

Draft date: 10/19/26

Virtual Meeting

RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE

Tuesday, October 27, 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

Ann Gillespie, Chair
Glen Mulready, Vice Chair
Mark Fowler
Heather Carpenter
Peter M. Fuimaono
Ricardo Lara
Michael Conway
Joshua Hershman
Michael Yaworsky
Doug Ommen
Sharon P. Clark
Timothy J. Temple
Michael T. Caljouw
Angela L. Nelson
Eric Dunning
Ned Gaines
Susan Ochs
Mike Causey
Remedio C. Mafnas
Michael Humphreys
Suzette M. Del Valle
Michael Wise
Carter Lawrence
Amanda Crawford
Scott A. White
Patty Kuderer
Nathan Houdek

Representative

Kevin Baldwin, Chair
Donna Wilson, Vice Chair
Ryan Donaldson
Jeffery Bethel
Elizabeth Perri
Joe Holloway
Rolf Kaumann
Jane Callanan
Yamile Benitez-Torviso
Jordon Esbrook
Rodney Huggle
Tom Travis
Christopher Joyce
Shelley Forrest
Tadd Wegner
Alexia Emmermann
Susan Ochs
Jacqueline Obusek
Maryann Borja-Arriola
Laura Lyon Slaymaker
Glorimar Santiago
Ryan Basnett
Trey Hancock
Jessica Barta
Dan Bumpas
Charles Malone
Amy Malm

State/Territory

Illinois
Oklahoma
Alabama
Alaska
American Samoa
California
Colorado
Connecticut
Florida
Iowa
Kentucky
Louisiana
Massachusetts
Missouri
Nebraska
Nevada
New Jersey
North Carolina
Northern Mariana Islands
Pennsylvania
Puerto Rico
South Carolina
Tennessee
Texas
Virginia
Washington
Wisconsin

NAIC Support Staff: Jane Koenigsman

AGENDA

1. Consider Adoption of Sept. 17 and Aug. 5 Meeting Minutes—*Kevin Baldwin (IL)*

Attachment One

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|---|------------------|
| 2. Consider Adoption of 2027 Proposed Charges— <i>Kevin Baldwin (IL)</i> | Attachment Two |
| 3. Receive Comments and Consider Adoption of a Memo in Response to the Macprudential (E) Working Group on Funding Agreement Backed Notes— <i>Kevin Baldwin (IL)</i> | Attachment Three |
| 4. Receive the Report of the Receivership Law (E) Working Group— <i>Laura Slaymaker (PA) and Kevin Baldwin (IL)</i> | |
| 5. Receive the Report of the Receivership Financial Analysis (E) Working Group— <i>Donna Miller (OK) and Kevin Baldwin (IL)</i> | |
| 6. Discuss Any Other Matters Brought Before the Task Force
— <i>Kevin Baldwin (IL)</i> | |
| 7. Adjournment | |

Draft: 9/28/26

Receivership and Insolvency (E) Task Force
Virtual Meeting
September 17, 2026

The Receivership and Insolvency (E) Task Force met on Sept. 17, 2026. The following Task Force members participated: Ann Gillespie, Chair, represented by Kevin Baldwin (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 Rolf Kaumann (CO); Joshua Hershman represented by Jane Callanan (CT); Michael Yaworsky represented by Lorrie Arterburn (FL); Doug Ommen represented by Jordon Esbrook and Kevin Clark (IA); Sharon P. Clark represented by Rodney Hugle (KY); Timothy J. Temple represented by Tom Travis (LA); Michael T. Caljouw represented by Christopher Joyce (MA); Angela L. Nelson represented by Shelley Forrest (MO); Mike Causey represented by Jessica Price (NC); Eric Dunning represented by Tadd Wegner (NE); Susan Ochs represented by David Wolf (NJ); Ned Gaines represented by Alexia Emmermann (NV); Michael Humphreys represented by Laura Lyon Slaymaker (PA); Michael Wise represented by Thomas Baldwin (SC); Carter Lawrence represented by Trey Hancock (TN); Amanda Crawford represented by Jessica Barta (TX); Scott A. White represented by Jacob Lubetkin (VA); Patty Kuderer represented by Charles Malone (WA); and Nathan Houdek represented by Mark McNabb (WI).

1. Exposed its 2027 Proposed Charges

Baldwin said the proposed 2027 charges include disbanding the Receivership Law (E) Working Group and moving its charges to the Receivership and Insolvency (E) Task Force. The Working Group's current project regarding updates to the *Receiver's Handbook for Insurance Company Insolvencies* is expected to be complete by year-end. Given the minimal amount of work directed at the Working Group in recent years, the charges propose disbanding the Working Group at the end of the year and moving its charges to the Task Force. If material receivership issues arise in the future that necessitate a working group or subgroup, the Task Force can consider forming one at that time.

Baldwin said, hearing no objections, the proposed charges are exposed for a 30-day public comment period ending Oct. 16.

2. Exposed a Memorandum on the Treatment of FABNs in Receivership

Baldwin said that since April, the Task Force has worked to understand how funding agreement-backed notes (FABNs) are handled in an insurance company receivership.

