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SAMPLE TEXT FOR DESCRIBING THE U.S. RECEIVERSHIP REGIME IN RESOLUTION PLANS

The following is sample text that may be used by a U.S. lead state to describe the U.S. receivership regime within resolution plans or to facilitate dialogue with international supervisors during Supervisory Colleges and Crisis Management Group (CMG) discussions.

This sample text does NOT constitute a complete resolution plan, but rather focuses on one element of a resolution plan—a description of the receivership process in the U.S.

The sample text must be modified for the individual state’s laws, regulations, and receivership practices, and supplemented with specific insurer scenarios and information depending on the nature and complexity of the insurer for which the resolution plan or Supervisory College/CMG discussion applies.

TRIGGERS FOR RESOLUTION

[Insert this state’s Commissioner/Director/Superintendent title] has broad discretion to take regulatory action if any of the hazardous conditions listed in [Insurance Code] are triggered, which provides the hazardous conditions that can be considered. *[Insert details from the insurance code for hazardous financial condition law.]*

The Commissioner would also be required to take regulatory action if the risk-based capital (RBC) level falls to or below the Mandatory Control Level as defined by the NAIC RBC model or *[Insert the Insurance Code for RBC]*. Below are the Authorized Control Level (ACL) RBC trigger points.

ACL RBC Percentage	RBC Action Levels
Above 200%	No negative trend, no action
150% to 200%	Company Action Level – company submits a plan to improve capital
100% to 150%	Regulatory Action Level – the regulator specifies correction actions
70% to 100%	Authorized Control Level – the regulator may take control of company
Below 70%	Mandatory Control Level – the regulator is required to take control

[Insert any differences between the ACL RBC triggers and the triggers outlined in the Recovery Plan (if applicable) or elsewhere in the Resolution plan].

[Insert additional summary information describing RBC. For example, include a description of the applicable trend test calculation for life, health or P&C.]

In addition to triggers for hazardous conditions and RBC action levels, the receivership statute within *[Insurance Code]* provides ~~that~~ the following grounds for receivership. *[If the state’s receivership law contains additional triggers for receivership, add or combine with the above.]*

IMPACT OF FAILURE ON POLICYHOLDER PROTECTION

While the laws governing state insurance guaranty associations vary, most states ⁴have laws ~~are~~ patterned after the ~~[Insert applicable Model: Life and Health Insurance Guaranty Association Model Act (#520), or and the Property and Casualty Insurance Guaranty Association Model Act (#540)]~~ adopted by the National Association of Insurance Commissioners (NAIC). Under the Model Act, a state's guaranty association generally must cover resident claims of an insolvent insurer (placed into liquidation). For life and health insurers, the guaranty association may cover resident claims of an impaired insurer (placed into rehabilitation and not an insolvent insurer). Benefit limits vary by state. This means that usually, the guaranty association of the claimant's state of residence is responsible for paying policyholder protection claims, subject to that state's laws, regardless of where the insurer is domiciled. If a claimant is not fully covered by the applicable guaranty association, the claimant's rights against the estate of the insurer would be governed by the receivership laws of the insurer's domiciliary jurisdiction, as discussed more fully below.

Formatted: Keep with next**Formatted:** Left**Commented [RAW1]:** This is not placeholder text so it shouldn't be bracketed. Most states have versions of both model acts, or similar related legislation, so it's "and," not "or."**Formatted:** Font: Not Italic**Commented [RAW2]:** This is not obvious to non-US readers, so it bears emphasis.**Formatted:** Font: Italic

The *Life and Health Insurance Guaranty Association Model Act* proposes the following benefit limits, with respect to one life, regardless of the number of policies or contracts:

- (1) \$300,000 in life insurance death benefits, but not more than \$100,000 in net cash surrender and net cash withdrawal values for life insurance,
- (2) in health insurance benefits:
 - i. \$100,000 for coverages not defined as disability insurance or health benefit plans or long-term care insurance including any net cash surrender and net cash withdrawal values,
 - ii. \$300,000 for disability insurance,
 - iii. \$300,000 for long-term care insurance,
 - iv. \$500,000 for health benefit plans, and,
- (3) \$250,000 in the present value of annuity benefits, including any net cash surrender and net cash withdrawal values.

Aggregate limits and other rules may apply.

The *Property and Casualty Insurance Guaranty Association Model Act* proposes the following benefit limits,

- (1) Full amount of workers' compensation insurance coverage,
- (2) \$10,000 per policy, for return of unearned premium for a covered claim, and,
- (3) \$500,000 per claimant for all other covered claims.

High net worth exclusions and other rules may apply.

[Describe any material differences between the state guaranty association act(s) and the two NAIC Model Acts.]

OVERVIEW OF A RESOLUTION REGIME

~~If multiple legal entity insurers are within scope of the resolution plan, insert a comment that "Receivership actions would be independent for each individual insurance legal entity and would be conducted by their respective domiciliary jurisdictions. Factors would be considered independently such as, minimum capital requirements or RBC levels in determining whether it should be placed into any receivership proceeding. An insolvency at the holding company level would be outside the scope of state~~

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insurance receivership laws and would be within the jurisdiction of the federal Bankruptcy Courts. Insurance regulators would coordinate to avoid contagion in the event of ~~the~~ the insolvency or threatened insolvency of [Insurance Holding Company Name] [or its parent(s) or affiliate(s)].

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[Modify or eliminate the above paragraph if there is only one insurance legal entity within scope of the resolution plan, if there is no holding company subject to federal bankruptcy jurisdiction, or if the holding company is within scope of the Dodd-Frank Act.]

Commented [RAW4]: Unless I am missing something, this is a highly unusual situation for an insurer that would be subject to resolution planning.

