

To Receivership & Insolvency (E) Task Force Members, Interested Regulators and Interested Parties:

Feedback is requested on the following questions related to the handling of Funding Agreement Backed Notes, similar structures and the underlying notes in receivership and insolvency. Please also refer to the Macroprudential (E) Working Group referral and other materials provided on this topic on the Task Force's webpage <https://content.naic.org/committees/e/receivership-insolvency-tf>.

Comments are due to jkoenigsman@naic.org by May 20, 2026.

Illinois Comments on NAIC survey re Funding Agreement Backed Notes

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?

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.

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?

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.

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?

IRMA's priority classification for FABNs is consistent with Illinois receivership law. Policyholder priority classification is granted for Funding Agreements under both laws.

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

n/a

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

Illinois Department of Insurance

Additional information delineating the particular unique aspects of various FABNs would be required to answer this question.

6. Is there guaranty fund coverage?

The receiver defers response to this question to the Illinois Life and Health Insurance Guaranty Association and/or NOLHGA.

7. Are there concerns regarding sophisticated investors receiving the same priority of claims treatment as “traditional” policyholders?

Illinois receivership law does not distinguish between sophisticated and unsophisticated policyholders for purposes of priority of distribution of receivership estate assets.

8. Any other comments about FABNs and similar financial instruments treatment along with (pari passu) “traditional” policyholders in a receivership or insolvency?

Not at this time.

9. Any recommendations or conclusions for the Task Force’s consideration?

Not at this time.

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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?

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.

Massachusetts Division of Insurance

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?

Please see response to question #1.

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?

Massachusetts has not adopted IRMA's priority of claims provisions. Funding Agreements as defined under Massachusetts law would likely be 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;

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

Not applicable.

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

Unclear at this time.

6. Is there guaranty fund coverage?

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.

7. Are there concerns regarding sophisticated investors receiving the same priority of claims treatment as "traditional" policyholders?

We believe the potential that certain FABN-related arrangements, if treated as a general account obligation, could potentially dilute the asset recovery available to

Massachusetts Division of Insurance

claimants under life and health insurance policies and annuity contracts raises concerns.

8. Any other comments about FABNs and similar financial instruments treatment along with (pari passu) “traditional” policyholders in a receivership or insolvency?

No additional comments.

9. Any recommendations or conclusions for the Task Force’s consideration?

We have no recommendations or conclusions at this time but look forward to further discussions regarding FABN’s treatment in insurer receiverships.

To Receivership & Insolvency (E) Task Force Members, Interested Regulators and Interested Parties:

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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?
 - 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.
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?
- 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.
 - 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.

- 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.
 - 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.
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?
- Because the Insurers Supervision, Rehabilitation and Liquidation Act address the treatment of funding agreements, we rely on it and not on the model law.
4. If you have experience in dealing with FABNs in a receivership, describe how it was handled or any challenges?
- I have no experience with dealing with FABNS in receivership proceedings.
5. Are there any unique aspects of the various FABNs or how they are structured, that would result in different treatment?
- See above discussion regarding the nature of the underlying notes.
6. Is there guaranty fund coverage?
- 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".

7. Are there concerns regarding sophisticated investors receiving the same priority of claims treatment as “traditional” policyholders?
 - No comment.
8. Any other comments about FABNs and similar financial instruments treatment along with (pari passu) “traditional” policyholders in a receivership or insolvency?
 - No additional comments.
9. Any recommendations or conclusions for the Task Force’s consideration?
 - No recommendations or conclusions at this time.



May 11, 2026

Via Electronic Mail
jkoenigsman@naic.org

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Re: Treatment of Funding Agreement Backed Notes (FABNs) and Related Structures in Receivership

Dear Ms. Koenigsman:

North Carolina appreciates the opportunity to provide input regarding the treatment of funding agreements and related capital markets structures in receivership. The instruments identified, including Funding Agreement Backed Notes (FABNs), Funding Agreement Backed Commercial Paper (FABCP), Foreign Currency FABNs (FXFABNs), Funding Agreement Backed Repurchase Agreements (FABRs), Funding Agreement Backed Loans (FABLs), and similar structures, reflect evolving financing mechanisms that warrant careful analysis within existing statutory frameworks.