Jane Koenigsman (NAIC) said a memorandum has been drafted to summarize the Task Force's conclusions. The memorandum outlines the process the Task Force took to study the issue and includes caveats. For example, the Task Force did not study every state's law but rather based its conclusions on the current model language. The memo attempts to distinguish between the funding agreement and the note that is issued by the special purpose vehicle (SPV). The assessment of priority class and pari passu for the funding agreement is based on the *Insurer Receivership Model Act* (#555), which does not distinguish claims based on the characteristics of the claimant but rather on the underlying obligation. The memorandum recognizes that in receivership, how a FABN is handled will depend on the domestic state's law and a review of the actual funding agreement contract.

Koenigsman said the memorandum includes a statement of agreement with the National Organization of Life and Health Guaranty Association's (NOLHGA's) conclusion that funding agreements fall into the category of unallocated annuities that do not qualify for guaranty fund coverage. Koenigsman said the memorandum includes a summary of conclusions. Throughout this review process, the Task Force did not receive comments for changes to receivership or guaranty association model laws, so the memo does not propose any changes. The memorandum states that if a state's law is unclear about how funding agreements are handled, the state is encouraged to update its laws in line with the models. Several states have asked for more information on insurers' exposure. The NAIC has already addressed that concern through new statutory reporting requirements for the upcoming year-end financial statement. The conclusion also comments on the need for future review of this topic by appropriate NAIC groups as these structures evolve.

Mark Bennett (Cantilo & Bennett) said it is important that the memo include that the state law will determine how the funding agreements are handled, as state laws may differ. Bennett said the Task Force may want to consider monitoring the broader priority question, given that the market for funding agreements has grown over the last 10 years, and there are concentrated exposures among a limited group of life insurance companies. For some insurers, the funding agreements can represent a material portion of liabilities. With the new financial reporting requirements next year, there will be more transparency into how much of the funding agreement exposure is supporting traditional liabilities versus capital market structures. This will give regulators insight into how large exposures to capital market products impact policyholder recoveries for traditional insurance in a receivership. He said that he is not suggesting future changes to Model #555 for policyholder priority class, but the data will be important to get visibility into how large the issue is for these large life insurers if one should fail, and the capital market exposure for funding agreements is very dilutive to traditional policyholder obligations.

Baldwin said, hearing no objections, the memorandum is exposed for a 30-day public comment period ending Oct. 16.

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

Draft Pending Adoption

Draft: 8/6/26

Receivership and Insolvency (E) Task Force Virtual Meeting August 5, 2026

The Receivership and Insolvency (E) Task Force met Aug. 5, 2026. The following Task Force members participated: Ann Gillespie, Chair, represented by Kevin Baldwin (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 Rolf Kaumann (CO); Joshua Hershman represented by Jane Callanan (CT); Michael Yaworsky represented by Gladys Ferrer-Hernandez (FL); Doug Ommen represented by Jordon Esbrook and Kevin Clark (IA); Sharon P. Clark represented by Rodney Hugle (KY); Timothy J. Temple represented by Tom Travis (LA); Michael T. Caljouw represented by Christopher Joyce (MA); Angela L. Nelson represented by Shelley Forrest (MO); Mike Causey represented by Jaqueline Obusek (NC); Susan Ochs represented by David Wolf (NJ); Ned Gaines represented by Alexia Emmermann (NV); Michael Humphreys represented by Laura Lyon Slaymaker (PA); 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 April 20 Minutes

The Working Group met April 20. During this meeting, it took the following action: 1) adopted its Dec. 1, 2025, minutes; 2) received the report of the Receivership Financial Analysis (E) Working Group; and 3) received a referral from the Macroprudential (E) Working Group.

Baldwin said the Task Force met in regulator only session on June 1 and July 6 pursuant to paragraph 3 (specific companies, entities, or individuals) and paragraph 6 (consultations with NAIC staff members related to NAIC technical guidance) of the NAIC Policy Statement on Open Meetings.

Obusek made a motion, seconded by Malm, to adopt the Task Force's April 20 minutes (Attachment One). The motion passed unanimously.

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

Slaymaker said the Receivership Law (E) Working Group met May 26 to hear a presentation from Alex Martin (Cantilo & Bennett, LLP) on Medicare secondary payer issues. The presentation was about the challenges in receivership related to the requirements for data collection and reporting to the federal Centers for Medicare & Medicaid Services (CMS), reimbursement responsibilities, and the uncertain guidance from CMS.

As there is currently no guidance in the *Receiver's Handbook for Insurance Company Insolvencies* (Handbook) on Medicare secondary payer issues, the Working Group agreed it would benefit all states to develop guidance and best practices. A drafting group was formed and is comprised of five states and three interested parties. The drafting group met June 24 to develop an outline of topics to begin drafting. The goal is to finalize recommended edits to the Handbook by the end of 2026.

Bumpus made a motion, seconded by Emmermann, to adopt the report of the Receivership Law (E) Working Group (Attachment Two). The motion passed unanimously.

Draft Pending Adoption

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

Wilson said the Receivership Financial Analysis (E) Working Group plans to meet on Aug. 12 at the Summer National Meeting in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities, or individuals) of the NAIC Policy Statement on Open Meetings, to discuss companies in receivership and related topics.