A resolution of [Insurer Name(s)] would be handled under the insurance laws of the state of [this state]. The Commissioner of [this state] would be appointed as the receiver by a judge from the [Name and location of the court]. Receivership proceedings are conducted in state courts because insurance companies are specifically exempted from the provisions of the U.S. Federal Bankruptcy Code (See 11 U.S.C. § 109(b)). The court would oversee and be required to approve any significant actions taken by the receiver. [Insurance Code] provides the statutory authority and creditor priority for any receivership proceeding of an insurer domiciled in [this state]. *[Insert a comment on who handles receivership within the state – internal department or outside firm, and who appoints that firm.]*

Commented [RAW5]: There will often be more than one lead-state domestic insurer in a group that is subject to resolution planning.

~~*[If multiple legal entity insurers are within scope of the resolution plan, insert a comment that “receivership actions would be independent for each individual insurance legal entity. Factors would be considered independently such as, minimum capital requirements or RBC levels in determining whether it should be placed into any receivership proceeding.”]*~~

Timelines to complete a receivership depend on factors such as size and complexity of the insurer, ability to sell assets including selling books of business and affiliated assets, legal issues including handling affiliated or third-party agreements, stays and injunctions, and coordination with other states and jurisdictions where the insurer has business. Therefore, any receivership action is difficult to predict and may take years to complete.

The [other state insurance department(s)] would handle any resolution of [affiliated insurance entity(ies)] domiciled in another state(s)]. [Other state]’s receivership scheme would be similar to [this state]’s scheme in that any receivership would be overseen by the local court. *[For simplicity the District of Columbia is referred to here as a state.] [Omit last sentence if group does not do business in DC. Add additional explanatory material if group has operations in territories and possessions, or has subsidiaries domiciled outside the US or foreign branches that might be subject to foreign resolution laws.]*

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To provide an indication of relative size, the following sets out some comparative details for the insurer and its insurance subsidiaries as of December 31, 20xx. *[Customize the following table or other information to the U.S. insurers within the scope of the resolution plan.]*

	Insurer #1	Insurer #2	Insurer #3
General Account Assets			
(Separate Account Assets for L/H or Protected Cell Assets for P&C)			
Total Assets			
General Account Liabilities			
Separate Account Liabilities for L/H or Protected Cell Liabilities for P&C)			

Total Liabilities			
Total Policyholder Surplus			
Total (Direct/Net) Premiums			
Largest Line of Business			
Net Income or Loss			
ACL Risk-Based Capital %			

Should there be an insolvency of the insurer, [this state] must coordinate its activities on the receivership with [this state's] guaranty association. Attached is [Insurance Code] that provides the statutory authority of [this state's] guaranty association, and coverage limits provided by the association. The guaranty funds in all the states where the insurer sold business would be triggered to cover the policyholder liabilities as defined by insurance laws of those states. [This state's guaranty association] would work with [the National Organization of Life & Health Life Guaranty Associations (NOLHGA) or the National Conference of Insurance Guaranty Funds (NCIGF)] to coordinate the efforts of all the states' guaranty funds.

[Insurance Code] provides the Commissioner several regulatory actions when insurance companies experience financial difficulties. Regulatory action is taken when insurance companies trigger any of the hazardous financial condition standards delineated in [Insurance Code], including ~~if the company triggers action under~~ RBC standards as developed by the NAIC and adopted by [this state], which give the Commissioner authority to take action before a company is insolvent. ~~Failure to meet RBC requirements have absolute~~ requires specific prescribed actions that must be taken ~~given the reported~~ based upon the RBC level of the reporting entity; the required actions escalate with each RBC threshold that is breached. The hazardous condition ~~requirements criteria~~ are much broader in nature and include qualitative as well as quantitative standards ~~give the Commissioner authority to take action before a company is insolvent~~. [Specify the regulatory actions] within [Insurance Code] require a court order and oversight.

- Supervision is an order from the Commissioner that orders the insurance company to take certain actions to abate the hazardous conditions. Supervision is frequently used as the first step in a process to resolve financial issues within the insurer.
- If the issue is significant and needs immediate action to protect policyholders the Commissioner may decide Conservation, Seizure, Rehabilitation or Liquidation are appropriate, and petition the court.

The most appropriate action(s) to take in a resolution of the insurer will depend on the cause of the financial issues that are prompting the need for regulatory action.

RESOLUTION DIFFERENCES

[Include an explanation of any material differences in how resolution may be handled based on the unique nature of an insurer's book of business, for example insurance products that require special legal and regulatory consideration, unique receivership processes and procedures; or that may not be covered by guaranty funds. Examples may include the following:]

General Account vs. Separate Account

[This state] differentiates between the resolution of [the insurer's] general account business and its separate account business. A separate account refers to an investment account used to

Commented [RAW6]: This applies to RBC as well as HFC – that's the whole point of the RBC thresholds, after all.

Commented [RAW7]: Hazardous operation isn't "required"

manage policyholder funds placed in variable insurance products. This account is maintained separately from the general account, and distinctions are important in this context.

The insurer's separate account supports its *[List the products included in the separate account]*. In addition to being established under state insurance law, [the insurer's] separate accounts are *[Specify how they are considered under federal laws, such as "unit investment trusts under federal securities law and registered as investment companies with the U.S. Securities and Exchange Commission"]*. In any receivership proceeding, the receiver will need to communicate and consult with the U.S. Securities and Exchange Commission regarding the separate accounts business. We also note that separate account policyholders may not be subject to any of the rehabilitation or liquidation moratoriums on policy withdrawals or surrenders.

