and is a GHP payer in relation to them. The insurer's estate is a GHP payer for coverage provided pre-receivership, whether it provides coverage directly or reimburses the GA for its payment of covered obligations.

Martin said slide 19 covers modern case law and trends. In modern times, courts are holding that property/casualty (P/C) GAs are not primary plans responsible for MSP reimbursement, rejecting a narrowing application of CMS guidance and traditional compliance. In the 1996 First Circuit case, *United States v. Rhode Island Insurers' Insolvency Fund*, the court held that the fund was a primary plan with reimbursement obligations. He said that this is still a good law in the First Circuit. In the 2019 Ninth Circuit case *California Insurance Guarantee Association v. Azar*, the court held that the California Insurance Guarantee Association was not a primary plan with a reimbursement obligation. Later correspondence from CMS absorbed the fund for many reporting obligations as well. Martin said slide 20 reflects a letter from CMS responding to the Oregon Insurance Guaranty Association, where CMS now takes the position that funds in the Ninth Circuit do not have MSP obligations.

Martin said slide 21 covers additional developing case law and emerging trends. In 2025, in the Illinois Federal District Court case *Illinois Insurance Guaranty Fund v. Becerra*, the court held that the Illinois Insurance Guaranty Fund is not a primary plan with reimbursement obligations. Also in 2025, the issue was litigated in the U.S. District Court for the Eastern District of North Carolina in *North Carolina Insurance Guaranty Association v. United States Department of Health and Human Services et al.*, which addressed whether the North Carolina Insurance Guaranty Association had MSP reimbursement obligations. Pursuant to the National Conference of Insurance Guaranty Funds (NCIGF), that case was settled, and CMS has determined that it will no longer treat the North Carolina Insurance Guaranty Association as having MSP obligations. Also, according to NCIGF, the Kentucky Insurance Guaranty Association recently secured an administrative ruling that it has no MSP obligations.

Martin said slide 22 is a map that takes stock of P/C GA MSP obligations. For states shaded in red, CMS's current position is that these P/C GAs have MSP obligations. By rule or agreement, the P/C GAs for states in yellow are exempt from MSP obligations. If this monitoring continues, at least P/C GAs are not primary claims with reimbursement obligations. CMS acknowledged that if P/C GAs have no statutory reimbursement obligations, they likely have no reporting obligations, given a similar statutory language issue. However, the federal government does not seem willing to concede either of these points at this time, and this disruption of traditional operational roles and receivership leaves a vacuum that CMS may seek to fill, or that the receivership estate may otherwise need to fill as the only remaining player.

Martin said slide 23 shows associated issues. For federal government claims, to the extent they are filed, the federal government will file placeholder claims and assert priority but will not attempt to define or liquidate its claims prior to the passing of the claims-filing deadlines, claims bar dates, or otherwise. Courts are holding that the federal government is not bound by the receivership estate's deadlines. The federal government is largely nonresponsive to inquiries concerning its claims.

Another area where receivers encounter issues is defining the scope of MSP obligations. CMS has largely been nonresponsive or has not directly addressed MSP-related inquiries, including inquiries about receivership estate reporting and reimbursement obligations, specifically and importantly, regarding what, if any, MSP obligations exist when the receivership estate reimburses payment of a policyholder-level claim rather than paying it directly.

Another area of issues is the fulfillment of MSP obligations. Pre-receivership data does not always disclose whether MSP reporting was done. Data does not always allow for MSP reporting or Medicare beneficiary inquiries. Related inquiries from policyholder claimants and their representatives are sometimes not responded to, refused, or, if responses are tendered, are deficient. Receivership data does not confirm whether MSP reporting was done by the GAs or allow for the receiver to report for the GAs. Current CMS reporting procedures do not adequately account for an insurer in receivership.

Martin said slides 24–26 are three examples of how this process might play out. Each scenario starts with five Medicare beneficiaries for whom no reporting was done, and each receives $5,000 from Medicare that should have been paid by the insurer.

In the first scenario, the receivership closes after $50 million is distributed to policyholder-level claimants. Three years after the receivership's closure, the federal government demands that the former receiver and estate representatives personally repay at least $1.85 million.

- The second scenario has the same beginning facts, but in this scenario, $100 million is distributed to the policyholder level and other claimants. Seven years later, as the receivership approaches closure with limited assets, the federal government demands repayment of at least $1.85 million from the receivership estate and the receiver and estate representatives personally for any deficiency, and files and associated proof of claim.
- The third scenario has the same beginning facts, but the receivership closes after funds are distributed to policyholder-level claimants. Six months after the receivership closes, the federal government demands that the former receiver and estate representatives personally repay at least $1.85 million.

Martin said slide 27 illustrates the emerging MSP operational vacuum. In the traditional model, guaranty associations functioned as the primary MSP actors. In modern case law, courts are increasingly holding that GAs are not primary plans and are not the correct primary MSP actors, leaving an unresolved gap in the MSP operational vacuum and creating significant uncertainty and risk. The legal landscape has changed, while the operational framework has not. Until CMS provides clear guidance, receivers and estates face an operational vacuum for MSPs, with no clear roadmap and significant risk.

Martin said that slide 28 highlights his perspective on resolving the issues. The first is to support federal legislative reforms. The second is to support state protections. State-funded defense and indemnity protections may be more realistically achievable than a comprehensive federal MSP overhaul, as would statutes expressly recognizing immunity. *Insurer Receivership Model Act* (Model #555), Section 115 addresses many of these concepts, but it does not extend to state funds in relation to indemnity, providing little practical protection when state assets are

exhausted or insufficient. It also does not provide an indication to contractors and does not expressly impose a duty to defend or otherwise ensure the provision of counsel while immunity issues are litigated.

Martin said coordination with GAs is critical. The receiver and GAs should understand what is being done and what is not being done, as well as each other's roles, to help coordinate with CMS. GAs are often on the front line dealing with claimants and are in the best position to obtain the data needed for MSP reporting. P/C GAs currently use the Uniform Data Standards "M" record. He said that it would be good to revisit those records.

Martin said with respect to CMS coordination, he advised notifying CMS of the receivership and the agreed-upon MSP operational rules. Do your best to open a dialogue with CMS, obtain everything you need to query, and look up potential debts. He said he believes it is also important to acknowledge that there are likely to be incurable MSP-related defects. He recommends being forthright with CMS about those defects, implementing best-effort reporting substitutes, and adopting clear operational protocols and risk management measures.

At the estate level, Martin recommended seeking court guidance and approval for everything. Before making distributions to policyholders, consider tendering an MSP-related compliance report. With that application, to the extent there are uncurable MSP-related defects, let the court know how you tried to cure those defects and have the court render an opinion with a finding that sufficient due diligence was made. Essentially, getting the receivership court stamp of approval on these topics should the federal government try later to assert a claim, especially for personal liability. With receivership court approval, there is a better case for judicial immunity.

Baldwin said in his experience dealing with MSP reporting, Illinois has not had the federal government assert a super priority. Illinois has completed the reporting, and it has been acceptable if the claims are paid on a pro rata basis to policyholders. He asked Martin if there is a super priority over all other policyholder claims.

Martin said slide five includes a quote from Sharon Williams (DOJ), sent to him via email, which reflects her stated position that receivers must pay the federal government on the reimbursement obligation before policyholders receive one dollar. This is her email regarding the application instructions and was last confirmed in November 2025. He said he has not personally seen this play out either, but it is a red flag.

Ashley Rosenberger (NCIGF) said the P/C GAs have had litigation in the CMS sphere. There is an opportunity to align legal interests, and the NCIGF would be willing to enter into a joint common interest agreement to share information and coordinate strategy without waiving privilege.

Slaymaker said there is no guidance in the *Receiver's Handbook for Insurance Company Insolvencies* (Receiver's Handbook) on this topic and suggested it as a topic that warrants drafting guidance.

John R. Mathews (Public Policy and Advocacy) asked how regulators are handling this issue for insurance companies in rehabilitation, since regulators can determine whether there is MSP exposure in the claim files.

Baldwin said that in Illinois, if the company in rehabilitation was an RRE, it continues the RRE's registration number and the required reporting, which the company had been doing prior to rehabilitation. In liquidation, it continues to do the same, although regular payments are no longer being made as they were in rehabilitation.

Jane Koenigsman (NAIC) said the recent NAIC effort to propose changes to the Federal Priority Act regarding government claims deadlines and receiver liability in insurer receiverships was rejected by the DOJ and will not be moving forward at this time. She said the Working Group should look for other types of coordination or best practices to improve this process.