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

4. Received Comments on the Treatment of FABNs in Receivership

Baldwin said the Task Force received a referral from the Macroprudential (E) Working Group asking the Task Force to research how funding agreement-backed notes (FABNs), similar structures, and the notes themselves would be treated in receivership. A survey was sent to state insurance regulators and interested parties seeking feedback on the topic. Responses were received from 13 states and three interested parties (Attachment Three).

Baldwin said NAIC committee support researched funding agreement claims priority within states' receivership laws. The chart is posted to the Task Force's web page. He said that if any state has different information, please communicate that to NAIC committee support so they can update the chart.

Mark Bennett (Cantilo & Bennett, LLP) summarized his two comment letters. He said the term "funding agreement" covers many different types of products. Some funding agreements support traditional insurance products tied to retirement security, mortality, and morbidity losses; others function as institutional funding or capital markets instruments that involve sophisticated counterparties. Those products do not necessarily raise the same public policy considerations. Bennett said the focus should be on the function of the agreements, not the labels.

Bennett said the analysis should focus on the economic substance of the transaction and the public policy purpose. What is the risk and obligation that is being supported? Who is being protected? Is that an individual insurance consumer or an institutional investor? Did the parties have the ability to negotiate commercial protections such as pricing, collateral, and credit terms, which institutional investors do with funding agreements? An important consideration is whether the policyholder treatment furthers the purpose of the receivership and guaranty association statutes, which are designed to protect insurance consumers, and to not absorb institutional investment losses. Public policy considerations are who bears the losses and whether those losses should be passed on to insurance consumers. *Insurer Receivership Model Act* (#555), Section 801, broadly covers funding agreements. Some of these funding agreements would be qualified financial contracts, which are covered under Model #555, Section 711. Model #555, Section 711, includes a drafting note addressing netting agreements. It states that if the receiver expressly affirms a netting agreement, then any claim against the insolvent insurer after netting receives no greater treatment than a general creditor claim. It is not treated as a policyholder claim. The Executive Life Insurance Company decision from 1995, based on California law, addresses this issue. The case analyzes what an institutional investment contract is versus what a policyholder contract is. In that case, the court held that municipal insurance guaranteed funding agreement contracts were creditor claims at the executive level, like receivership.

Bennett said the Task Force should also look at the treatment of funding agreements in rehabilitation. Should those institutional investment contracts, the funding agreements, be paid alongside insurance policy and consumer claims? If that is the treatment, it will deplete the amount of assets available for the insurance consumer claims. If the insurer goes into liquidation, the amount available for the guaranty associations is depleted.

Draft Pending Adoption

Bennett said the landscape over the last 10 years has shown a rising tide of funding agreements. Between 2015 and 2025, funding agreements grew from approximately \$90 billion in 2015 to \$280 billion as of the end of 2025. The top 25 life insurer financials as of year-end 2025 show that FABN obligations range between low single-digit percentages to 18% of those life insurers' total liabilities. The average amount of liabilities covered by funding agreements is roughly 9% of statutory liabilities. When the insurance receivership statutes were enacted, no one contemplated the growth of this product. It is timely to consider whether funding agreements should receive the traditional policyholder treatment or whether there should be clarification that the treatment will depend on the function the funding agreement serves and the risks it is designed to address.

Bill O'Sullivan (National Organization of Life and Health Insurance Guaranty Associations—NOLHGA) summarized his comment letter. He said while NOLHGA did not do a 50-state review of guaranty association eligibility for funding agreements, most states have life and health guaranty association laws that are like the NAIC *Life and Health Insurance Guaranty Association Model Act* (#520). To the extent states do offer coverage to any unallocated annuity contract, he believes the result would be the same. Under Model #520, these funding agreements would not be eligible for guaranty association coverage because they would be a type of unallocated annuity contract issued to a special purpose vehicle (SPV) rather than to a benefit plan or a government lottery. He said Model #520 does not include a net worth exclusion, and therefore, that net worth would not be a consideration in assessing guaranty association coverage.

Don Henderson (Wilkie Farr & Gallagher, LLP) summarized his comment letter. Henderson said he did not offer any policy arguments, but rather clarifications on how these FABN programs work and what the issues are. He said a life insurance company would issue a funding agreement to an SPV, which would then issue its own notes, and those notes themselves, the FABNs, are capital market products. The holder of those notes has no privity with the insurance company. If the insurance company becomes insolvent, the note holders have no claim in the insolvency. The note holder's claim is solely against the SPV that issued the note. The SPV that holds the funding agreement would have a claim against the insolvent insurer. The issue then is whether the funding agreement itself has priority status. Henderson said his comment letter points out that in many states, the funding agreement would clearly have claim-priority status as they have funding agreements specifically listed in receivership law, while others do not. For states that do not identify funding agreements in law, while the issue would need analysis in that state, generally, funding agreements would be treated like annuities.

Wolf recommended researching the rehabilitation of Mutual Benefit Life Insurance Company, as it may have involved related funding agreement structures. O'Sullivan said NOLHGA would research if it has any information to share about the receiverships of Mutual Benefit Life Insurance Company or Executive Life Insurance Company. Jane Koenigsman (NAIC) said she searched in the NAIC *Proceedings* for the period when the current Model #555 was adopted, but she did not find mention of Executive Life Insurance Company. She said she would research the same NAIC *Proceedings* history for any information about Mutual Benefit Life Insurance Company contributing to the changes to Model #555.