Pursuant to [Insurance Code], separate accounts are insulated from general account creditors and liquidation claims. *[Consider inserting sections of the insurance code that define insulated vs. non-insulated; that further define separate account and differentiate general account vs. separate account assets; and that explain how separate accounts and guarantees within the general account are viewed under the state's guaranty association law.]*

Reinsurance Assumed Business

[Where a US insurance entity is a professional reinsurer, the exclusion of assumed reinsurance from guaranty association coverage and the potential complexity and multitude of the reinsurance agreements may result in different considerations of how to handle a [receivership, including the choice between rehabilitation vs. and liquidation, which that](#) should be described here.]

Pursuant to [Insurance Code], policies or contracts of reinsurance are not covered by the guaranty association unless the [assuming insurer has assumed the ceding insurer's entire obligation](#) ~~assumption certificates have been issued to the~~ [directly to the insured parties on the underlying policies](#).

Unique Lines of Business or Insurance Entities in the Group

[If material to the insurer, consider adding a description or distinct considerations for how the exclusion of significant lines of business from guaranty association coverage would be handled in receivership.]

While domestic captive [insurers](#) and risk retention groups (RRGs) are subject to most states' receivership laws, insureds within captives or RRGs do not have guaranty association coverage. Additionally, captives and RRGs may be subject to different parts of a states' insurance code with respect to financial regulation. If material and applicable to the resolution of a unique domestic insurance entity in the group, consider including a description of any material insurance code provisions related to supervision, seizure, conservation, rehabilitation, and liquidation that may either apply or does not apply.]

Commented [RAW8]: The language that included the "assumption certificate" exception is an accurate quote from 520, but I don't think it's easily accessible to the reader who doesn't already know this. 540 doesn't even expressly exclude reinsurance, but the effect of both the existing language and the proposed amendments is similar; however, neither version mentions anything called an "assumption certificate."

RESOLUTION ACTIONS

The following defines each of the resolution actions available in [this state].

The order from the court on any Rehabilitation or Liquidation would give the receiver (this state's Commissioner) the authority to marshal and take title to all assets of the insurer's estate.

Administrative Supervision

[Insurance Code] allows the Commissioner to issue an order of Supervision, which allows the Commissioner to order the insurer to take actions to abate the hazardous conditions as identified by the Commissioner. In this level of action, management and the board of directors remain in place, and continue to run the day-to-day operations [subject to the obligation to comply with orders issued by the Commissioner](#).

Seizure or Conservation

[State laws vary as to the reference to Seizure or Conservation as a resolution action, as these actions are generally similar. Include the description of the actions available under this state's law.]

Another possible regulatory action is an order of Seizure [or Conservation]. This order is used to ensure assets remain in place and under control of the receiver and the general supervision of the court. This order would be issued by a judge at the [Name of Court]. [This state] would pursue the order privately in chambers with the judge, and not in a public forum or even with the company present. The company would have the right to contest the order after it is issued. Generally, this action gives the receiver the ability to control the assets but does not remove management or the board from running the day-to-day operations.

Rehabilitation

An order of Rehabilitation is sought when the receiver wants a period of time to evaluate whether actions can be taken to restore or transform the insurer and restore financial stability. The receiver receives authority to marshal and take title to all assets of the insurer's estate and runs the day-to-day operations.

Liquidation

An order of Liquidation is sought when the receiver determines there is no possibility to rehabilitate the insurer, and the best option to protect policyholders and creditors is to liquidate the insurer. In a Liquidation, all new and renewal business ceases. Again, the receiver receives authority to marshal and take title to all assets of the insurer's estate. The liquidation order would also place a temporary stay on any litigation. The Board of Director's powers would be suspended, and the receiver placed in charge of running the day-to-day operations. Some or all of the insurer's upper management could be terminated as determined by the receiver.

In all the above actions, dividends would cease, and it is likely [this state] would have stopped any dividends prior to the deterioration in financial condition to the point where regulatory action was necessary. [Even in the ordinary course of business, an insurer may not pay](#) ~~The Commissioner has broad authority to object to ordinary dividends and must prior approve any~~ extraordinary dividends [without the prior approval of the Commissioner, and the Commissioner has broad authority to object to ordinary dividends for cause.](#)

ANALYSIS OF RESOLUTION ACTIONS

The following summarizes key elements of each of the resolution actions available in [this state]. Notwithstanding the following, each receivership situation and cause is often unique to the insolvent

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entity. An analysis must be quickly made, and a plan developed for dealing with any event. The plan must also be continually reviewed and adjusted as events unfold.

1. ORDER OF SUPERVISION

Supervision is the least severe delinquency action. It is dependent on the success of identifying the causes of the hazardous financial condition and taking efficient and timely actions to correct them. The correct identification of problem areas and developing an effective correction action plan is dependent on the skill and cooperation of the company employees, management and board of directors, as well as having an adequate company infrastructure (i.e., IT systems) in place. Another factor to consider is the unexpected severity of the hazardous conditions. Administrative supervision orders are sometimes useful in temporarily stabilizing a deteriorating situation prior to the entry of an order of conservation, rehabilitation or liquidation.