Slaymaker asked for volunteers to participate in a drafting group to develop new guidance on MSP for the Receiver's Handbook. Slaymaker, Baldwin, and Martin volunteered. She said others interested in volunteering should notify NAIC committee support.

Having no further business, the Receivership Law (E) Working Group adjourned.

Summary of Responses to RITF Survey on Funding Agreement Backed Notes (FABN) Treatment in Receivership —2026

Responses: 13 States; Cantilo & Bennett LLP; National Organization of Life and Health Insurance Guaranty Associations (NOLHGA); Willkie Farr & Gallagher LLP.

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1. **How does your state interpret your state's priority of claims provision within your receivership law with regard to FABNs and similar structures? For example, in which class of claims would FABNs or similar structures fall; how would collateral held in the trust account be handled; are funding agreements considered policies?**

Staff Summary	Priority Class would be fact specific depending on the agreement or more review needed = Four States Class 2 policyholder claims = Five States Class 3 loss claims and funding agreements = One State Secured claim (based on collateral and security interest) = Three States Class 5 general creditors = Two States Other Comments: • Cantilo & Bennett—Two distinct categories—insurance protection vs. investment or funding instruments. Public policy of receivership is focused on insurance protection. – • Willkie Farr & Gallagher—a number of states' insurance laws expressly treat claims under funding agreements the same as claims of other policyholders…we expect that many other states whose priority statutes do not expressly reference funding agreements would arrive at a similar result through the application of other insurance laws that include funding agreements within the definition of annuities.
CT	Funding Agreements are defined in Conn. Gen. Stat. §38a-459 as follows: (a) Notwithstanding any inconsistent provision in its charter, any domestic life insurance company may enter into written agreements (1) to fund benefits under any employee benefit plan as defined in the Employee Retirement Income Security Act of 1974, as amended from time to time, or any similar plan maintained in a foreign country, (2) to fund the activities of any organization exempt from taxation under Section 501(c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, or of any similar organization in any foreign country, (3) to fund any program of the government of the United States, the government of any state, foreign country or political subdivision thereof, or any agency or instrumentality thereof, (4) to fund any agreement providing for periodic payments in satisfaction of a claim, or (5) to fund any program of an institution which has assets in excess of twenty-five million dollars. Under such agreements, the company's obligations may be established by reference to (A) amounts deposited with the company and allocated to such company's general account or to one or more separate accounts in accordance with subsection (b) or (c) of this section or pursuant to section 38a-433, or (B) an asset portfolio that is not owned or possessed by such company. The

	issuance or delivery of a funding agreement in this state shall constitute doing an insurance business in this state. Funding Agreements as defined by Conn. Gen. Stat. §38a-459(a) would be treated as insurance contracts for purposes of Connecticut's priority of claims statute, Conn. Gen. Stat. § 38a-944(a)(3). ***However, the treatment of FABNs and similar structures in a receivership proceeding would be a matter of first impression and would depend on how the FABN is structured. If the notes embody direct "policyholder" obligations, they may reasonably fall within Class 3. If not, they may reasonably fall within Class 6.***
IL	Illinois receivership law classifies FABNs and similar structures as policyholder priority claims. Funding Agreements are distinguished as different products than policies of insurance but are treated at the same priority level for purposes of distribution. Collateral held in trust to secure obligations under a Funding Agreement are classify the obligation as a secured claim, resulting in a super-priority over other policyholders claims to the extent of the amount of collateral held.
MA	Funding Agreements are defined in Massachusetts as follows: M.G.L. c. 175, section 132I - Funding Agreements Any insurer authorized to issue annuity contracts in the commonwealth may issue one or more funding agreements, in fixed or variable amounts or in both, to fund (i) benefits under any employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. section 1002; (ii) the activities of any organization exempt from taxation under section 501(c) of the Internal Revenue Code or any similar organization in any foreign country; (iii) any program of the government of the United States, the government of any state, foreign country or political subdivision thereof; (iv) any agreement providing for periodic payments in satisfaction of a claim; or (v) any program of any individual or entity which has assets in excess of $25,000,000. Amounts paid to the insurer under such funding agreements may be allocated by the insurer to its general account or to one or more separate accounts pursuant to section 132F or section 132G. The issuance of a funding agreement in the commonwealth shall constitute doing an insurance business herein. For purposes of section 180F, funding agreements shall be treated as insurance contracts, and the holders thereof shall be entitled to the same priority of distribution as policyholders. Agreements that fall under M.G.L. c. 175, section 132I would be treated as insurance contracts for purposes of our state's priority of claims statute, M.G.L. c. 175, sec. 180F. However, the matter of how FABNs and similar structures would be addressed in a receivership proceeding would be a matter of first impression in our state.
MO	The Insurers Supervision, Rehabilitation and Liquidation Act directly address the treatment of funding agreements. Under the priority of distribution statute, claims arising from funding agreements are treated as Class 2 loss claims. This is the same priority class as claims under life insurance and annuity policies. Section 375.1218 provides, in relevant part:

	(2) Class 2. All claims under policies including such claims of the federal or any state or local government for losses incurred ("loss claims") including third party claims and all claims of a guaranty association or foreign guaranty association including reasonable allocated loss adjustment expenses and all claims of a life and health insurance guaranty association or foreign guaranty association which covers claims of life and health insurance policies, relating to the handling of such claims. All claims under life insurance and annuity policies and funding agreements, whether for death proceeds, annuity proceeds or investment values shall be treated as loss claims. That portion of any loss, indemnification for which is provided by other benefits or advantages recovered by the claimant, shall not be included in this class, other than benefits or advantages recovered or recoverable in discharge of familial obligation of support or by way of succession at death or as proceeds of life insurance, or as gratuities. No payment by an employer to his employee shall be treated as a gratuity. Early distributions to guaranty associations and foreign guaranty associations may be made in the manner provided in section 375.1205, provided that such guaranty associations and foreign guaranty associations agree to indemnify the liquidator if a shortage occurs in the insurer's estate of property necessary to settle claims as provided by this section. Any early distributions shall not increase the proportionate share of such guaranty associations and foreign guaranty associations, of distributions of the insurer's estate. The liquidator shall have authority to inquire into the reasonableness of any allocated loss adjustment expenses claimed by a guaranty association or foreign guaranty association and such claim shall not be allowed if it is found to be unreasonable. • Please note that the legislature listed funding agreements alongside "life insurance and annuity policies" in Class 2. The placement may be significant in that it reflects the legislature's recognition that funding agreements are a distinct type of instrument that would not automatically be included within the generic phrase "all claims under policies" that opens the Class 2 provision. By expressly naming them, the statute ensures funding agreement claimants cannot be relegated to a lower priority class (such as Class 5 for general creditors) on the theory that they are not covered by a "policy." • Under Missouri law, only a life insurance company formed under Chapter 376 may issue funding agreements. § 376.2080.2, RSMo. A “funding agreement” is defined as “an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies of the person to whom the funding agreement is issued”. § 376.2080, RSMo. This activity is regulated as insurance business. § 376.2080.2, RSMo. Additionally, the statute expressly provides that a funding agreement “shall not be deemed to constitute a security, as such term is defined in section 409.1-102.” § 376.2080.1, RSMo.
NC	Under Article 30, priority of claims is determined based on the legal nature of the obligation and the status of assets, not the structure through which the obligation is issued. The statute defines a "creditor" broadly to include any party holding a claim, whether secured or unsecured (see N.C. Gen. Stat.§ 58-30-10(4)). Claims supported by a valid lien, pledge, or other security interest may qualify as secured claims (see N.C. Gen. Stat. § 58-30-10(18)), while all other claims are treated as general creditor claims.