Clark asked if the research had included the difference between funding agreements with collateral vs. funding agreements without collateral. Bennett said his comment letter addresses this topic.

Baldwin recommended that any state insurance department that did not respond to the original survey may still submit a response to NAIC committee support.

5. Discussed Drafting a Response to the Macroprudential (E) Working Group

Draft Pending Adoption

Baldwin asked whether Task Force members needed additional education or information before beginning the process of drafting a response to the referral from the Macroprudential (E) Working Group. Hearing none, Baldwin recommended three topics to include in the response: 1) claims priority stating that while not uniform, most states consider funding agreements in the same priority class as policyholder claims; 2) guaranty association coverage as outlined in NOLHGA's response; and 3) a description of how funding agreements would generally be treated in a receivership.

Bennett suggested including a discussion of the impact and consideration of Section 711 of Model #555 as outlined in his comment letter. Marc Altschull (American Council of Life Insurers—ACLI) reminded the Task Force that while funding agreements issued by the insurer are in scope of a receivership, the notes would not be as they are issued by the SPV. He offered to provide additional education to the Task Force. Bennett and Hendersen offered to assist in drafting the response.

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

Draft: 9/10/26

Adopted by the Executive (EX) Committee and Plenary, ____, 2026

Adopted by the Financial Condition (E) Committee, ____, 2026

Adopted by the Receivership and Insolvency (E) Task Force, ____, 2026

2027 Proposed Charges

RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE

The mission of the Receivership and Insolvency (E) Task Force is to be administrative and substantive on issues concerning insurer insolvencies and insolvency guarantees. Such duties include, without limitation: 1) monitoring the effectiveness and performance of the state administration of receiverships and the state guaranty fund system; 2) coordinating cooperation and communication among state insurance regulators, receivers, and guaranty funds; 3) monitoring ongoing receiverships and reporting on such receiverships to NAIC members; 4) developing and providing educational and training programs in the area of insurer insolvencies and insolvency guarantees to state insurance regulators, professionals, and consumers; 5) developing and monitoring relevant model laws, guidelines, and products; and 6) providing resources for state insurance regulators and professionals to promote efficient operations of receiverships and guaranty funds.

Ongoing Support of NAIC Programs, Products, or Services

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

- A. Monitor and promote efficient operations of insurance receiverships and guaranty associations, including discussion of significant cases that affect the administration of receivership.
- B. Monitor and promote state adoption of insurance receivership and guaranty association model acts and regulations, and monitor other legislation related to insurance receiverships and guaranty associations.
- C. Review and provide recommendations on any issues identified that may affect states' receivership and guaranty association laws (e.g., any issues that arise as a result of market conditions, insurer insolvencies, federal rulemaking and studies, international resolution initiatives, or the work performed by or referred from other NAIC committees, task forces, and/or working groups).
- ~~C~~.D. Provide input and comments to the International Association of Insurance Supervisors (IAIS), the Financial Stability Board (FSB), and other related groups on issues regarding international resolution authority.
- ~~D~~.E. Monitor, review, and provide input on federal rulemaking and studies related to insurance receiverships.
- ~~E~~.F. Provide an ongoing review of the *Receiver's Handbook for Insurance Company Insolvencies* (Receiver's Handbook), other related NAIC publications, and the Global Receivership Information Database (GRID), and make any necessary updates.
- ~~F~~.G. Monitor the work of other NAIC committees, task forces, and working groups to identify and address any issues that affect receivership law and/or regulatory guidance.
- ~~G~~.H. Perform additional work as directed by the Financial Condition (E) Committee and/or received through referrals by other groups.

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

- A. Monitor receiverships involving nationally significant insurers/groups to support, encourage, promote, and coordinate multistate efforts in addressing problems.
- B. Interact with the Financial Analysis (E) Working Group, domiciliary regulators, and lead states to assist and advise on the most appropriate regulatory strategies, methods, and/or action(s) regarding potential or pending receiverships.

3. ~~The Receivership Law (E) Working Group will:~~ [\[Propose to Disband the Working Group effective Dec. 31, 2026\]](#)
- ~~A. Review and provide recommendations on any issues identified that may affect states' receivership and guaranty association laws (e.g., any issues that arise as a result of market conditions, insurer insolvencies, federal rulemaking and studies, international resolution initiatives, or the work performed by or referred from other NAIC committees, task forces, and/or working groups).~~
 - ~~B. Discuss significant cases that may affect the administration of receiverships.~~

NAIC Support Staff: Jane Koenigsman



To: Robert Kasinow (NY), Chair; and Anthony Quandt (NE), Vice Chair, Macroprudential (E) Working Group

From: Ann Gillespie, (IL), Chair, and Kevin Baldwin (IL); and, Glen Mulready, (OK), Vice Chair, and Donna Wilson (OK), Receivership and Insolvency (E) Task Force

Date: October 27, 2026

Re: Funding Agreement Backed Notes in Receivership

On March 16, 2026, the Macroprudential (E) Working Group (MPWG) requested the Receivership and Insolvency (E) Task Force to review the priority treatment of Funding Agreement Backed Notes (FABNs), or similar structures receivership, along with (pari passu) “traditional” policyholders in a receivership or insolvency.