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The Order

- [Insurance Code] allows the Commissioner to issue an order of Supervision which allows the Commissioner to order the insurer to take actions to abate the hazardous conditions identified by the Commissioner. Under Supervision there is no judicial oversight. *[If judicial action is required in this state, replace applicable language.]*
- The Supervision order provides an *[Insert timeframe]* for the company to abate the hazardous conditions. The Commissioner may determine to extend the Supervision timeframe dependent on the company's progress in abating the hazardous conditions or, if satisfactory progress has not been met, place the company in a more ~~severe~~-stringent delinquency proceeding (i.e., seizure, conservation, rehabilitation, liquidation). The Commissioner may also decide to suspend, revoke or limit the company's certificate of authority to do business.
- Supervision does not vest control or title of the company's assets under the Commissioner. *[Consider other risk scenario specific comments such as for life and annuity insurers: "If confidentiality is breached it may cause a run on the bank scenario i.e., policy surrenders."]*

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Operations of a Supervision

- The company continues to write and renew business and pay claims in the ordinary course of business subject to any corrective actions necessary to abate the causes of the hazardous financial condition.
- General creditors and vendors are also paid in the ordinary course of business.
- The company's board of directors and present management remain in place.
- The Supervisor would meet with company management to ensure they understood the supervision order and the hazardous conditions that needed to be abated. The Supervisor would request the company develop a corrective action to address each specific hazardous condition along with a projected implementation timeframe. The Supervisor would then have ongoing meetings with company management to monitor progress and also verify the results of the corrective actions.
- In Supervision there would be no changes to policy benefits or coverage.
- The Supervisor would be empowered to prohibit the insurer from certain actions without prior approval, such as: dispose, convey or encumber any of its assets or business in force; close bank accounts; lend or invest funds; terminate or enter into new reinsurance; transfer property; incur debt; merger or consolidate with another insurer.

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Confidentiality and Notification/Communication

- The Supervisor would be responsible for providing updates to the Commissioner and impacted parties covered by the confidentiality provisions. *[Insert a comment on the confidentiality of supervision orders in this state, such as “Supervision orders are confidential, and the order may be shared with limited parties as designated by statute. Those parties include but are not limited to guaranty associations, reinsurers, insurance regulatory officials and debtors and creditors of the company and its affiliates. These parties are required to keep the Supervision confidential.”]*
- The Commissioner would coordinate actions with *[Insert name(s) of other state insurance departments where multiple insurers are domiciled in multiple states, and federal and international supervisors, as applicable]*.
- The Commissioner would inform those parties *[or insert a list]* covered by the statute’s confidentiality, as to the provisions of the Supervision order.
- Under Supervision, guaranty associations are not triggered. However, the Supervisor may discuss the Supervision with the guaranty associations, where the guaranty associations are covered by *[the state’s confidentiality statute or confidentiality agreements]*. In Supervision, the notification to *[NOLGHA or NCIGF]* and the guaranty associations of the existence of a Supervision order acts as a notice of a potential receivership that may trigger coverage should the insurer’s financial condition worsen, or the insurer does not successfully abate the conditions of the Supervision order and a more severe resolution action becomes necessary.

Commented [RAW10]: The insurer itself might have the right to waive confidentiality in whole or part.

Oversight of Supervision

- In a Supervision, the Commissioner generally designates an internal or external party as supervisor *[referred to as “Supervisor” in this section]* to oversee and monitor the company’s progress in developing and implementing corrective actions necessary to abate the hazardous financial conditions. The Supervisor interacts with company management and provides the Commissioner and interested parties with progress reports.
- The Commissioner may hire an external Supervisor to monitor and oversee the Supervision. *[Insert the state’s rule on compensation, such as “The amount of compensation would be dependent on the expertise and experience of the external Supervisor. The Commissioner may appoint an internal supervisor and those costs would be covered within the Department’s budget.”]*

Commented [RAW11]: We started using this term earlier – consider reordering?

2. ORDER OF SEIZURE OR CONSERVATION

Under [Insurance Code] an Order of Seizure [or in other state jurisdictions may refer to this as an Order of Conservation. Both [are](#) referred to as “Seizure” in this section] is the next more severe step after Supervision in the hierarchy of delinquency actions. A Seizure is designed to make and immediate hands-on determination of the true financial condition of the company and then to make a recommendation to the Commissioner to preserve and protect its assets either by releasing the insurer or placing the insurer in Rehabilitation or Liquidation. Seizure allows the Commissioner to immediately take control over the disposition of company assets while the financial determination process is ongoing. The Commissioner immediately takes possession and control over the property, books, accounts and other records and physical premises.

The Order

- The Commissioner would request an **ex-parte** confidential order from [Name of Court]. The conditions for issuing a Seizure order ~~reflect that there~~ require either one or more statutory grounds that would justify ~~ing for~~ a formal delinquency (i.e., Rehabilitation or Liquidation), or a demonstration that the interests of policyholders, creditors or the public are endangered by a delay in entering such an action and therefore requires immediate action, or any other reason determined to be necessary by the Commissioner.
- The duration of the Seizure order is *[a specific time period or]* such time as the Court determines the Commissioner needs to determine the financial condition of the company. The Court may hold hearings from time to time to decide the status of the Seizure order. If the Commissioner does not commence a formal delinquency hearing after a reasonable period of time, the Court may vacate the Seizure order. The company may petition the Court at any time during the Seizure order for a hearing. Such hearings may be held privately in chambers. Generally, seizure orders are for less than six months.

Commented [RAW12]: Might there be readers who don't know what "ex parte" means?