	Funding agreements backing F ABN s do not constitute contracts of insurance under North Carolina law. A contract of insurance requires an obligation to indemnify against loss or injury (see N.C. Gen. Stat. § 58-1-10). Funding agreements instead represent fixed payment obligations and do not involve traditional risk transfer. Accordingly, they should not be treated as policyholder obligations for purposes of priority. Claims arising from funding agreements and F ABN s should therefore be classified as creditor claims, with their priority determined based on whether a claimant can establish a valid, perfected security interest in specific assets. With respect to collateral, Article 30 distinguishes between "general assets" and assets that are specifically pledged or encumbered (see N .C. Gen. Stat. § 58-30-10(12)). The use of special purpose vehicles (SPVs), trusts, or other structured finance mechanisms does not, in itself, remove assets from the insurer's general estate. Only assets subject to a valid and enforceable security interest would be excluded.
PA	Our state has not had any companies in receivership that had FABNs or similar structures. If that would happen in the future, we would have to analyze the FABNS or similar structures to determine the priority class and related issues.
VA	FABNs issued for delivery by life insurers in the Commonwealth of Virginia are treated as an insurance contract under Section 38.2-3100.2(G) of the Code of Virginia (“Code”) and are entitled to the same priority as covered claims under Section 38.2-1509(B) of the Code.
WA	Funding agreements would not be considered policies under Washington’s insurance code (Title 48 RCW). My legal opinion is that funding agreements would be treated as Class 5 (claims of general creditors) under RCW 48.31.280.
WI	Wis. Stat. 645.68 includes funding agreements as Class 3 loss claims and funding agreements are defined in Wis. Stat. 632.66 (2) (a) as “an annuity without life contingencies that is an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in fixed or variable amounts, or both, that are not based on mortality or morbidity contingencies.” However funding agreements and FABNs are fundamentally different and FABNs are examples of structured finance, they are not insurance contracts or policies. Since the statutes do not differentiate between funding agreements and FABNs, more review should be done on this issue.
Cantilo Bennett LLP	At the outset, I believe it is important for the Receivership and Insolvency (E) Task Force (“RITF”) to distinguish between two very different categories of obligations that may involve funding agreements. The first category involves obligations that support traditional insurance risks and insurance protection functions, including mortality and morbidity risks, retirement income protections, and obligations intended to support insurance consumers who have suffered insured losses or who rely upon insurance benefits for retirement or financial security.

	The second category involves obligations that primarily function as institutional funding arrangements or capital markets instruments. These structures may involve sophisticated institutional counterparties, special purpose vehicles, commercial paper programs, note issuances, repurchase structures, municipal pre-pay structures, or other financing arrangements that, while issued by or connected to insurers, may function primarily as investment or funding instruments rather than traditional insurance protections. In my view, this distinction is important because the public policy purposes underlying insurance receivership statutes and insurance guaranty association systems have historically focused upon the protection of insurance consumers and claimants suffering insured losses—not the protection of institutional investment risks or sophisticated financial counterparties. The distinction is also important because many funding agreement structures today are significantly more complex than traditional insurance products. In many cases, there are multiple layers to the transaction, including: • the funding agreement issued by the insurer; • a special purpose vehicle or intermediary issuer; • notes, commercial paper, or other obligations issued to investors; and • institutional counterparties or financing participants downstream from the insurance company. It is also possible that some aspects of these structures may not always be fully transparent or readily visible from traditional insurance regulatory reporting. These structures can serve legitimate and beneficial purposes. Funding agreements can provide liquidity and financing flexibility to insurers, may support retirement and annuity-related products, and can provide insurers with access to broader capital markets. At the same time, however, the mere fact that an obligation is issued by an insurance company should not necessarily mean that the obligation should receive the same insolvency priority treatment as traditional policyholder claims in a receivership or liquidation.
Willkie Farr Gallagher	In response to the Task Force's discussion and request for comments on the treatment of funding agreement backed note ("FABN") programs and similar structures in receivership and insolvency, this letter is intended to clarify certain points about FABN programs, on which we regularly advise clients, and the related questions raised during the Task Force's April 20 meeting. • <u>FABN Program Structure and Approval.</u> As presented to the Task Force during its April 20 meeting, in an FABN program, a life insurance company issues one or more funding agreements to an unaffiliated special purpose vehicle (the "Issuer"). The Issuer purchases the funding agreement(s) with the net proceeds from the issuance and sale of a like amount of the Issuer's own notes (the "Notes"), typically to

	"qualified institutional buyers" (as defined in Rule 144A under the Securities Act of 1933, as amended (the "Securities Act")) and to persons that are not "U.S. persons" in offshore transactions outside the United States under Regulation S under the Securities Act. The holders of the Notes have no rights with respect to the life insurance company as to the payment of amounts due under the Notes. The sole enforcement rights of the holders of the Notes is against the Issuer and its assets. Importantly, as noted above, the Issuer is not a subsidiary of, or otherwise affiliated with, the life insurance company (or any of its subsidiaries or affiliates) in this structure for holding company act purposes. We note also that life insurers typically file for approval a form of funding agreement to be issued in connection with FABN programs. Such filing is made with the state insurance regulator of the insurer's domestic state and/or the state into which the funding agreement will be issued and sold to the Issuer, depending on applicable state law. 138250260 • Priority Treatment of Claims Under Funding Agreements. The questions exposed for feedback ask regulators how to interpret their respective states' priority statutes with regard to FABNs and similar structures. We note that the statutory language under a number of states' insurance laws expressly treat claims under funding agreements the same as claims of other policyholders. A non-exhaustive selection of such statutes is provided for the Task Force's convenience at **Attachment A**[1]. Furthermore, while we have not analyzed every state's insurance laws for purposes of this letter, we expect that many other states whose priority statutes do not expressly reference funding agreements would arrive at a similar result through the application of other insurance laws that include funding agreements within the definition of annuities. As discussed by regulators and NAIC staff during the April 20 meeting, publicly available offering memoranda prepared in connection with FABN programs contain detailed descriptions of such treatment and may be useful to the Task Force as it considers the Referral.

2. How would the underlying Notes be handled under your state's receivership laws? For example, will receivers be required to continue to fund the executory contract?

Staff Summary	Handling of Notes? • Notes may share Class 2 status if they embody direct policyholder obligations. • If structure does not include policyholder obligations or creditor claims then, Class 5 general creditor claims • No direct liability against the insurer as the holders of the note are the SPV or trust, not the insurer Funding Executory Contracts? • 7 responses that the receiver is not obligated to continue an executory contract but can either continue or reject executory contracts; or that FABNs would not be executory contracts.
CT	Handling of Notes Under the CT Receivership Law: See response to Item 1.

[1] See Attachment A in Willkie Farr Gallagher's May 19, 2026 memo to RITF.

	Executory Contract: Section 38a-923(a) of the Connecticut General Statutes provides that "[t]he liquidator shall have the power:… (11) to enter into such contracts as are necessary to carry out the order to liquidate and to affirm or ***disavow*** any contracts to which the insurer is a party…" Whether a contract would be disavowed would require a fact specific analysis.
IL	The receiver is not required to continue an executory contract upon entry of a receivership order. Executory contracts continue in-force only at the election of the receiver.
MA	Please see response to question #1.
MO	• Initial AI-assisted research into the treatment of the underlying notes issued in connection with funding agreements suggests that the notes may share Class 2 status if they embody direct policyholder obligations. If they do not, they are more likely classified as Class 5 general creditor claims or, if they constitute surplus or contribution notes, as Class 8 obligations. • Further AI-assisted research suggests "Where underlying notes are issued by a special purpose vehicle ("SPV") against the backing of a funding agreement, rather than directly by the insurer to policyholders, the notes may not embody the direct "policy claim" character required for Class 2 treatment and would more likely be classified as Class 5 general creditor claims". • Neither the rehabilitator nor the liquidator is automatically required to continue funding an executory contract. o The rehabilitator holds broad discretionary powers under § 375.1168, RSMo. Under § 375.1166.3, RSMo, "[e]ntry of an order of rehabilitation shall not constitute an anticipatory breach of any contracts of the insurer, nor shall it be grounds for retroaction revocation or retroactive cancellation of any contracts of the insurer, unless such revocation or cancellation is made by the rehabilitator pursuant to section 375.1168." This is important because it illustrates that the rehabilitator retains discretion over the revocation or cancellation of contracts. It also makes clear that a counterparty to a funding agreement or underlying note cannot treat the insurer as having repudiated the agreement simply because a rehabilitation order was entered. o The liquidator holds express statutory authority under § 375.1182(1)(11), RSMo to "affirm or disavow" any contract to which the insurer is a party and may additionally disaffirm or repudiate burdensome contracts under § 375.1184, RSMo. o If a liquidator determines that a contract is necessary for the orderly administration of the estate and affirms a contract, then any costs and expenses of carrying out the obligations would generally be considered administrative expenses entitled to Class 1 priority under § 375.1218(1), RSMo.
NC	Article 30 provides that a receiver may assume or reject executory contracts (see N.C. Gen. Stat. § 58-30-35(a)). It further provides that contracts to make a loan, extend debt financing, or provide other financial accommodations are not required to be assumed by the receiver (see N.C. Gen. Stat. § 58-30-35(c)(2)). Funding agreements backing F ABNs are appropriately characterized as financial accommodation contracts, as they function as debt-like obligations of the insurer rather than contracts involving the transfer of insurance risk. As such, a receiver is not