North Carolina's analysis is grounded in Article 30 of Chapter 58 of the North Carolina General Statutes ("Article 30"), which governs insurer receiverships, as well as related provisions of Chapter 58 that define insurance contracts, establish regulatory authority, and delineate the treatment of creditors and assets.

1. Priority of Claims Treatment

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 FABNs 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 FABNs 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.

2. Treatment of Underlying Notes and Executory Contracts

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 FABNs 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.

3. Interpretation of IRMA Relative to State Law

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 FABNs 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 FABNs 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.

4. Experience and Observed Challenges

North Carolina does not have direct experience administering a receivership involving FABNs. Accordingly, this response reflects application of the State's statutory framework rather than prior case-specific experience.

5. Structural Variability and Its Impact

The materials provided demonstrate that FABN-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. Guaranty Fund Coverage

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), FABNs and similar instruments would not be eligible for guaranty fund protection.

7. Policy Considerations: Sophisticated Investors vs. Policyholders

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. § 58-30-1(c).

The question of whether investors in FABNs are sophisticated does not alter this analysis. Under North Carolina law, priority of claims is determined by the nature of the underlying obligation, not by the characteristics of the holder of that claim.

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 FABNs 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.

8. Pari Passu Treatment with Policyholders

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.

9. Recommendations

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.

Conclusion

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.

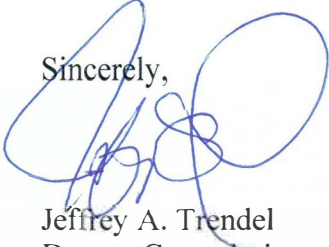
Because these instruments do not constitute insurance obligations, they fall outside the policyholder class, and their treatment in receivership should be determined under the statutory framework applicable to creditor claims.

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.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeffrey A. Trendel', with a large, stylized flourish above the name.

Jeffrey A. Trendel
Deputy Commissioner
Financial Oversight & Special Entities Division
North Carolina Department of Insurance

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Pennsylvania Responses, see below:

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? **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.**
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? **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.**
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? **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.**
4. If you have experience in dealing with FABNs in a receivership, describe how it was handled or any challenges? **We have not had any experience with FABNs in receivership.**
5. Are there any unique aspects of the various FABNs or how they are structured, that would result in different treatment? **We aren't sure and would like more education on this topic.**
6. Is there guaranty fund coverage?
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.
7. Are there concerns regarding sophisticated investors receiving the same priority of claims treatment as "traditional" policyholders? **We do have concerns about this and want to**

Pennsylvania Insurance Department

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?

8. Any other comments about FABNs and similar financial instruments treatment along with (pari passu) “traditional” policyholders in a receivership or insolvency?
9. Any recommendations or conclusions for the Task Force’s consideration? 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.

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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?

The Texas Receivership Act's (TIRA) application to FABNs and FAs would be fact specific, depending upon the specific terms of agreements providing the rights in any collateral held in trust.

A claim under an FABN would be a "Class 5-other secured creditors claim" under TIRA, (IRMA Class 7).

A claim under an FA would be a "Class 2-policy claim" under TIRA, (IRMA Class 3).

If a claim against the collateral held in the trust account was determined to be a secured claim, that collateral would not be a general asset subject to distribution.

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?

TIRA gives the receiver the discretion to assume or reject 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?

Texas has adopted IRMA. Although TIRA's priority classes are numbered differently from IRMA, their effect is the same.

4. If you have experience in dealing with FABNs in a receivership, describe how it was handled or any challenges? A Texas receivership has not yet dealt with an FABN
5. Are there any unique aspects of the various FABNs or how they are structured, that would result in different treatment?

See answer to #1. Results would depend on the specifics of any collateral agreement.

6. Is there guaranty fund coverage?

There is no guaranty fund coverage for FABNs or FAs that we understand would be issued to support an FABN.

7. Are there concerns regarding sophisticated investors receiving the same priority of claims treatment as “traditional” policyholders?

TIRA allows the same priority of claims for FAs.

8. Any other comments about FABNs and similar financial instruments treatment along with (pari passu) “traditional” policyholders in a receivership or insolvency?

If a claim against collateral held in trust was determined to be a secured claim, that claim would be satisfied from the trust account before any priority distribution. If funds are not available for a full distribution at TIRA Class 2, the secured claimant would recover its claim, while all Class 2 claimants would only receive a pro-rata distribution. As there is no GA coverage, the claimant’s only recovery would be from the general assets of the estate.