Operations of a Seizure

- Similar to Supervision, the insurer continues to write and renew business and pay claims in the ordinary course of business. General creditors and vendors are also paid in the ordinary course of business. The company's board of directors and present management remain in place. There would be no changes to policy benefits or coverage under a Seizure order.
- However, the Seizure order prohibits the insurer, its officers, managers, agents and employees from disposing of the insurer's property and transacting business except with the Commissioner's written consent or further court order.
- While there is more control of the disposal of assets under Seizure, the Seizure order does not give title of those assets to the Commissioner. The company's current contractual obligations remain in place. ~~*[If confidentiality is breached it may cause a run on the bank scenario i.e., policy surrenders or withdrawals.]*~~

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Confidentiality and Notification/Communication

- *[If applicable in the state, insert confidentiality statement.]* Seizure orders are confidential. ~~*[If confidentiality is breached it may cause a run on the bank scenario i.e., policy surrenders or withdrawals.]*~~ ~~and~~ ~~However~~, the order may be shared with limited parties as designated by statute. Those parties may include but are not limited to guaranty associations, reinsurers, insurance regulatory officials and debtors and creditors of the company and its affiliates. These parties are required to keep the Seizure confidential.² The confidentiality of the seizure order is intended to allow the receiver to discharge the conservation, if appropriate, and return the insurer to normal business operations without public knowledge and the resultant harm to the insurer's business.
- The Commissioner would inform those parties *[or insert a list]* covered by the statute's confidentiality provisions of the Seizure order.
- Under a Seizure order, guaranty associations are not triggered for coverage. However, the appointed party may discuss the Seizure and any potential formal delinquency proceedings with the guaranty associations, where the guaranty associations are covered by *[the statute's confidentiality or confidentiality agreements]*. *[Note that depending on the state law, if a court finds that a life and/or health insurer is financially impaired, such finding may be sufficient to trigger the involvement of life and health guaranty associations].*

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Oversight of Seizure

- In a Seizure, the Commissioner generally designates an internal or external party to oversee and monitor the company’s operations (the party is ~~often~~ referred to as the “conservator” in some jurisdictions) and investigates the company’s financial condition. Because the company is enjoined from disposition of its property, the appointed party will have to approve any disposition of company assets including cash disbursements. The appointed party interacts with company management and provides the Commissioner and interested parties with progress reports.
- The appointed party would work with company management to make a determination of the financial condition of the company. The appointed party would identify those areas that may negatively impact the company’s financial condition. The appointed party would then have ongoing meetings with company management to discuss the financial condition of the company and also verify the results of the financial review. The appointed party would be responsible for providing updates to the Commissioner and impacted parties covered by the confidentiality provisions.
- The Commissioner may hire an external party to monitor and implement the Seizure order. The amount of compensation would be dependent on the expertise and experience of the external party. The Commissioner may appoint the [Specify the title of department director of receivership or other position] to implement the Seizure order and those costs would be covered [Specify how costs are covered, such as “within the Department’s budget”].
- The Commissioner would coordinate actions with *[Insert name(s) of other state insurance departments where multiple insurers are domiciled in multiple states, and federal and international supervisors, as applicable]*.

3. ORDER OF REHABILITATION

~~After Supervision and Seizure [or Conservation],~~ Rehabilitation is the ~~next~~ most ~~severe-stringent~~ delinquency proceeding short of Liquidation. Rehabilitation is designed to generate a Rehabilitation plan that will either correct the difficulties that led to the insurer being placed in receivership and restore the company’s financial condition to sound basis or transition the company’s policyholder liabilities to financially sound insurers. The ~~Deputy~~ Rehabilitator(s) may determine the company cannot be rehabilitated. If that is the determination, then a petition for Liquidation will be filed with the court.

The Order

- [Insurance Code] allows the Commissioner to petition the Court for an order of Rehabilitation based on one or more of the criteria listed above including, but not limited to, the concern that allowing the company to transact business would be hazardous to policyholders, creditors and the public.
- Rehabilitation orders are public documents and are subject to judicial oversight by [Name of Court].
- The Rehabilitation order vests authority to marshal and take title of all assets of the insurer’s estate with the Commissioner as Rehabilitator.
- During Rehabilitation, the receiver may look for possible buyers for the insurer or even books of business or may consider other options to restore profitability or minimize losses.
- There are a number of issues ~~that may occur~~ that can complicate a successful Rehabilitation, such as loss of essential personnel, inability to restructure non-policyholder contractual obligations, loss of asset values due to market conditions, litigation, reinsurer disputes, inability to find

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insurers to reinsure company policies on an satisfactory basis, unexpected liabilities under derivative or policy contracts, inadequate policy or claim reserves, rating downgrade due to the Rehabilitation order and inability of investment income to meet policy minimum guarantees as well as other matters.

- The length of time of a Rehabilitation is dependent on the complexity, financial condition, size of the company, and the development of a plan of rehabilitation. Rehabilitation can take multiple years to complete.

Operations of a Rehabilitation

- After the Court has issued the Rehabilitation order, the receiver would be placed in charge of running the day-to-day operations of the insurer.
- The Rehabilitation order would suspend the authority of the board of directors, managers and officers unless reappointed by the Commissioner. Some or all of the insurer's upper management could be terminated as determined by the receiver.
- All current legal proceedings and litigation against the company would be stayed for [number of days based on state's insurance code] and the Rehabilitation order would contain an injunction against filing new legal actions.
- The Rehabilitation order may include *[For this bullet suggest only including those items that may be included in the order which are material to the insurer, rather than an exhaustive list.]*:
 - Prohibit or severely limit all new business writings.
 - Require the insurer to modify or even cancel certain managing general agent ("MGA"), third-party administrator ("TPA") and general agency agreements.
 - Suspend claims payments and halt the transfer of cash or loan values on life insurance contracts.
 - Provide that reinsurance agreements may not be canceled, and that the insurer may not obtain any new reinsurance without the approval of the receiver.
 - Require recapitalization.
 - Restrict new investments or liquidate investments.
- *[Insert the state's handling in rehabilitation of any material issues or risks that are specific to the insurer, such as the following:]*:
 - The Rehabilitation order would most likely include a moratorium on cash surrenders or policy loans except in defined hardship matters. If the Rehabilitator sells or ~~reinsurers~~ reinsures a block of business with another insurer, an additional moratorium may be implemented before the policyholder can change insurers.
 - Because Rehabilitation is a formal delinquency action, counterparties to the company's derivative contracts may decide to exercise any contractual rights to terminate, liquidate or net out their positions with the company. If the counterparties decide to terminate, liquidate or net out their positions with [insurer], ~~risks that hedging strategies previously undertaken by~~ [insurer] ~~had hedged~~ may disappear and expose [insurer] to adverse financial risks. [Insurer's] credit rating may be lowered and finding replacement derivative contracts may not be possible or the cost of such contracts may rise.
 - If the company has any secured loans outstanding, for example, with advances of credit from the a Federal Home Loan Bank (FHLB), the ~~FHLB lender~~ would be able to take possession of any collateral pledged as security for the loan amounts.
 - *[Describe the handling of significant assumed reinsurance business in receivership, e.g., if the US entity is a reinsurer or a direct writer with significant assumed book of business.]*