The Task Force heard presentations on funding agreements and FABNs, and solicited feedback from state insurance departments and interested parties requesting interpretation of states’ receivership laws regarding treatment of FABNs and similar structures in an insolvency, guaranty fund coverage, and views on claim priority treatment pari passu with traditional policyholders¹.

Background and Caveats

The following interpretation is based on NAIC Models and a general understanding of funding agreements and FABNs; however, it should be noted that most states indicated limited or no prior experience with funding agreements, FABNs or similar structures in receivership². In a receivership proceeding, handling of the funding agreement or FABN would be dependent on the terms and conditions of the actual agreement, for which there could be multiple variations of FABNs³, as well as the receivership laws in the domiciliary state. While all states have a receivership law based on a version of the NAIC’s *Insurer Receivership Model Act*, (Model #555, known as “IRMA”), most states laws are based on earlier versions (e.g., *Insurer Rehabilitation and Liquidation Model Act*, known as “IRLMA”) and therefore certain provisions may vary.

¹ NAIC Proceedings – Summer 2026, Receivership and Insolvency (E) Task Force, attachment Three, for related materials.

² Historical examples: Mutual Benefit Life Ins. Co. (Rehabilitation 1991, Superior Court of New Jersey, Chancery Division, C-91-00109); Executive Life Ins. Co. (Liquidation 1995, California Court of Appeal, 32 Cal.App.4th344)

³ Examples of variations of FABNs: Funding agreement backed notes (FABNs), foreign currency funding agreement backed notes (FXFABNs), secured funding agreement structures (FABRs) where borrowings are collateralized, funding agreement backed loans (FABLs), and funding agreement backed municipal pre-pay/energy bonds.

The Task Force's conclusions are based on a general understanding of funding agreements. The conclusions are not based on a nationwide study of states' laws, nor do the conclusions address variations in a FABN structure, or any specific terms and conditions of the funding agreement that might present an unusual circumstance.

Funding Agreement vs. the FABN (the "note") in Receivership

It is important to distinguish between the funding agreement and the FABN (i.e., the note) that is supported by the funding agreement.

The Funding Agreement: The insurance company issues the funding agreement to a special purpose vehicle (SPV). The insurer records the liability, typically as a deposit-type contract liability, and the proceeds are assets of the general account. The funding agreement is without mortality, morbidity or longevity risk. The insurer's obligation is to the SPV as the holder of the funding agreement. In the event of the insurer's receivership, the funding agreement would be a claim against the insurance company.

The Note: In a typical FABN program, a life insurance company issues a funding agreement to the SPV, which in turn issues notes to institutional investors (e.g., pension funds, asset manager, state and local government entities, sovereign wealth funds, etc.). The note is issued by the SPV, which is a separate non-insurance legal entity established for the specific purpose of issuing the FABN. The funding agreement is held by a trustee of the SPV. The insurer is not a party to the note agreement; therefore, the noteholder would not have a claim against the insurer's estate. As the SPV is not an insurance company, it is not subject to insurance receivership laws.

Model #555 Priority Class

Under the current Model #555, funding agreements fall within priority distribution Class 3 for policyholder claims. While the immediate prior version of Model #555—IRLMA does not specifically reference funding agreements, it does identify annuities within Class 3 as a policyholder claim. Funding agreements are commonly categorized as unallocated annuities. Refer to the Model #555 excerpts in Appendix A, below.

While a funding agreement should be evaluated based on the terms and conditions of the contract, under Model #555 it is typically a type of annuity contract. Funding agreements do not involve mortality, morbidity or longevity of the person to whom the funding agreement is issued. Under Model #555, annuities and funding agreements would fall within the priority of distribution as Class 3 policyholder claims. Where state law does not specifically address funding agreements, they would typically fall within the same priority class with insurance contracts. In states where funding agreements do not represent policyholder obligations under state law, the priority would be based on an assessment of the contract and the claim. Some states indicated funding agreements do not meet the statutory definition of insurance within their state's law⁴. In such cases, depending upon review of the contract, those obligations would likely classify the obligation as either an unsecured or a secured claim depending on whether the agreement includes collateral held in trust to secure obligations under a funding agreement.

⁴ Examples where funding agreements are not considered insurance per the Task Force's survey: North Carolina Article 30 of Chapter 52 General Statute § 58-1-10; Washington Title 48, RCW 48.31.280.

The impact of unique contract terms or structural differences in FABNs may include for example, if collateral is involved in the funding agreement transactions. As there were a variety of structures presented, unique contract terms or structural differences would need to be assessed on a case-by-case basis in the event of receivership.

With regard to executory contracts, based on those states responding to the Task Force's survey, FABNs would either not qualify as an executory contract or the receiver would not be obligated to continue an executory contract.

Pari Passu Treatment with Traditional Policyholders

The referral from MPWG requested the Task Force specifically consider pari passu treatment of claims under a funding agreement owned by a sophisticated investor would be treated differently than other policy owners. Some states have expressed concerns that in a receivership where the funding agreement represents a materially large claim liability to the estate, such a claim would reduce the assets available to other traditional policyholders and raise guaranty association assessment needs. The claim priority distribution provision in Model #555 does not make a distinction in claims priority based on type of policyholder as the statutory framework is designed to apply uniformly based on the substance of the obligation. The priority class for a claim is based on the review of the specific funding agreement and the nature of the underlying obligation, not the characteristics of the owner of the funding agreement.