9. Any recommendations or conclusions for the Task Force’s consideration?

COMMONWEALTH OF VIRGINIA



SCOTT A. WHITE
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May 20, 2026

Director Ann Gillespie
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Re: Feedback on Funding Agreement Backed Notes

Dear Director Gillespie,

The Virginia Bureau of Insurance ("Bureau") appreciates the opportunity to offer its comments on the request for feedback on funding agreement backed notes ("FABNs") from the Receivership and Insolvency (E) Task Force. The Bureau's response to the questions raised by the Task Force is provided below.

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?

Response: 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.

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?

Response: 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.

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?

Response: 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.

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

Response: None.

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

Response: None.

6. Is there guaranty fund coverage?

Response: 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.

7. Are there concerns regarding sophisticated investors receiving the same priority of claims treatment as “traditional” policyholders?

Response: 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.

8. Any other comments about FABNs and similar financial instruments treatment along with (pari passu) “traditional” policyholders in a receivership or insolvency?

Response: None.

9. Any recommendations or conclusions for the Task Force’s consideration?

Response: None.

The Bureau offers these responses for the Task Force’s consideration and looks forward to continuing to engage on this important issue.

Sincerely,
/s/ Dan Bumpus
Deputy Commissioner
Innovative Solutions & Strategies Division

Cc: Doug Stolte
Greg Chew
Jennifer Blizzard
Jacob Lubetkin

To Receivership & Insolvency (E) Task Force Members, Interested Regulators and Interested Parties:

Feedback is requested on the following questions related to the handling of Funding Agreement Backed Notes, similar structures and the underlying notes in receivership and insolvency. Please also refer to the Macroprudential (E) Working Group referral and other materials provided on this topic on the Task Force's webpage <https://content.naic.org/committees/e/receivership-insolvency-tf>.

Comments are due to jkoenigsman@naic.org by May 20, 2026.

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?
 - a. ANSWER: 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.
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?
 - a. ANSWER: My legal opinion is that notes associated with FABNs would be treated as Class 5 (claims of general creditors) under RCW 48.31.280.
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?
 - a. ANSWER: Washington State has not adopted the Insurer Receivership Model Act (IRMA-555)
4. If you have experience in dealing with FABNs in a receivership, describe how it was handled or any challenges?
 - a. ANSWER: In speaking with our staff, we don't have any documented recent experience dealing with FABNs in a receivership in Washington State.
5. Are there any unique aspects of the various FABNs or how they are structured, that would result in different treatment?
 - a. ANSWER: Not that I know of.
6. Is there guaranty fund coverage?

- a. ANSWER: 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. (i) Is a resident, regardless of where the contract owner resides; or
 - ii. (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.
-
7. Are there concerns regarding sophisticated investors receiving the same priority of claims treatment as “traditional” policyholders?
 - a. ANSWER: 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.
-
8. Any other comments about FABNs and similar financial instruments treatment along with (pari passu) “traditional” policyholders in a receivership or insolvency?
 - a. ANSWER: No.
-
9. Any recommendations or conclusions for the Task Force’s consideration?
 - a. ANSWER:

To Receivership & Insolvency (E) Task Force Members, Interested Regulators and Interested Parties:

Feedback is requested on the following questions related to the handling of Funding Agreement Backed Notes, similar structures and the underlying notes in receivership and insolvency. Please also refer to the Macroprudential (E) Working Group referral and other materials provided on this topic on the Task Force's webpage <https://content.naic.org/committees/e/receivership-insolvency-tf>.

Comments are due to jkoenigsman@naic.org by May 20, 2026.

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?

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.

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?

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.

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?

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?

We don't have any experience in dealing with FABNs in receivership.

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

Not that we are aware of.

6. Is there guaranty fund coverage?

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.

7. Are there concerns regarding sophisticated investors receiving the same priority of claims treatment as "traditional" policyholders?

Yes.

8. Any other comments about FABNs and similar financial instruments treatment along with (pari passu) "traditional" policyholders in a receivership or insolvency?

None at this time.

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

None at this time.

CANTILO & BENNETT, L.L.P.