	obligated to continue performance under these agreements and may elect to reject them in accordance with§ 58-30-35. Upon rejection, any rights arising under the funding agreement would be reduced to a claim for damages (see N.C. Gen. Stat. § 58-30-35(g)). Consistent with the framework described above, such claims would be treated as creditor claims, with priority determined based on whether the claimant can establish a valid, perfected security interest in specific assets.
PA	Our state has not had any companies in receivership that had FABNs or similar structures. If that would happen in the future, we would have to analyze the underlying Notes to determine how they would be handled, including whether the receiver would be required to fund the executory contracts.
VA	Section 38.2-1507 of the Code provides broad authority to the receiver to issue injunctions or enter other appropriate orders for the protection of the insurer's policyholders and creditors and the preservation of the insurer's property. As such, the receiver in Virginia may not be required to continue to fund a FABN.
WA	My legal opinion is that notes associated with FABNs would be treated as Class 5 (claims of general creditors) under RCW 48.31.280.
WI	Noteholders are one layer removed from the claim against the insurer since these investors generally hold notes issued by the SPV or trust and not directly against the insurer, but they could pass-through and the noteholders could recover depending on the structure.
Cantilo Bennett LLP	See #1 above.
Willkie Farr Gallagher	• <u>No Privity of Contract Between Noteholders and Life Insurer.</u> The questions exposed for feedback also ask regulators how the underlying Notes would be handled under their respective states' receivership laws. However, this question does not apply here because, as noted above, the holders of the Notes have no privity of contract with the life insurance company. As a result, the Notes themselves would not be subject to a state's priority statute in the event of the life insurer's insolvency or receivership. Rather, the Issuer, as the purchaser of the funding agreement(s), is the only party involved in the FABN transaction that has privity of contract with the life insurance company that could have claims against such company subject to the priority scheme. This is illustrated by the FABN "flowchart" included in the April 20 meeting materials and comments during that meeting confirming that the Task Force's purview in considering the Referral is limited to the transaction between the life insurer and the Issuer to the left of the red line. • <u>Funding Agreements Not Executory Contracts.</u> The questions exposed for feedback ask whether, in the event of a life insurer's receivership, the receiver would be required to continue to "fund the executory contract." Generally, an executory contract is one where both parties still have material obligations left to perform at the time a bankruptcy petition is filed and excludes a contract where one party has completed performance and only payment of money by the other party remains.[2]

[2] See, e.g., 9C Am. Jur. 2d Bankruptcy § 2283.

	After a life insurance company issues a funding agreement, its only remaining obligation is to make scheduled payments of principal and interest to the Issuer. As a result, a funding agreement in the context of an FABN transaction should not be considered to constitute an executory contract.

3. How do we interpret IRMA's priority of claims for FABNs or similar structures – i.e., is it different from what state has adopted?

Staff Summary	• NC offers an interpretation of IRMA where "claims arising from funding agreements and F ABNs would not fall within the policyholder priority class. Instead, they would be treated in accordance with their nature as financial obligations of the insurer, with priority determined based on whether they are secured or unsecured."
CT	Connecticut has not adopted IRMA's priority of claims provision.
IL	IRMA's priority classification for FABNs is consistent with Illinois receivership law. Policyholder priority classification is granted for Funding Agreements under both laws.
MA	Massachusetts has not adopted IRMA's priority of claims provisions. Funding Agreements as defined under Massachusetts law would likely be in included in priority class #2 (after expenses of administration) of our state's priority of claims statute, M.G.L. c. 175, sec. 180F. The applicable language from M.G.L. c. 175, sec. 180F is below: *(2) claims of policyholders, beneficiaries and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company and claims presented by the Massachusetts Insurers Insolvency Fund, the Massachusetts Life and Health Insurance Guaranty Association or any similar organization in another state, but the workers' compensation claims afforded a preference in section 46A shall be treated as preferred only as respects all other claims in this clause;*
MO	Because the Insurers Supervision, Rehabilitation and Liquidation Act address the treatment of funding agreements, we rely on it and not on the model law.
NC	The NAIC Insurer Receivership Model Act (IRMA) establishes a structured priority of distribution framework under Section 801 that classifies claims based on their legal nature rather than the form of the instrument through which they arise. A central feature of this framework is the distinction between traditional policyholder obligations and other types of claims that do not reflect the core risk-transfer function of insurance. Consistent with this approach, claims arising from funding agreements and F ABNs would not fall within the policyholder priority class. Instead, they would be treated in accordance with their nature as financial obligations of the insurer, with priority determined based on whether they are secured or unsecured. In this respect, IRMA is aligned with the approach reflected in North Carolina law. Both frameworks distinguish between obligations arising from insurance contracts and those arising from financial or funding arrangements and tie priority of distribution to the substance of the obligation rather than the structure through which it is issued.

	Accordingly, IRMA does not support treating F ABNs or similar instruments on par with traditional policyholder claims but instead reinforces an approach under which such instruments would generally be treated as creditor claims.
PA	Our state hasn't adopted anything specifically related to FABNs. We would be curious about NAIC's or NOLHGA's take on IRMA's priority of claims for FABNs or similar structures under IRMA.
VA	Virginia has not adopted IRMA. The priority to disburse the assets of an insolvent insurer is found in Section 38.2-1509(B) of the Code.
WA	Washington State has not adopted the Insurer Receivership Model Act (IRMA-555)
WI	Wisconsin's language is different. Wisconsin's statute states, "all amounts payable under funding agreements" and includes a definition of funding agreements. It also includes the principal and interest in the loss claim.

4. If you have experience in dealing with FABNs in a receivership, describe how it was handled or any challenges?

Staff Summary	No states' responses indicate any experience with FABNs in receivership. Cantilo and Bennett, LLP offered the example of Executive Life.

5. Are there any unique aspects of the various FABNs or how they are structured, that would result in different treatment?

Staff Summary	Most responses request more education. NC offers some comments on the effect of structural differences to determine if the claims is secured or unsecured.
CT	As noted above, the analysis depends on how the FABN is structured.
IL	Additional information delineating the particular unique aspects of various FABNs would be required to answer this question.
MO	See above discussion regarding the nature of the underlying notes.
NC	The materials provided demonstrate that F ABN-related structures vary significantly in form. However, they share a common economic characteristic: the insurer issues a funding agreement that ultimately supports payments to investors. As reflected in the materials provided to the Task Force, the insurer remains the economic obligor, while SPVs or trusts act as intermediaries. Structural differences may affect, for example: • Whether a claim qualifies as secured (see N.C. Gen. Stat. § 58-30-10(18)); and • Whether assets are excluded from general assets (see N.C. Gen. Stat. § 58-30-10(12)) These factors are relevant to determining whether a claim is secured or unsecured, but do not alter the underlying classification of the obligation as a creditor claim.

6. Is there guaranty fund coverage?

Staff Summary	• Depends on "allocated" or "unallocated" or other definition in the law – Two States • Further consultation with the GA is needed = Four States • No GA Coverage = Four States • GA Coverage for FA = One State • Other Comments:

	○ Cantilo & Bennett: …numerous guaranty association acts contain net worth exclusions or other limitations designed to prevent very large or sophisticated entities from accessing guaranty association protections. ○ NOLHGA: funding agreements issued by life insurance companies to special purpose vehicles ("SPVs") in connection with FABN programs do not appear to be eligible for guaranty association coverage under the NAIC Life and Health Insurance Guaranty Association Model Act, Model-520 (the "Model Act").
CT	Section 38a-860 of the Connecticut General Statutes provides as follows: (f) (1) Sections 38a-858 to 38a-875, inclusive, shall provide coverage to the persons specified in subsections (a) to (e), inclusive, of this section for policies or contracts of direct, nongroup life insurance, health insurance, or annuities and supplemental contracts to such policies or contracts, for certificates under direct group policies and contracts, and for unallocated annuity contracts issued by member insurers, except as limited by said sections. Annuity contracts and certificates under group annuity contracts include, but are not limited to, guaranteed investment contracts, deposit administration contracts, unallocated **funding agreements**, allocated **funding agreements**, structured settlement annuities, annuities issued to or in connection with government lotteries and any immediate or deferred annuity contracts. Whether there is guaranty association coverage for a FABN would depend on the structure, and best assessed by the Connecticut Life and Health Insurance Guaranty Association.
IL	The receiver defers response to this question to the Illinois Life and Health Insurance Guaranty Association and/or NOLHGA.
MI	FABNs are not inherently annuity contracts, a position that is supported by NAIC Model Law and the Michigan Insurance Code which deliberately list annuity and funding agreement contracts side-by-side. NAIC Model Law #520 section 3.B.(1) states that, "annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, *unallocated funding agreements*, allocated funding agreements, structured settlement annuities, annuities issued to or in connection with government lotteries and any immediate or deferred annuity contracts." MCL 500.7705(w) states, "'unallocated annuity contract' means an annuity contract or group annuity certificate that is *not issued to and owned by an individual*, except to the extent of an annuity benefit guaranteed to an individual by an insurer under the contract or certificate. Unallocated annuity contract includes, but is not limited to, a guaranteed investment contract or a deposit administration contract." While the Michigan Life & Health Insurance Guaranty Association (MLHIGA) Act does not define an unallocated annuity to specifically include funding agreements, funding agreements meets the definition as they are issued to special purpose vehicles, which are entities, not individuals. As it relates to guaranty association coverage, MCL 500.7704(1) establishes that the MLHIGA only provides coverage for direct, nongroup life, health, annuity policies, supplemental policies or contracts, and very specific types of unallocated group annuity contracts. Subsection (c) only provides coverage to an owner of an unallocated annuity contract if the contract is issued to a specific plan whose sponsor has its principal place

	of business in Michigan or an owner of an unallocated annuity issued in connection with the government lottery if the owner is a resident of this state. Furthermore, MCL 500.7704(5)(h) bars MLHIGA coverage for, "a portion of an unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery." The referenced Michigan Insurance Code section is consistent with NAIC Model Law #520 section 3.B.(2)(h). FABNs and more specifically, the special purpose vehicles, do not fit the description of a specific employee, union, or association benefit plan or a government lottery. Therefore, FABNs do not appear to be covered by the MLHIGA.
MA	Since the treatment of a FABN in a Massachusetts receivership would be a matter of first impression this is something we plan to discuss further with our guaranty fund.
MO	Under the Missouri Life and Health Insurance Guaranty Association Act, the treatment of funding agreements depends on whether they are "allocated" or "unallocated." Section 376.717 provides that "[a]nnuity contracts and certificates under group annuity contracts include allocated funding agreements, structured settlement annuities, and any immediate or deferred annuity contracts." This statutory language classifies allocated funding agreements as a species of annuity contract for guaranty association coverage purposes, meaning they qualify as "policies and contracts" under §§ 376.715–376.758, RSMo. The definitional section of the guaranty association act, § 376.718, RSMo, defines "unallocated annuity contract" as "any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate".
NC	Guaranty fund coverage in North Carolina applies to insurance policies and related contractual obligations, not to capital markets instruments. Because funding agreements do not meet the statutory definition of insurance (see N.C. Gen. Stat. § 58-1-10), F ABNs and similar instruments would not be eligible for guaranty fund protection.
PA	We aren't sure. We would like the GAs to weigh in on this question. The more insurance-related the transaction is, as opposed to strictly a financial instrument, the more likely that there should be GA coverage, we suspect.
VA	The Virginia Life, Accident and Sickness Insurance Guaranty Association provides guaranty association coverage under Section 38.2-1700(C)(1) of the Code for funding agreements. The Virginia Property and Casualty Insurance Guaranty Association does not provide coverage for funding agreements.
WA	Under RCW 48.32A.025, "guaranteed investment contracts," "unallocated funding agreements," and "allocated funding agreements" are considered "annuity contracts." RCW 48.32A.025(2)(a). However, unallocated annuity contracts are only granted coverage under the Washington Life and Disability Insurance Guaranty Association Act for persons "who are owners of unallocated annuity contracts if the contracts are issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in [Washington State]." RCW 48.32A.025(1)(c). For structured settlement annuities, Washington Life and Disability Insurance Guaranty Association Act does provide coverage to a person "who is a payee under a structured settlement annuity, if the payee": i. ii. (i) Is a resident, regardless of where the contract owner resides; or (ii) Is not a resident, but only under both of the following conditions: 1. (A) a. (I) The contract owner of the structured settlement annuity is a resident; or b. (II) The

	contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state; and the state in which the contract owner resides has an association similar to the association created by this chapter; and 2. (B) Neither the payee, nor beneficiary, nor enrollee, nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides; RCW 48.32A.025.
WI	We inquired with the Wisconsin Insurance Security Fund (Security Fund), and they provided the following response: None of the arrangements outlined in the presentation would be covered by the Security Fund under the scope of the current law outlined in Wis. Stat. § 646.01. All of the arrangements outlined appear to be investment vehicles with no connection to direct coverage. If they are attached to an annuity product, these must be specifically allocated to policyholders. In addition, a growing trend of special purpose vehicles and segregated accounts that are set up to benefit only a subset of policyholders raises equity concerns about how guaranty coverage limits are applied. The Security Fund has concerns about a growing trend of sophisticated investors looking to position themselves at the head of the line for assets by obtaining preferential treatment or trying to obtain classification as a "policyholder" in the preference classification. Entities that take risks through investment arrangements should not receive the same preference status as ordinary policyholders. When the guaranty system's recover from liquidation estates is reduced, assessments must increase to meet the statutory obligations. Increased assessment activities transferred losses to a load in rates in general marketplace or a loss of tax revenue through tax offsets.
Cantilo Bennett LLP	I also believe it is important for the RITF to consider the historical purpose of insurance priority statutes and guaranty association systems. The priority framework in insurance receiverships was generally designed to prioritize the payment of policyholder and claimant losses arising from insurance protections and insured risks. Similarly, guaranty associations were created as consumer protection safety nets for policyholders and claimants in insurer insolvencies. Many state guaranty association statutes already reflect this policy distinction. For example, numerous guaranty association acts contain net worth exclusions or other limitations designed to prevent very large or sophisticated entities from accessing guaranty association protections. The underlying policy rationale is straightforward: guaranty association resources are finite and are intended primarily to protect insurance consumers who lack the financial means to absorb substantial insured losses. That policy concern becomes even more significant in the context of very large life insurer insolvencies involving substantial funding agreement obligations or institutional funding structures.
NOLGHA	Based on the below referenced facts and analysis, funding agreements issued by life insurance companies to special purpose vehicles ("SPVs") in connection with FABN programs do not appear to be eligible for guaranty association coverage under the NAIC

	Life and Health Insurance Guaranty Association Model Act, Model-520 (the "Model Act"). I. Funding Agreements Issued in FABN Programs Appear to be Unallocated Annuity Contracts. It is our understanding that in a typical FABN program a life insurance company issues a funding agreement to a special purpose vehicle ("SPV"), which in turn issues notes to institutional fixed income investors. [3] We further understand that the SPV, which is not an individual, is the legal owner of and sole counterparty to the insurer under the funding agreement. We assume the insurer's contractual obligations under the funding agreement are only for the benefit of the SPV, and that none of the contractual benefits under the funding agreement are guaranteed to individuals. Moreover, we assume that the insurer does not issue certificates under the Funding Agreement to individuals. Based on these facts, a funding agreement issued in an FABN program appears to be an "unallocated annuity contract" within the meaning of the Model Act. Section 5Y of the Model Act defines "unallocated annuity contract" as "an annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate." Since a funding agreement issued in an FABN program ("FABN Funding Agreement") is issued to and owned by a SPV (i.e., not an individual), and there are no benefits guaranteed by the insurer to individuals under the FABN Funding Agreement or under related certificates issued by the insurer, FABN Funding Agreements would appear to fall within the definition of an unallocated annuity contract under the Model Act. II. The Model Act Provides Limited Coverage for Unallocated Annuity Contracts.[4] Under the Model Act, coverage for unallocated annuity contracts is limited to unallocated annuity contracts issued to certain types of entities. Specifically, Section 3B(2)(h) excludes from coverage an unallocated annuity contract that is not issued to or in connection with a specific employee, union or association of natural persons benefit plan ("benefit plan") or a government lottery. As a result, the Model Act only provides coverage for unallocated annuity contracts issued to or in connection with benefit plans or government lotteries. III. FABN Funding Agreements Do Not Appear to be Eligible for Coverage under the Model Act.