Guaranty Association Coverage

The National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) provided an analysis of eligibility of funding agreements for guaranty association coverage, based on the NAIC's *Life and Health Insurance Guaranty Association Model Act* (Model #520), and certain assumptions about funding agreements. Adoption of Model #520 is generally consistent across all states.

The following is a summary of NOLHGA's analysis as of May 2026⁵ whereby it concluded funding agreements issued in FABN programs appear to be unallocated annuity contracts and would not qualify for guaranty association coverage. The Task Force agrees with NOLHGA's assessment.

For purposes of NOLHGA analysis, it assumes: 1) the SPV, which is not an individual, is the legal owner of and sole counterparty to the insurer under the funding agreement; 2) 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; 3) the insurer does not issue certificates under funding agreements; and, 4) FABN Funding Agreements are issued to SPVs. 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.

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 #520. Since a funding agreement issued in an FABN program 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 program or under related certificates issued by the insurer, FABN programs would appear to fall

⁵ See the *NAIC Proceedings – Summer 2026, Receivership and Insolvency (E) Task Force* as attachment three for NOLHGA's full comment letter.

within the definition of an unallocated annuity contract under Model #520. Model #520 section 3B(2)(h) only provides coverage for unallocated annuity contracts issued to or in connection with benefit plans or government lotteries. SPVs used in FABN programs do not appear to be benefit plans or government lotteries. Therefore, funding agreements fall within the exclusion in section 3B(2)(h) and would not appear to be eligible for guaranty association coverage.

Conclusion

The receivership ~~and guaranty association~~ laws of the insurer's domestic state govern the handling of funding agreements in receivership. In a receivership proceeding, determination of the handling of the funding agreement would be dependent on a review of the terms and conditions of the agreement. As stated above, in most states, [based on this preliminary review](#), funding agreements (not FABNs) would be treated pari passu with other life and annuity policyholder claimants, but it appears would not be eligible for guaranty association coverage.

At this time the Task Force does not recommend any changes to existing receivership and guaranty association model laws. Since funding agreements are addressed in Section 801-Priority of Distributions of the current version of Model #555 and unallocated annuities are addressed in Model #520, the Task Force encourages more consistent adoption of related provisions by state insurance departments, where necessary, to clarify the treatment of funding agreements in line with the current Model #555 and Model #520.

The Task Force appreciates the NAIC's efforts to enhance insurer's statutory reporting requirements to improve disclosures and transparency to better understand funding agreements and related FABN structures within the insurance industry. [This reporting will enable the Task Force and regulators to better evaluate the growth and concentration of these obligations at specific insurers and their potential significance in an insurance insolvency, as well as how these increasingly varied structures function in practice. After consideration of the results of future statutory reporting of FABNs, the Task Force will consider if this topic warrants future discussion.](#)

The Task Force encourages the Macroprudential (E) Working Group or another appropriate NAIC group(s) to also consider evaluating such arrangements on an enterprise basis, including the role of affiliated entities and off-balance-sheet structures, to understand the broader holding company system exposure, and to ensure such structures operate in a manner that does not circumvent statutory protections.

If there are any questions regarding this response, please contact me or NAIC staff (Jane Koenigsman, jkoenigsman@naic.org) for further clarification.

APPENDIX A

Insurer Receivership Model Act (Current 2007 Version of Model 555 “IRMA”)

ARTICLE VIII. DISTRIBUTIONS.

Section 801. Priority of Distribution

C. Class. 3. All claims under policies of insurance including third party claims, claims under annuity contracts and funding agreements, claims under non-assessable policies for unearned premium, claims of obligees (and, subject to the discretion of the receiver, completion contractors) under surety bonds and surety undertakings (not to include bail bonds, mortgage or financial guaranty or other forms of insurance offering protection against investment risk, or warranties), claims by principals under surety bonds and surety undertakings for wrongful dissipation of collateral by the insurer or its agents, and claims incurred during the extension of coverage provided for in Section 502. All other claims incurred in fulfilling the statutory obligations of a guaranty association not included in Class 2, including but not limited to indemnity payments on covered claims and, in the case of a life, health and annuity guaranty association, all claims as a creditor of the impaired or insolvent insurer for all payments of and liabilities incurred on behalf of covered claims or covered obligations of the insurer and for the funds needed to reinsure those obligations with a solvent insurer.

Notwithstanding any other provision of this Act, the following claims shall be excluded from Class 3 priority and paid as claims in Class 7, except as otherwise provided in this section:

Drafting Note: If appropriate, states may add to Class 3: “This class shall also include indemnity payments on covered claims, unearned premiums, and payments for the continuation of coverage made by any entity responsible for the payment of claims or continuation of coverage of an insolvent health maintenance organization.”