Commented [RAW14]: If the risks disappeared, that would be a good thing. It's the disappearance of the hedges we need to worry about.

Commented [RAW15]: Does an FHLB have special rights that other secured lenders lack??? Revert to original language if it's unique to FLHBs.

Commented [RAW16]: There are multiple regional FHLBs.

- *[This bullet applies to resolution plans involving life, annuity and health insurers.]* A Rehabilitation order against a life, annuity or health insurer such as [name(s) of insurer(s)] would trigger guaranty association involvement and coverage under the definition of “impaired” insurer contained in their statutes. The guaranty association may guarantee, assume or reinsure any or all of the impaired insurer policies, provide additional funds to assume or reinsure the impaired insurer policies, provide substitute benefits in some cases for the impaired insurer and other actions.
- Proof of claim forms would need to be sent out for unpaid pre-rehabilitation liabilities. It is likely that other state insurance departments would seek to either revoke or suspend the company’s authority to transact business in ~~that~~ their respective states.
- The Commissioner would coordinate actions with *[Insert name(s) of other state insurance departments where multiple insurers are domiciled in multiple states, and federal and international supervisors, as applicable]*.
- Various matters will need to be filed with the Court for approval including legal settlements, payments to pre-rehabilitation creditors, modifications of contractual obligations, sales of assets and/or transfers of existing business to other insurance carriers.

Commented [RAW17]: Groups subject to resolution planning could often have members of both guaranty associations within the group. In some cases a single legal entity writes some cross-category business.

Oversight of a Rehabilitation

- The Commissioner may appoint one or more Deputy Rehabilitators. The [Specify the title of any department director of receivership or other position] is usually appointed as Deputy Rehabilitator or manages the Rehabilitators if they are outside consultants. Given the insurer’s size and complexity, the Deputy Rehabilitators would likely hire a rehabilitation team to assist in the Rehabilitation. The rehabilitation team would likely have specialists such as actuaries, investment specialists and others. [Insert any needed specialists based on the insurer’s unique risk profile.] An investment bank may be hired to assist in identifying potential purchasers of blocks of business, merger partners or sources of capital infusion.
- The *[name of the department’s Receivership or other Division]* has procedures in place for hiring outside specialists/outside Deputy Rehabilitators as well as a list of qualified vendors. The hiring of any outside consultants/specialists is subject to *[Specify state’s rules on hiring and compensation such as “the Receivership procurement procedures”]* and their compensation is subject to Court approval. *[Specify the state’s legal structure for handling receivership matters, such as “The Attorney General usually handles receivership matters for the Commissioner”]*.
- Because of [insurer’s] size and complexity, it may be necessary to hire outside legal counsel. There are a number of qualified law firms that have prior rehabilitation legal experience. Any outside legal counsel and their compensation would be subject to Court approval.
- *[Specify the state’s rules on funding of compensation, such as “Payment of any outside specialists, Deputy Rehabilitators and/or legal funds would be paid out of the Rehabilitation estate funds. The (Name of the department’s receivership director, if applicable) costs are funded by the Department subject to potential reimbursement by the Rehabilitation estate.”]*
- The Rehabilitator or Deputy Rehabilitators and the Rehabilitation team are responsible for the day-to-day operations of the company.
- The Deputy Rehabilitator(s) and the rehabilitation team would be responsible for drafting a plan of Rehabilitation subject to the Commissioner and the Court’s approval. The Rehabilitation Plan may include reorganization, reinsurance of various blocks of company business, merger or purchase or other options in order for the company to meet its obligations to policyholders and creditors. The Rehabilitation Plan will follow the creditor priorities as stated in [Insurance Code]. The Deputy Rehabilitators would seek the guaranty association input on any sale or reinsurance

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of company blocks of business. The Deputy Rehabilitators and the rehabilitation team would be responsible for communicating the plan of Rehabilitation to all interested parties.

4. ORDER OF LIQUIDATION

Liquidation is the most severe delinquency proceeding. Liquidation is designed to wind down and dissolve the company and distribute any remaining assets to its outstanding creditors.

[Insurance Code] allows the Commissioner to petition the Court for an order of Liquidation based on any ground for an order of Rehabilitation, that the insurer is insolvent or that the continued transaction of business would be hazardous to policyholders, creditors and the public.