[3] We understand the funding agreements issued to SPVs in FABN programs contain no life-contingent elements and are deposit-style contracts under which the insurer credits a specified rate of interest on deposits and repays principal at maturity. For purposes of our analysis, we assume the funding agreements would be considered a type of annuity contract. See Model Act Section 3.B(1), which references allocated and unallocated funding agreements as a type of annuity contract.

[4] A drafting note to Section 3 of the Model Act states: "It is believed that coverage of unallocated annuities is a policy decision that should be made by each individual State." Id. at Model-520-2. As a result, the Model Act provides two approaches to coverage (i) the main text of the Model Act provides limited coverage for certain unallocated annuity contracts and (ii) an Appendix to the Model Act completely excludes all unallocated annuity contracts from coverage. This letter discusses only the provisions of the main text of the Model Act since the provisions of the Appendix completely exclude unallocated annuities from coverage.

	We understand FABN Funding Agreements are issued to SPVs. We further understand that SPVs are financing entities formed to issue notes in the capital markets and that they have no participants, no plan sponsors, and no benefit-plan structure of any kind. Therefore, the SPVs used in FABN programs do not appear to be benefit plans. Nor do they appear to be government lotteries. Since FABN Funding Agreements do not appear to be issued to or in connection with a "specific employee, union or association of natural persons benefit plan or a government lottery," they would fall within the coverage exclusion under Model Act Section 3B(2)(h) and therefore would not appear to be eligible for guaranty association coverage under the Model Act. [5] Based on the assumed facts referenced above, this letter analyzes the coverage of FABN Funding Agreements solely under the current version of the Model Act. If the above-referenced facts are changed, or the analysis is conducted under individual state laws (in particular, state laws that differ from the Model Act), the results of the analysis could be different. In addition, please note that coverage for specific insurance products will be determined by the applicable guaranty association based on the terms of the insurance products and the state guaranty association law in effect on the date the guaranty association becomes obligated to provide coverage.

7. & 8. Are there concerns regarding sophisticated investors receiving the same priority of claims treatment as "traditional" policyholders? Any other comments about FABNs and similar financial instruments treatment along with (pari passu) "traditional" policyholders in a receivership or insolvency?

Staff Summary of #7 & 8	• 11 responses expressed concerns, or does not support pari passu treatment, or agrees if FABN are treated pari passu this significantly impacts assets available and the liability to the guaranty association • 3 responses stated there is no distinction in law by type of policyholders for funding agreements
CT	With regard to funding agreements, there is no distinction in the law. With regard to FABNs, if the structure allows for treatment as a Class 3 priority, this does not seem consistent with the intent of the applicable law. In addition, this treatment may have a significant impact on the assets available to other policyholders and the liability of the guaranty association system.
DE	Delaware believes that, optimally, FABN's and similar financial instruments should not be accorded equal treatment with policyholders in a receivership. As was cited in the state-by-state surveys contained in earlier responses to the Macroprudential Working Group's referral, Delaware did amend its liquidation priority statute in 2016 to include such emerging products at the policyholder level. That amendment followed the accounting guidance at that time, and was made to avoid subjecting Delaware insurers to the

[5] Model Act Section 3.B(2)(g) also excludes from coverage unallocated annuity contracts issued to or in connection with benefit plans protected under the federal Pension Benefit Guaranty Corporation. However, for the purposes of this analysis, it is not necessary to apply that exclusion since SPVs used in FABN programs do not appear to meet the threshold requirement of being a benefit plan.

	adverse competitive financial consequences of issuing such investment products while other Liquidation Act models (IRMA) expressly allowed for policyholder level participation. However, more broadly, Delaware's version of the Uniform Insurance Liquidation Act ("DUILA"), as interpreted and developed in several Delaware Supreme Court and Delaware Court of Chancery decisions, evidences a consistent and clear policy goal of maximizing policyholder and claimant recovery in a receivership. One example which demonstrates the supremacy of that goal is the exclusion of assumed reinsurance claims from distribution at the same level as policyholders and guaranty funds who pay those policyholders. Cedents, who presumably are sophisticated parties, are able to knowingly assess and monitor solvency concerns and can individually negotiate terms appropriate to the perceived financial security of the reinsurance assumed by the insurer, and can seek the collateral or other protections they deem necessary. Accordingly, the priority of their distribution in an insolvency is expressly provided in Class 5 [only after full distribution is made to policyholders in Class 3 (see 18 Del C 5918 (e) (3) and (5)]. There are various other restrictions contained in the DUILA which separate commercial financial products and transactions from more traditional insurance policies and annuities in the event of a receivership. Delaware believes that honoring the distinctions between sophisticated parties, who are able to assess risk, design protections, and also factor the characteristics of such risk and protections into the pricing of its relationship with the insurer, should not be accorded equal priority with policyholders and claimants who cannot or routinely do not do so. Delaware notes that notwithstanding that the Guaranty Funds have indicated they will not provide protection for claimants possessing FABN's and such instruments, Guaranty Funds will in fact receive lower distributions of an insolvent insurer's assets when holders of such products share in distributions at the policyholder level.
IL	Illinois receivership law does not distinguish between sophisticated and unsophisticated policyholders for purposes of priority of distribution of receivership estate assets.
KY	Putting holders of FABN's, typically sophisticated investors, on a par with policyholders raises issues of fairness and preservation of assets in receivership. It seems inequitable to put sophisticated holders of what is essentially unsecured debt on the same footing as policyholders in receivership, leaving less available for distribution to policyholders
MA	We believe the potential that certain FABN-related arrangements, if treated as a general account obligation, could potentially dilute the asset recovery available to claimants under life and health insurance policies and annuity contracts raises concerns.
MI	A Funding Agreement-Backed Note (FABN) is a debt security issued by a special purpose vehicle that is collateralized by a funding agreement. The funding agreement is a contract sold by a life insurance company that pays a guaranteed rate of return over a specified period. Under the Michigan Insurance Code, the distribution of claims from an insolvent insurer's estate assigns Class 2 priority to "claims by policyholders, beneficiaries, and insureds," which explicitly incorporates "funding agreement contracts". More specifically, MCL 500.8142(1)(b) states, "Class 2… For purposes of this section, life insurance and annuity policies include, but are not limited to, individual

	annuities, group annuities, guaranteed investment contracts, and *funding agreement contracts*, issued by an insurer…" In a liquidation scenario, every claim in each class shall be paid in full or adequate funds retained for their payment before the members of the next class receive payment and if funds are insufficient, the available pool of general account assets is distributed proportionally among all claimants within the same priority tier. As discussed below, FABN holders do not appear to have guaranty association coverage and must rely entirely on their pro-rata share of the general account assets of the estate. If those assets are drained, the noteholders absorb the final losses directly, whereas retail policyholders are shielded by the guaranty association safety net. Because FABN issuances often total very high dollar amounts, it is possible that these sophisticated institutional claims may severely dilute the general assets of the estate available to pay uncovered policyholders claims or those without guaranty association coverage, as well as lower priority claims including but not limited to claims of federal and local government, unearned premium, general creditors, etc. FABNs are not inherently annuity contracts, a position that is supported by NAIC Model Law and the Michigan Insurance Code which deliberately list annuity and funding agreement contracts side-by-side. NAIC Model Law #520 section 3.B.(1) states that, "annuity contracts and certificates under group annuity contracts include but are not limited to guaranteed investment contracts, deposit administration contracts, *unallocated funding agreements*, allocated funding agreements, structured settlement annuities, annuities issued to or in connection with government lotteries and any immediate or deferred annuity contracts." MCL 500.7705(w) states, "'unallocated annuity contract' means an annuity contract or group annuity certificate that is *not issued to and owned by an individual*, except to the extent of an annuity benefit guaranteed to an individual by an insurer under the contract or certificate. Unallocated annuity contract includes, but is not limited to, a guaranteed investment contract or a deposit administration contract." While the Michigan Life & Health Insurance Guaranty Association (MLHIGA) Act does not define an unallocated annuity to specifically include funding agreements, funding agreements meets the definition as they are issued to special purpose vehicles, which are entities, not individuals. As it relates to guaranty association coverage, MCL 500.7704(1) establishes that the MLHIGA only provides coverage for direct, nongroup life, health, annuity policies, supplemental policies or contracts, and very specific types of unallocated group annuity contracts. Subsection (c) only provides coverage to an owner of an unallocated annuity contract if the contract is issued to a specific plan whose sponsor has its principal place of business in Michigan or an owner of an unallocated annuity issued in connection with the government lottery if the owner is a resident of this state. Furthermore, MCL 500.7704(5)(h) bars MLHIGA coverage for, "a portion of an unallocated annuity contract that is not issued to or in connection with a specific employee, union, or association of natural persons benefit plan or a government lottery." The referenced Michigan Insurance Code section is consistent with NAIC Model Law #520 section 3.B.(2)(h). FABNs and more specifically, the special purpose vehicles, do not fit the description of a