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May 19, 2026

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

Re: Funding Agreements and Related Structures in Insurance Receiverships

Members of the Task Force:

Thank you for the opportunity to provide comments regarding the referral from the Macroprudential (E) Working Group concerning funding agreements and related structures, including Funding Agreement Backed Notes (“FABNs”), Funding Agreement Backed Commercial Paper (“FABCP”), Foreign Currency Funding Agreement Backed Notes (“FXFABNs”), Funding Agreement Backed Repurchase Agreements (“FABRs”), Funding Agreement Backed Loans (“FABLs”), and similar arrangements.

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:

- (1) the funding agreement issued by the insurer;
- (2) a special purpose vehicle or intermediary issuer;
- (3) notes, commercial paper, or other obligations issued to investors; and
- (4) 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.

In evaluating these issues, 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.

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.

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.

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. [SEE NOTE 1]

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 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. [SEE NOTE 2] 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 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.

Thank you again for the opportunity to provide comments on this important issue. I appreciate the RITF's consideration of these matters and would be happy to provide any further information that may be helpful.

Respectfully submitted,



Mark F. Bennett

MFB:dkd

NOTES:

[1] 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.

[2] 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.

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June 4, 2026

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

Re: Funding Agreements and February 2026 Capital Markets Bureau Primer

Members of the Task Force:

Thank you again for the opportunity to provide comments regarding the Macroprudential (E) Working Group's referral concerning funding agreements and related structures.

After submitting my comments, I reviewed the NAIC Capital Markets Bureau's February 2026 primer on Funding Agreement-Backed Notes. I wanted to briefly bring to your attention a possible interaction between portions of that publication and the issues that MWG referred to RITF for review.

The referral requests that RITF review the receivership treatment and priority of funding agreements, FABNs, FABCPs, FXFABNs, FABRs, FABLs, energy/municipal pre-pay structures, and related instruments, and provide recommendations and conclusions regarding those issues.

At the same time, the February 2026 primer states that funding agreements backing FABNs rank pari passu with other insurance products in an insurer insolvency and further states that FABN noteholders, through the SPV, would rank pari passu with policyholders and ahead of general creditors.

The February 2026 primer appears to describe one possible understanding of the priority treatment of funding agreements and related structures. The referral itself appears to contemplate further review of the receivership treatment and priority of these structures.

As discussed in my comment letter, there may be important distinctions between funding agreements supporting traditional insurance obligations and funding agreements functioning primarily as institutional funding or capital markets arrangements. In addition, authorities such as Executive Life, together with potential questions arising from the interaction of Sections 711 and 801 of the Insurer Receivership Model Act, may warrant further consideration as part of the Task Force's review.

I do not mean to suggest any particular conclusion, but simply to note that the issues identified in the referral may overlap with assumptions reflected in the February 2026 primer. It may also be helpful to consider whether the assumptions reflected in the February 2026 primer are fully consistent with the treatment of funding agreements and related structures under existing state receivership statutes, guaranty association laws, and applicable case law.

Thank you again for your consideration of these matters.

Respectfully submitted,



Mark F. Bennett

MFB:dkd



May 20, 2026

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

Re: Response to Question 6 from RITF Regarding Funding Agreement-Backed Notes

Dear Ms. Koenigsman:

The National Organization of Life and Health Insurance Guaranty Associations (“NOLHGA”) is submitting this letter in response to the Receivership and Insolvency Task Force’s (“RITF”) request for feedback regarding the treatment of funding agreement-backed notes (“FABNs”) in receivership and insolvency. Specifically, NOLHGA is responding to Question 6 – “Is there guaranty fund coverage?”.

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.¹ 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.

¹ 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.

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.²

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.

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.³

* * *


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

² 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.

³ 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.

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.

Very truly yours,

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

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

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

FROM: Willkie Farr & Gallagher LLP

RE: Feedback on April 20, 2026 Discussion on the Handling of Funding Agreement
Backed Notes and Similar Structures

DATED: May 19, 2026

Dear Members of the Receivership and Insolvency (E) Task Force,

We appreciate the opportunity to comment on certain topics raised by the Receivership and Insolvency (E) Task Force (the “Task Force”) during its April 20, 2026 discussion of the March 16, 2026 referral received from the Macroprudential (E) Working Group (the “Referral”). 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.

1. FABN Program Structure and Approval. 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.

2. 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. 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.

3. No Privity of Contract Between Noteholders and Life Insurer. 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.

4. Funding Agreements Not Executory Contracts. 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.¹ 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.