- (1) Obligations of the insolvent insurer arising out of reinsurance contracts;
- (2) Obligations incurred pursuant to an occurrence policy, or reported pursuant to a claims made policy, after the expiration date of the insurance policy or after the policy has been replaced by the insured or canceled at the insured’s request or after the policy has been canceled as provided in this Act. Notwithstanding this subsection, unearned premium claims on policies, other than reinsurance agreements, shall not be excluded;
- (3) Obligations to insurers, insurance pools or underwriting associations and their claims for contribution, indemnity or subrogation, equitable or otherwise, except for direct claims under policies where the insurer is the named insured;
- (4) Any amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy, which shall be paid as claims in Class 9;

Drafting Note: In some jurisdictions the courts have held that coverage for punitive or exemplary damages may not be excluded from liability policies.

- (5) Tort claims of any kind against the insurer, and claims against the insurer for bad faith or wrongful settlement practices; and
- (6) Claims of the guaranty associations for assessments not paid by the insurer.

Insurers Rehabilitation and Liquidation Model Act (1999 Version of Model 555 “IRLMA”)

Article II. Proceedings

Section 47. Priority of Distribution

- C. Class 3. All claims under policies including claims of the federal or any state or local government for losses incurred, (“loss claims”) including third party claims, claims for unearned premiums, and all claims of a guaranty association, for payment of covered claims or covered obligations of the insurer. All claims of a guaranty association for reasonable expenses other than those included in Class 2. All claims under life and health insurance and annuity policies, whether for death

proceeds, health benefits, 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.

Notwithstanding the foregoing, the following claims shall be excluded from Class 3 priority:

- (1) Obligations of the insolvent insurer arising out of reinsurance contracts;
- (2) Obligations incurred after the expiration date of the insurance policy or after the policy has been replaced by the insured or canceled at the insured's request or after the policy has been canceled as provided in this Act;
- (3) Obligations to insurers, insurance pools or underwriting associations and their claims for contribution, indemnity or subrogation, equitable or otherwise;
- (4) Any claim which is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer;
- (5) Any amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy; and

Drafting Note: In some jurisdictions the courts have held that coverage for punitive or exemplary damages may not be excluded from liability policies.

- (6) Tort claims of any kind against the insurer, and claims against the insurer for bad faith or wrongful settlement practices.

Insurers Supervisions, Rehabilitation and Liquidation Model Act (1977 Version of Model 555)

Article III. Formal Proceedings

Section 42. Priority of Distribution

C. Class 3. All claims under policies for losses incurred, including third party claims, all claims against the insurer for liability for bodily injury or for injury to or destruction of tangible property which are not under policies, and all claims of a guaranty association or foreign guaranty association. All claims under life insurance and annuity policies, 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 obligations 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.

Comments from Florida on FABN Memo

As Receiver for Florida, we have significant concerns regarding funding agreements and their treatment. Based on the information currently available to us, there is also concern that the NAIC would treat funding agreements as Class 3 claims.

Under a receivership priority structure, priority is designed to protect policyholders and covered claims arising from traditional insurance products. In Florida, our statute is silent with respect to funding agreements. At first glance, these obligations appear to be more investment-related than insurance-related.

That said, we remain open-minded and recognize that we cannot make an informed determination without first reviewing an actual agreement and understanding how the company treated the associated funds within its day-to-day operations.

Based on the information and scenarios presented during these discussions, our current position would be that such claims would not receive a priority classification above a Class Six, general creditor claim. Moreover, depending on our review (at time of an actual receivership) of the underlying agreement and the manner in which the funds were actually handled and used, we may determine that the obligation warrants an even higher classification (lower priority) if its purpose or nature is ultimately inconsistent with the representations made during these discussions.

Accordingly, any classification at this stage should be viewed as preliminary and subject to further review of the specific agreements, the underlying transactions, and the company's treatment of the funds.

Thanks,

Yami

Yamile Benitez-Torviso

Director of Estate Management

Florida Department of Financial Services

Division of Rehabilitation and Liquidation

Comments from Pennsylvania on FABN Memo

Thank you for the opportunity to comment on the Receivership and Insolvency Task Force's (RITF) work regarding funding agreements, including those supporting Funding Agreement-Backed Notes (FABNs) and other special purpose vehicle (SPV) structures. We appreciate the thoughtful work undertaken to consolidate the information presented to the Task Force and to develop its current set of recommendations.

Specifically related to the Memo itself, we are concerned with the following statement in the memo:

"As stated above, in most states, funding agreements (not FABNs) would be treated pari passu with other life and annuity policyholder claimants, but it appears would not be eligible for guaranty association coverage."

We are not sure if this is true. In Pennsylvania, we do not know how funding agreements would be treated with regard to other life and annuity policyholders. This statement contradicts the beginning of the memo, which indicates that most states have had no experience with funding agreements in this context.

Additionally, as RITF transmits its conclusions back to the Working Group, it is important that the referral not be characterized as fully resolved. We understand that, beginning next year, enhanced NAIC financial reporting requirements will provide regulators with substantially more detailed information regarding funding agreements supporting FABNs and related SPV structures. This improved reporting may enable regulators to better evaluate the growth and concentration of these obligations at specific insurers, as well as how these increasingly varied structures function in practice.

As funding agreements are used with greater frequency in institutional financing and capital-markets transactions, it is worth considering whether all such structures should necessarily receive the same policyholder-level treatment in an insolvency. As we begin receiving more information in 2027, it may be a good time to revisit the question of whether modifications to the Model Act or related guidance would be warranted.