	specific employee, union, or association benefit plan or a government lottery. Therefore, FABNs do not appear to be covered by the MLHIGA.
NC	Article 30 establishes a structured framework for the treatment of claims in receivership, with priority determined based on the legal classification of obligations and the status of assets. This framework is to be applied in a manner that protects policyholders and the public, consistent with N.C. Gen. Stat.§ 58-30-l(c). The question of whether investors in F ABNs are sophisticated does not alter this analysis. Under North Carolina law,. Funding agreements do not constitute insurance contracts, as they do not involve the transfer of risk or provide indemnification for loss (see N.C. Gen. Stat. § 58-1-10). Accordingly, obligations arising from funding agreements and F ABNs are properly characterized as financial obligations of the insurer rather than policyholder obligations. Because Article 30 distinguishes between policyholder claims, secured claims, and general creditor claims based on their legal characteristics, the classification of FABN-related claims should not depend on whether the investors are institutional or retail, sophisticated or otherwise. Allowing the treatment of such claims to vary based on investor characteristics, or based on the use of structured arrangements such as special purpose vehicles or trusts, would be inconsistent with the statutory framework, which is designed to apply uniformly based on the substance of the obligation. For these reasons, North Carolina believes that funding agreements and FABNs should be evaluated based on their substantive legal characteristics and should not receive priority treatment equivalent to policyholder claims absent clear statutory authority. North Carolina does not support treating FABNs or similar instruments pari passu with policyholder obligations. Article 30 establishes a structured priority framework that distinguishes among policyholder claims, secured claims, and general creditor claims based on the legal nature of the obligation and the status of the underlying assets (see N.C. Gen. Stat.§ 58-30-10). This framework does not provide for equal treatment of all obligations issued by an insurer, but instead assigns priority based on statutory classification. As discussed above, funding agreements do not constitute insurance contracts under North Carolina law (see N.C. Gen. Stat. § 58-1-10). Obligations arising from such agreements, including FABNs, are therefore properly characterized as financial obligations of the insurer rather than policyholder claims. Accordingly, such claims should not be afforded the same priority as policyholder obligations. Any priority afforded to these instruments should be determined based on whether they meet the statutory requirements for secured status or otherwise fall within a defined class of creditor claims under Article 30.

	Permitting pari passu treatment based on the use of structured arrangements, such as special purpose vehicles, trusts, or similar mechanisms, would be inconsistent with the statutory framework, which requires that priority be determined based on the substance of the obligation rather than its form.
OK	Oklahoma statutes do not specifically address FABN's or similar agreements. I understand these agreements can vary in form somewhat. Therefore, such determination would be based on each specific agreement. Although there is an increase in the use of these agreements, I wonder how extensively they are used by a particular insurer as a percentage of their total exposure. The impact on the policyholder protection safety net does concern me. If there are policyholders impacted by the GA limits or are uncovered for other reasons, these investment type agreements could significantly impact distributions to those parties.
PA	We do have concerns about this and want to protect policyholders as much as possible. However, we do not know how distinguishing between the two types of policyholders would play out in a PA liquidation. Also – Would the Net Worth Exception be a factor here that might affect sophisticated, larger investors?
VA	Yes, resources are finite with companies in receivership so those resources should be prioritized to protect policyholders without the financial resources to absorb losses from an insolvent insurer.
WA	These investors will not be treated as policyholders under Washington State law as Washington State has not adopted the Insurer Receivership Model Act (IRMA-555) that gives special treatment to funding agreements.
WI	Yes.
Cantilo Bennett LLP	To the extent large institutional funding agreement claims are treated pari passu with traditional policyholder claims, several consequences may follow: • assets otherwise available for traditional policyholders and insurance claimants may be diluted; • guaranty association exposure may materially increase; • guaranty association assessment burdens on member insurers may increase; and • those increased assessment costs may ultimately be passed through to insurance consumers in the form of higher insurance costs and reduced affordability.

8. Any recommendations or conclusions for the Task Force's consideration?

Staff Summary	Considerations (see detail below): • More education • Clarification on GA coverage • What is the treatment under existing state laws • Clarifying if funding agreements constitute insurance obligations, eg. understanding the economic substance and public policy purpose of the obligation (tied to consumer risks, who are the beneficiaries, etc.)

	• Clarify claim priority • Guidance on treatment of collateral arrangements • Encouraging transparency and disclosure • Importance of evaluating these arrangement on enterprise-wide basis • Ensuring arrangements does not alter priority outcomes or circumvent statytory protections for policyholders • Consider the California Executive Life litigation as background • The interaction between Sections 711 and 801 of the Insurer Receivership Model Act may also warrant further consideration and clarification • As funding agreement structures increasingly intersect with repurchase agreements, swaps, securities contracts, collateralized financing arrangements, and other capital markets structures, further clarification regarding the intended receivership priority treatment of these obligations. • Additional clarification regarding the treatment of unsecured or non-insurance funding arrangements during rehabilitation proceedings, including whether rehabilitators should have express authority, subject to court oversight, to suspend or defer payments on such obligations where necessary to protect policyholders, preserve estate assets, or facilitate rehabilitation efforts • Careful consideration should be given as to whether protections, at the expense of policyholders, would be justified, such as those that provide counterparties with additional protections through collateral arrangements, security interests, netting provisions, or other contractual mechanisms that may effectively enhance the counterparty's position in an insolvency proceeding relative to traditional policyholder claims. • RITF evaluate these structures through the lens of insurance consumer protection, guaranty association capacity, and the historical purposes underlying insurance receivership priority frameworks, while also considering the economic substance and purpose of the particular funding agreement structure at issue.
NC	North Carolina recommends that the Task Force's review focus on clarifying how existing statutory frameworks apply to funding agreements and related structured instruments, rather than creating new priority classifications. In particular, the Task Force may wish to consider: • Clarifying that funding agreements should be evaluated under existing statutory definitions of insurance contracts and, in most cases, do not constitute insurance obligations as contemplated by provisions such as N.C. Gen. Stat. § 58-1-10. • Reaffirming that priority of claims in receivership is determined by statutory classification, particularly the distinctions set forth in N.C. Gen. Stat. § 58-30-10, rather than by the legal or financial structure through which an obligation is issued. • Providing additional guidance on the treatment of collateral arrangements, including the standards necessary to establish secured status, such as valid and enforceable liens, clear legal segregation of assets, and demonstrable control. • Encouraging enhanced transparency and disclosure regarding funding agreements and related structures, including the nature of the insurer's

	obligations, associated liabilities, and the role of affiliated or intermediary entities. • Recognizing the importance of evaluating these arrangements on an enterprise basis, including the role of affiliated entities and off-balance-sheet structures. • Ensuring that structured finance arrangements do not operate in a manner that alters priority outcomes or circumvents statutory protections applicable to policyholders and other claimants. <u>Conclusion</u> North Carolina supports the Task Force's review and emphasizes that any resulting framework should preserve the integrity of existing receivership law. Under North Carolina law, priority of claims must be determined based on the substance of the insurer's obligations and the legal status of assets and not altered through structured finance mechanisms. Because these instruments do not constitute insurance obligations, they fall outside the policyholder class, and their treatment in receivership should be determined under the statutory framework applicable to creditor claims. The use of an SPV, trust, or similar structure should not alter the priority of a claim where the underlying obligation does not constitute an insurance contract, and any priority afforded to such claims should be determined based on whether they qualify as secured claims under applicable law. North Carolina appreciates the opportunity to provide comments on these issues and would welcome continued discussion as the Task Force evaluates the treatment of funding agreements and related structured finance arrangements under existing receivership frameworks. We would be pleased to provide any additional information or clarification that may assist in the Task Force's review.
PA	We would like more education on this topic, and to hear the thoughts of the NAIC legal staff about the treatment of FABNs under IRMA. We would also like to hear the Guaranty Fund perspective on whether these would be considered GA covered claims in a liquidation context.
Cantilo Bennett LLP	In evaluating these issues (#1 above), I respectfully suggest that the RITF consider a functional analysis focused on the economic substance and public policy purpose of the obligation, including: • what risk is actually being transferred or supported; • whether the obligation is tied to consumer risks such as disability, mortality, or morbidity contingencies; • whether the ultimate beneficiaries are traditional insurance consumers or sophisticated institutional investors; • whether the counterparties had the ability to negotiate structural, collateral, pricing, credit, or other protections; and • whether extending pari passu policyholder priority treatment would further—or instead dilute—the consumer protection objectives underlying insurance receivership statutes.