The Order

- Liquidation orders are public documents and are subject to judicial oversight by [Name of the Court].
- The Liquidation order does vest title of the assets with the Commissioner as Liquidator.
- Liquidations are complicated by unexpected or prolonged litigation, federal tax issues, unexpected or inaccurate reserves for liabilities, assets valuation issues and collection of receivables especially reinsurance related receivables.
- The length of time of a Liquidation is dependent on the complexity, financial condition, and size of the company. ~~Like Rehabilitation, a~~ Liquidation can take multiple years to complete, ~~often even longer than a Rehabilitation.~~

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Operations of a Liquidation

- After the Court has issued the Liquidation order all new business writings would cease.
- *[Insert applicable insurance code that describes the effect of the order of liquidation upon contracts of the insolvent insurer, i.e., continuance in force, termination or cancelation of policies:]*
 - [Insurance code] provides that upon issuance of the order, all of the rights and liabilities of the insurer, its creditors and policyholders are fixed as of the date of entry of the order of liquidation. The Liquidation order provides notice to policyholders, terminates policies and contracts where a guarantee of insurance is provided upon *[insert termination period]*.
 - *[For life, annuity and health insurers.]* Life and health insurance policies and annuities shall continue in force for such a period and under such terms provided for by the guaranty associations. Those life, health and annuity products not covered by a guaranty association would terminate [Insert termination period from state statute]. The Liquidation order would most likely include a moratorium on cash surrenders or policy loans except in defined hardship matters. If the Liquidator sells or ~~reinsurers-reinsures~~ a block of business with another insurer an additional moratorium may be implemented before the policyholder can change insurers.
- *[Insert the state's handling in liquidation of any material issues or risks or unique policy types that are specific to the insurer that may require special consideration, such as the following:]*
 - Because Liquidation is a formal delinquency action, counterparties to the company's derivative contracts may decide to exercise any contractual rights to terminate, liquidate or net out their positions with the company. If the counterparties decide to terminate, liquidate or net out their positions with [insurer], risks that [insurer] had hedged may disappear and expose [insurer] to adverse financial risks. [Insurer's] credit rating may be lowered and finding replacement derivative contracts may not be possible or the cost of such contracts may rise.

- If the company has any secured loans outstanding, for example, with advances of credit from the a Federal Home Loan Bank (FHLB), the FHLB lender would be able to take possession of any collateral pledged as security for the loan amounts.
- [Insurance code] excludes [material policy types or business not covered] from guaranty fund coverage.
- [Describe the handling of significant assumed reinsurance business in receivership, if the US entity is a reinsurer or a direct writer with a significant assumed book of business. e.g., exclusion from guaranty fund coverage; claims fall within general creditor class of priorities; limitations on setoffs.]
- The Liquidation order would terminate the authority of the board of directors and officers.
- A Liquidation order would trigger guaranty association involvement and coverage under the definition of “insolvent” insurer contained in their statutes.
- The Liquidation order would contain an injunction against filing new legal actions or pursuing current actions.
- Proof of claim forms would need to be sent out for unpaid pre-liquidation liabilities.
- It is likely that other state insurance departments would seek to either revoke or suspend the company’s authority to transact business in that their respective states.
- The Commissioner would coordinate actions with [Insert name(s) of other state insurance departments where multiple insurers are domiciled in multiple states, and federal and international supervisors, as applicable].
- The Deputy Liquidators would need to discuss the transition of policyholder administration and claims adjudication processes with the effected guaranty associations.
- Various matters will need to be filed with the Court for approval including legal settlements, any distribution to liquidation creditors, modifications of contractual obligations, sales of assets and/or transfers of existing business to other insurance carriers.

Commented [RAW18]: Does an FHLB have special rights that other secured lenders lack??? Revert to original language if it’s unique to FLHBs.

Commented [RAW19]: There are multiple regional FHLBs.

Commented [RAW20]: Strictly speaking, the definition isn’t the trigger, it’s the substantive provisions that use the defined term.

Oversight of a Liquidation

- The Commissioner may appoint one or several Deputy Liquidators. Given [insurer’s] size and complexity, the Deputy Liquidators would likely hire temporary staff to assist them in the Liquidation. The Deputy Liquidators may hire specialists such as actuaries, investment specialists and others to evaluate certain areas of the company. [Insert any needed specialists based on the insurer’s unique risk profile.]
- The [Specify the title of any department director of receivership or other position] is usually appointed as Deputy Liquidator or manages the Deputy Liquidators if they are outside consultants. The [Name of the department’s Receivership or other Division] has procedures in place for hiring outside specialists and outside Deputy Liquidators as well as a list of qualified vendors. The hiring of any outside consultants/specialists is subject to [Specify state’s rules on hiring and compensation such as “the Receivership procurement procedures”] and their compensation is subject to Court approval. [Specify the state’s legal structure for handling receivership matters, such as “The Attorney General usually handles receivership matters for the Commissioner”]. Because of [insurer’s] size and complexity, it may be necessary to hire outside legal counsel. There are a number of qualified law firms that have prior liquidation legal experience. Any outside legal counsel and their compensation would be subject to Court approval. [Specify the state’s rules on funding of compensation, such as “Payment of any outside specialists, Deputy Liquidators and/or legal funds would be paid out of the Liquidation estate funds. The (Name of the department’s receivership director, if applicable) costs are funded by the Department subject to potential reimbursement by the Liquidation estate.”]

- The Deputy Liquidator(s) would be responsible for the administration of the Liquidation estate with the goal of the fair and efficient handling of all Liquidation claims and the marshalling of assets to insure the maximum distribution for the Liquidation creditors. The Deputy Liquidators would distribute assets in accordance with the creditor priorities as stated in [Insurance Code]. The Deputy Liquidators would work with the guaranty association input on any sale or reinsurance of company blocks of business.

Guaranty Associations

[Due to differences in P&C vs. L&H guaranty funds, this section should be edited for the applicable guaranty fund(s) based on the type(s) of domestic insurer(s) within the scope of the resolution plan.]