Please contact Donald Henderson at dhenderson@willkie.com or (212) 728-8262 or Benjamin Nixon at bnixon@willkie.com or (212) 728-8532 with any questions regarding the above.

WILLKIE FARR & GALLAGHER LLP

¹ See, e.g., 9C Am. Jur. 2d Bankruptcy § 2283.

Attachment A

Select State Statutes Establishing Priority Treatment of Funding Agreements

State	Citation	Statutory Language
Arizona	Ariz. Rev. Stat. § 20-629(A)(3)	In a delinquency proceeding against an insurer domiciled in this state, the priority of distribution of claims from the general assets of the insurer shall be determined pursuant to this section.... (3) Claims under insurance policies and contracts and guaranteed investment contracts ...
Connecticut	Conn. Gen. Stat. § 38a-944(a)	The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section.... (3) Class 3.... All claims under life and health insurance policies, annuity contracts and funding agreements
Delaware	Del. Code Ann. tit. 18, § 5918(e)(3)	The priority of distribution of claims from the insurer's general assets shall be in accordance with the order in which each class of claims is herein set forth.... (3) Class III. Claims by policyholders, beneficiaries and insureds ... arising from and within the coverage of and not in excess of the applicable limits of insurance policies, insurance contracts and funding agreements issued by the company....
Illinois	215 Ill. Comp. Stat. 5/205(1)(d)	The priorities of distribution of general assets from the company's estate is to be as follows: ... (d) Claims by policyholders, beneficiaries, and insureds, under insurance policies, annuity contracts, and funding agreements
Indiana	Ind. Code §§ 27-9-3-40; 27-1-12.7-10(3)	The priority of distribution of claims from the insurer's estate must be in accordance with the order in which each class of claims is set forth in this section.... (2) Class 2. All claims under policies for losses incurred...
		Notwithstanding any other provision of law: ... (3) a claim for payments under a funding agreement must be treated as a loss claim described in Class 2 of IC 27-9-3-40....
Iowa	Iowa Code § 507C.42(2)	The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth.... 2. Class 2.... claims under funding agreements as provided in section 508.31A, subsection 3....
Massachusetts	Mass. Gen. Laws ch. 175, §§ 180F, 132I	The priority of distribution from the general assets of an insurer in a liquidation proceeding shall be in the order set forth below.... (2) claims of policyholders....
		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.
Michigan	Mich. Comp. Laws § 500.8142(1)(b)	Except as provided in subsection (2), the priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section.... (b) Class 2.... All claims under life insurance and annuity policies, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims. 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.
Nebraska	Neb. Rev. Stat. § 44-4842(2)	The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section.... (2) Class 2.... All claims under life insurance and annuity policies, funding agreements , guaranteed interest contracts, guaranteed investment contracts, synthetic guaranteed investment contracts, and deposit administration contracts, whether for death proceeds, annuity proceeds, or investment values, shall be treated as loss claims.
New York	N.Y. Ins. Law § 7435(a)(4)	The priority of distribution of claims from the estate of a life insurance company in any proceeding subject to this article shall be in accordance with the order in which each class of claims is herein set forth.... (4) Class four. All claims under insurance policies, annuity contracts and funding agreements
Ohio	Ohio Rev. Code Ann. § 3903.42(B)	The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section.... (B) Class 2.... All claims under life insurance, annuity policies, and funding agreements
Tennessee	Tenn. Code Ann. § 56-9-330(a)(2)	The priority of distribution of claims from the insurer's estate shall be in accordance with the order in which each class of claims is set forth in this section.... (2) Class 2. All claims under policies ... for losses incurred (loss claims).... All claims under life insurance policies and annuities, which, for purposes of this section only, shall include guaranteed investment contracts and funding agreements , whether for death proceeds, annuity proceeds, or investment values shall be treated as loss claims.
Texas	Tex. Ins. Code § 443.301(b)(1)	The priority of payment of distributions on unsecured claims must be in accordance with the order in which each class of claims is set forth in this section.... (b) Class 2. (1)... claims under annuity contracts, including funding agreements , guaranteed investment contracts, and synthetic guaranteed investment contracts....
Wisconsin	Wis. Stat. § 645.68	The order of distribution of claims from the insurer's estate shall be as stated in this section.... (3) Loss claims.... All amounts payable under funding agreements , as defined in s. 632.66(2)(a), whether for principal or interest, shall be treated as loss claims.