	Insurance affordability remains an important public policy concern for regulators across the country. In my view, insolvency priority rules should be carefully evaluated to ensure that the risks associated with institutional funding arrangements are not inadvertently shifted onto traditional insurance consumers and policyholders. I also believe the RITF should review the treatment of funding agreements and related obligations under existing state laws, including: • insurance receivership priority statutes; • definitions of "policyholder," "contract holder," and "covered claim"; • state life and health insurance guaranty association acts; • exclusions applicable to funding agreements or investment-related obligations; and • existing case law interpreting these statutes. In this regard, one important decision for the RITF's consideration is the **California Executive Life litigation, including In re Executive Life Insurance Company, 32 Cal.App.4th 344 (1995).** While the Executive Life decision was based upon California law and the specific statutory framework in place at that time, the decision provides an important discussion regarding the distinction between traditional insurance obligations and funding agreements that lack mortality or morbidity contingencies. In Executive Life, the California Court of Appeal discussed California Insurance Code Section 10541 and concluded that the legislative purpose behind the statute was to classify certain funding agreements as noninsurance obligations. The court further recognized the significance of mortality-contingent features in distinguishing traditional insurance obligations from noninsurance funding agreements.[6] I do not suggest that Executive Life necessarily resolves all issues presently before the RITF or that all states would reach the same conclusions under their respective statutory schemes. However, I do believe the decision is important background authority that should be carefully considered as part of the RITF's review. The interaction between Sections 711 and 801 of the Insurer Receivership Model Act may also warrant further consideration and clarification by the RITF. Section 801 broadly

[6] Prior to its receivership, Executive Life Insurance Company ("ELIC") issued annuity-like products known as Guaranteed Investment Contracts ("GICs"), covering funding for (1) pension and profit-sharing plans, (2) municipal bond obligations, and (3) structured settlements, as well as certain single premium annuities. California Insurance Code Section 10541 was later amended to treat certain noninsurance funding agreements, such as municipal GIC agreements, as creditor claims subordinate to policyholder claims involving insurance risk. The Executive Life decision discusses the distinction between traditional insurance obligations and funding agreements lacking mortality or morbidity contingencies.

	includes "funding agreements" within Class 3 priority treatment without expressly distinguishing between funding agreements supporting traditional insurance obligations and those functioning primarily as institutional funding or capital markets arrangements.[7] At the same time, the drafting note to Section 711 appears to contemplate that, absent express assumption by the receiver, certain counterparty claims arising from netting agreements and qualified financial contracts would receive no greater priority than general creditor claims. As funding agreement structures increasingly intersect with repurchase agreements, swaps, securities contracts, collateralized financing arrangements, and other capital markets structures, further clarification may be appropriate regarding the intended receivership priority treatment of these obligations. To the extent these non-insurance funding arrangements are supported by valid collateral or security interests, the counterparty may appropriately hold secured creditor claims to the extent of the collateral value, with any deficiency claim treated as a general creditor claim. By contrast, non-insurance funding arrangements lacking collateral support would appear more consistent with general creditor treatment rather than traditional policyholder priority treatment. Separate and apart from liquidation priority considerations, the interaction between Sections 711 and 801 may also warrant further consideration in the rehabilitation context, particularly where a receiver is attempting to preserve liquidity and continue core insurance operations for the benefit of traditional policyholders and claimants. In many jurisdictions, the statutory priority provisions applicable in liquidation proceedings may not necessarily govern the operational decisions of a rehabilitator during rehabilitation. At the same time, Section 711 may significantly constrain a receiver's flexibility with respect to qualified financial contracts, netting agreements, collateral arrangements, and related funding structures. Certain funding agreement structures reflected in the NAIC materials involve repurchase agreements, swaps, collateralized financing arrangements, and other integrated capital markets transactions. In some cases, these arrangements may be unsecured or only partially secured and may function primarily as institutional funding obligations rather than traditional insurance protections. As a practical matter, a rehabilitator may seek to continue the payment of traditional insurance benefits and mortality or morbidity-related obligations while suspending, restructuring, deferring, or imposing moratoria upon unsecured non-insurance funding

[7] Certain funding agreement structures referenced in the NAIC materials may implicate Section 711 and related qualified financial contract ("QFC") provisions to the extent they involve repurchase agreements, swaps, securities contracts, collateral arrangements, netting agreements, or other capital markets transactions. Examples may include Funding Agreement Backed Repurchase Agreements ("FABRs"), Foreign Currency Funding Agreement Backed Notes ("FXFABNs"), certain Funding Agreement Backed Loans ("FABLs"), and certain municipal pre-pay or energy-related funding agreement structures involving swaps or derivative arrangements.

	obligations in order to preserve liquidity and protect policyholders. However, the interaction between Sections 711 and 801 may create uncertainty regarding the receiver's authority and flexibility to implement such measures. Accordingly, the RITF may wish to consider whether additional clarification would be appropriate regarding the treatment of unsecured or non-insurance funding arrangements during rehabilitation proceedings, including whether rehabilitators should have express authority, subject to court oversight, to suspend or defer payments on such obligations where necessary to protect policyholders, preserve estate assets, or facilitate rehabilitation efforts. Before concluding, I bring one more possible concern to the attention of the Task Force. Apart from efforts to assign policyholder priority and guaranty association protection to investment obligations in funding agreements, regulators should also be aware of other possible priority issues. Specifically, some structures may be designed to provide counterparties with additional protections through collateral arrangements, security interests, netting provisions, or other contractual mechanisms that may effectively enhance the counterparty's position in an insolvency proceeding relative to traditional policyholder claims. For the same public policy reasons discussed above, I respectfully submit that careful consideration should be given as to whether those protections, at the expense of policyholders, would be justified. Finally, I respectfully suggest that the RITF evaluate these structures through the lens of insurance consumer protection, guaranty association capacity, and the historical purposes underlying insurance receivership priority frameworks, while also considering the economic substance and purpose of the particular funding agreement structure at issue. The concern is that a broad or uniform approach may unintentionally expand insolvency protections beyond their traditional consumer-protection purpose and create unintended consequences for policyholders, guaranty associations, and insurance affordability.

MEMORANDUM

TO: Ann Gillespie, (IL), Chair, and Jacob Stuckey (IL), Receivership and Insolvency (E) Task Force

FROM: Robert Kasinow (NY), Chair, Macroprudential (E) Working Group

DATE: March 16, 2026

RE: Funding Agreements backing Funding Agreement Backed Notes

The Macroprudential (E) Working Group (MWG) would like to make a referral to the Receivership and Insolvency (E) Task Force (RITF) to review the treatment of Funding Agreements that back all types of Funding Agreement Backed Notes (FABNs), similar structures and the Notes themselves in receivership. The MWG has been researching the activity surrounding the issuance of funding agreements by insurers and the related issuance of FABNs by special purpose vehicles. The MWG has also made a referrals to the Blanks (E) WG and Statutory Accounting Principles (E) WG in pursuit of obtaining further disclosures of funding agreements in the Annual Statement.

Please note there are several types of FABNs and we request the RITF consider all types as follows:

- Funding Agreement Backed Notes (FABNs)
- Funding Agreement Backed Commercial Paper (FABCP)
- Foreign Currency Funding Agreement Backed Notes (FXFABNs)

There are also several other types of transactions involving funding agreements that we would like the RITF to review as well. They include:

- Funding Agreement Backed Repurchase Agreements (FABRs)
- Funding Agreement Backed Loans (FABLs)
- Funding Agreement Backed Energy/Municipal Pre-pay Notes.

We ask the RITF to review the priority treatment of these agreements and financial instruments along with (pari passu) “traditional” policyholders in a receivership or insolvency. We would appreciate some type of report back from RITF outlining the results of their review, recommendations and conclusions.

If there are any questions regarding the proposed recommendations, please contact me or NAIC Committee Support Tim Nauheimer (tnauheimer@naic.org). Thank you for your consideration of this referral.