- Under a Liquidation order, guaranty associations are triggered ~~under certain~~ when the insurer meets the conditions for insurers meeting in the statutory definition of “insolvent insurers.”
- Each guaranty association has limits on the amount of coverage ~~they it provides~~ for each type of policy benefit as well as aggregate limits per policyholder. These amounts vary by state.
- The Deputy Liquidators would work with the guaranty associations to potentially reinsure or transfer the existing blocks of business to new insurers when possible, or run-off remaining blocks of business.
- The life and health guaranty association may guarantee, assume or reinsure any or all of the insolvent insurer’s policies or provide additional funds to another carrier in an assumption of the business. Also, with the Commissioner’s approval, the guaranty association may issue an alternative policy, modify a current policy, implement temporary policy moratoriums, or pay policy claims subject to coverage limits, among other actions.
 - [Specific to life/annuity] The guaranty associations may modify guaranteed or credited interest rates on certain policies.

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Commented [RAW21]: It would have been simpler just to say “when the insurer becomes insolvent,” but there are several steps between the insurer going broke and meeting the statutory definition of “insolvent insurer” (which also contains some other conditions that aren’t part of the English definition of the term).

POLICYHOLDER PROTECTION SCHEMES (AKA., GUARANTY FUNDS)

Guaranty associations provide a mechanism for the payment of covered claims under certain insurance policies, or to continue coverages, aimed to avoid excessive delays in the payment of claims and to the extent allowed by state statute, to minimize the financial loss to claimants or policyholders resulting from the insolvency of an insurer.

A state’s guaranty association generally must cover resident claims of an insolvent insurer (placed in a liquidation proceeding) and a life and health guaranty association may cover resident claims of an impaired insurer (placed in a rehabilitation proceeding and not an insolvent insurer). Benefit limits vary by state. [This state’s] benefit limits are:

- [Insert a summary of applicable state guaranty fund benefit limits by product type for this state].
- Each States’ guaranty association can be accessed by going to the [NOLHGA (nolhga.com) or NCIGF (ncigf.org)] website.

Further details on the coverage and eligibility requirements for coverage by the [this state’s guaranty association(s)] can be found at [Insert name of attachment or website]. A list of coverage and limitations of [this state’s guaranty association(s)] can be found at [Insert name of attachment or website]. [Customize to address the types of business conducted in this state by insurers within scope of this resolution plan.]

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Where assets of the insurer’s estate are determined to be insufficient and guaranty funds are triggered to pay benefits within statutory limits, guaranty associations may assess other member insurers under [Insurance code] for purposes of carrying out the duties of the association.

IMPLEMENTATION

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Under [Insurance Code], only the Commissioner has the power to commence delinquency proceedings for a [this state] domestic insurance company. Immediately upon receiving an order of Rehabilitation or Liquidation from the court, the receiver will proceed to serve the proper papers to the entities that may hold assets of the estate to move authority over those assets to the receiver.

The receiver in cooperation with the [this state’s guaranty association] will consider ~~if~~ whether outside expertise is necessary to appropriately continue the program. *[Specify the state’s process for beginning the hiring process, such as requesting bids to determine the best qualified contractors.]*

The receiver will need to quickly obtain access to books, data and records of the insurer.

The receiver will need to quickly evaluate *[Specify any unique situations that will require immediate attention based on the insurer’s risk profile, such as.*

- *The need to continue a derivatives program.*
- *Any rights of offset or collateral calls on assets of the estate, and the potential financial and legal impact.]*

The receiver will then assess other areas relevant to running the day-to-day operations of the insurer, such as ensuring the ability to continue essential services (e.g., assessing contracts with service providers), look for potential buyers for the company or books of business, staffing needs, products sales, reinsurance, etc.

COMMUNICATION STRATEGY

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The Deputy Rehabilitator or Deputy Liquidator would be responsible for communications with all interested parties.

Immediately upon a determination by the Commissioner to seek rehabilitation or liquidation of [the insurer], the Commissioner will *[Specify the state’s process for notifying other state offices (e.g., Attorney General) who may be involved in drafting a petition and order to be filed with the court].*

Because Rehabilitation and Liquidation orders are public documents, it is essential that there be accurate and timely communications with all parties.

Parties to which timely communication is required include the NAIC, NOLGHA or NCIGF and [this state’s] guaranty association, states in which the company is licensed, state/federal/international regulatory agencies, agents, policyholders, reinsurers, creditors, management and employees, board of directors,

and other federal agencies (as applicable), among others. *[Edit this list for this state's communication requirements].*

[Insert this state's process for public notice of Liquidation, e.g., published in a nationally distributed newspaper and sent to all interested parties; correspondence, press releases and/or internet accessible information; responsibility of agents to inform their clients of the liquidation directly; etc.].

Consistent with the NAICs' *Troubled Insurance Company Handbook*, [this state] must be proactive in communicating with regulators including regulators in other states. [This state] will also immediately update *[the international group-wide supervisor (GWS), if not this state; or other Crisis Management Group (CMG) members, if the GWS is this state]* so that CMG members are informed of the proposed action.

Upon receiving court approval, the petition and order will be sent to other regulators including the *[international GWS, if not this state, to be distributed to CMG members; or CMG members, if the GWS is this state]*. Rehabilitation or Liquidation orders and all relevant documents to the receivership will also be posted to the insurance department's website.

To expedite communications, policyholder and creditor notifications as well as correspondence to the guaranty associations and other state regulators may be prepared in advance of the actual filing of the receivership petition to the court. In addition, mailing lists are prepared, and publication is arranged, if legally required. ~~Upon court approval of the receivership action, d~~ Distribution of notice to the affected parties, and publication in media outlets, begins [upon court approval of the receivership action](#).