For these reasons, we respectfully recommend that RITF's response to the Macroprudential Working Group reflects the Task Force's intention to continue monitoring these developments as new disclosures become available.

Thank you for your consideration.



Laura Lyon Slaymaker, Esquire

Deputy Insurance Commissioner

Office of Liquidations, Rehabilitations and Special Funds

Pennsylvania Insurance Department



October 1, 2026

Mr. Kevin Baldwin, Chair

Receivership and Insolvency (E) Task Force
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1000
Kansas City, MO 64106-2197

Re: Exposure of Response to the Macroprudential (E) Working Group on Funding Agreement Backed Notes

Submitted Electronically

Dear Chair Baldwin:

The American Council of Life Insurers (ACLI) appreciates the Task Force's thoughtful consideration of stakeholder feedback and its careful analysis of funding agreements and funding agreement-backed note (FABN) structures. The Task Force's response reflects a balanced and well-reasoned review of the applicable receivership and guaranty association frameworks.

ACLI agrees with the Task Force's conclusion that funding agreements are generally treated *pari passu* with other life and annuity policyholder claims under existing state receivership laws and that funding agreements issued in FABN programs generally would not be eligible for guaranty association coverage. We also appreciate the Task Force's recognition that the treatment of any particular arrangement ultimately depends on the terms of the contract and applicable state law.

Thank you for your engagement on this issue and for the opportunity to provide input throughout the Task Force's review.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Marc Altschull", is written over a light blue circular background.

Marc Altschull, CFA, FSA, MAAA
Managing Director, Investment & Capital Markets Policy
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American Council of Life Insurers | 300 New Jersey Avenue, NW, 10th Floor | Washington, DC 20001

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October 16, 2026

Receivership and Insolvency (E) Task Force
National Association of Insurance Commissioners

Re: Comments on Draft Memorandum —Funding Agreement-Backed Notes in Receivership

Members of the Task Force:

Thank you for the opportunity to comment on the Task Force's draft memorandum concerning the treatment of funding agreements and related structures in insurance receiverships. I appreciate the work undertaken by the Task Force in evaluating these issues and developing its recommendations.

My principal suggestion is that the Task Force complete its current response to the Macroprudential (E) Working Group while retaining this matter for further consideration as additional information becomes available.

Beginning with year-end 2026, enhanced NAIC financial reporting requirements under **SSAP No. 52 (Deposit-Type Contracts), Annual Statement Note 11, and Exhibit 7** will provide regulators with greater information concerning funding agreements supporting Funding Agreement-Backed Notes (FABNs) and other funding agreement structures. These disclosures should provide additional information concerning the amounts, types of arrangements, maturities, and certain contractual and collateral features of these obligations. Importantly, the new reporting should help regulators better evaluate the concentration of these obligations among individual life insurers and their potential significance in an insurance insolvency.

From a receivership perspective, I believe there remains an important question whether all funding agreements should necessarily receive the same claims-priority treatment as traditional insurance obligations, or whether consideration should be given to distinguishing arrangements supporting traditional insurance risks, including mortality, morbidity, and disability, from those primarily serving institutional financing and capital-markets purposes. The potential effect of substantial funding agreement obligations on recoveries for traditional policyholders and insurance claimants is also worthy of continued consideration.

I am not suggesting that the Task Force needs to resolve these questions now or delay its present recommendations. Rather, I respectfully suggest that its response to the Macroprudential Working Group expressly recognize the importance of continued monitoring and further consideration of these issues in 2027, as the enhanced financial disclosures become available. This would provide a more informed basis for determining whether any further guidance or modifications to the existing receivership framework may be appropriate. Thank you for your consideration.

Respectfully submitted,



Mark F. Bennett
Cantilo & Bennett, L.L.P.



October 16, 2026

Jane M. Koenigsman, FLMI
Senior Manager II
Life & Health Financial Analysis
National Association of Insurance Commissioners
jkoenigsman@naic.org

Re: RITF's Draft Memo Regarding Funding Agreement Backed Notes in Receivership

Dear Ms. Koenigsman:

The National Organization of Life and Health Insurance Guaranty Associations ("NOLHGA") is submitting this comment letter in response to the Receivership and Insolvency Task Force's ("RITF") request for comments on the referenced draft memorandum.

NOLHGA's only comment relates to the first sentence in the conclusion of the memo. That sentence (which is quoted in full below) states that receivership and *guaranty association* laws of the insurer's domestic state govern the handling of funding agreements in receivership.

While it is true the receivership law of the insurer's domestic state would govern the handling of funding agreements in receivership, it is not necessarily true that guaranty association treatment of funding agreements would be governed by the guaranty association law of the insurer's domestic state. Under the NAIC Life and Health Insurance Guaranty Association Model Act, the applicable law for determining guaranty association coverage will typically be the guaranty association law in the state of residence of the policy or contract owner or other designated person.

To address this issue, we would suggest the following technical change to the first sentence of the conclusion:

"The receivership ~~and guaranty association~~ laws of the insurer's domestic state govern the handling of funding agreements in receivership."

We thank you for the opportunity to provide comments on the draft memo.

Very truly yours,

A handwritten signature in black ink that reads "William P. O'Sullivan". The signature is written in a cursive, slightly stylized font.

William P. O'Sullivan
Senior Vice President & General Counsel