NAIC
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

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State Insurance Receivership Priority Act

- *To better protect insurance consumers' interest when an insurer fails, the NAIC supports legislation that amends the Federal Priority Act to require the United States to file claims against insolvent insurers within a 180-day time period or as established by State law or the court of jurisdiction.*
- *Unlike the Bankruptcy code, the Federal Priority Act currently has no time limit for the United States to file its claims against an insolvent insurer's estate.*
- *The absence of a statutory deadline has created a process that leads to significant delays in resolving an insolvent insurance company, increases the expenses associated with the resolution of the insolvent insurance company, and unnecessarily harms consumers and creditors.*

Background

When an insurance company becomes insolvent and is required to be liquidated the receiver, usually the insurance commissioner, is responsible for fully distributing its assets to pay insurance consumer and creditor claims. In many insurance receiverships, the United States government can be a creditor to the estate.

The Federal Priority Act (FPA) provides that claims of the United States are to be paid first in such proceedings. Under the FPA, there is no statutory deadline for the United States to notify an insurance receiver of claims it may have against an insolvent insurance company and personal liability is imposed on insurance receivers that pay any debts prior to government claims. By comparison, the Bankruptcy Code provides for the United States to file its claims within 180 days after the date of the order of relief unless a later time is provided by the Federal Rules of Civil Procedure.

Because the receiver is personally liable, they cannot proceed with liquidating the assets unless there is a waiver or release of claims from the United States. Absent a statutory deadline, waiver requests are often left pending for years and are dependent on the discretion of attorneys at the Department of Justice. This has caused significant delays in the distribution of assets of insolvent insurers, increased administrative costs, and has adversely impacted the financial interests of policyholders and creditors. Commissioners in multiple states have requests for at least 29 releases pending, with the DOJ, some for as long as 17 years, impacting policyholders in nearly all states and jurisdictions and with a total dollar impact of $3.14 billion. To remedy this, NAIC seeks a legislative fix that would set clear time limits in the federal priority act for the DOJ to file claims of the United States and eliminates personal liability for receivers.

Key Points

- ✓ Since the United States may currently file a claim at any time, even many years after a proceeding has begun, liquidators of insurers are unable to determine the universe of creditors entitled to share in an estate.
- ✓ Since receivers, usually the insurance commissioners, are held personally liable, releases from the United States are required before they can distribute assets to policyholders and creditors.
- ✓ Absent a statutory deadline, these releases can take years to obtain, thereby increasing administrative expenses and consumer harm.

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