

**JOINT COMMENTS ON RITF EXPOSURE DRAFT  
OF SAMPLE DESCRIPTION OF U.S. RESOLUTION REGIME  
September 14, 2023**

Thank you for the opportunity to comment on the exposure draft of the Sample Description of U.S. Resolution Regime. The draft provides a solid description of the national state-based resolution system, including the important policy protection role of guaranty associations. We appreciate the Task Force continuing to acknowledge the importance of coordination among regulators, receivership staff, and the guaranty system in ensuring that a resolution achieves the best possible outcomes for policyholders and other creditors.

Our comments are focused primarily on the description of the guaranty system. In a few instances, we also have suggestions regarding the broader resolution description for your consideration. All those suggestions are provided in the attachment through redlines or document comments.

We are available to discuss these comments with the Task Force and staff, and look forward to continuing to contribute to the project.

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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 SUPPORT UPON FAILURE**

Policyholder protection mechanisms are in place in all U.S. states and several of its territories. These mechanisms, commonly known as "guaranty associations" or "guaranty funds", pay certain policy claims and/or continue certain policy coverages, generally upon the issuance of a liquidation order with a finding

of insolvency by a court in the appropriate U.S. jurisdiction. The operation and obligations of guaranty associations are governed by statute. Funding to support the guaranty associations' statutory obligations comes from the remaining assets of the insolvent insurer, assessments on certain licensed insurance companies that are "members" of the guaranty associations, future premiums (if applicable), and statutory deposits collected by the states (if available).

While the laws governing state insurance guaranty associations vary somewhat, most states' laws are patterned after the [Insert applicable Model: Life and Health Insurance Guaranty Association Model Act (#520), or 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-against an insolvent member insurer (placed into liquidation with a finding of insolvency). For life and health insurers, the guaranty associations also continue in-force policies and annuities of an insolvent insurer. Life and health guaranty associations may have discretionary authority to provide coverage or continue policies/annuities resident claims for policyholders of an impaired insurer (placed into rehabilitation and not an insolvent insurer). Due to concerns and challenges associated with this authority, it has not been used in multi-state insolvencies and has only rarely been used in single state cases. Benefit limits vary by state.

Additional information about the guaranty system is available on the websites for the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) and the National Conference of Insurance Guaranty Funds (NCIGF).

Benefit limits are generally consistent but can vary somewhat by state. 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~~ 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/limitations and other rules may apply in many jurisdictions for property and casualty claims. These limitations generally exclude or call for recovery of claims by or against policyholders that have a net worth exceeding the threshold. The thresholds vary by jurisdiction but typically range from 10 million to 50 million USD.

**Commented [A1]:** NOLHGA notes that voluntary triggering for an impaired insurer is not a practical solution in multi-state cases and has only rarely been used in single state cases. NOLHGA suggests that this and other references to triggering for an impaired insurer be deleted. If the reference is regarded as necessary, we request the noted revisions be made here and the subsequent references be deleted as noted below.

The coverage limits for each guaranty association and information about certain limitations on coverage can be found on NOLHGA's website and NCIGF's website.

**OVERVIEW OF A RESOLUTION REGIME**

A resolution of [Insurer Name] 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 state 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.]*

*[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.”]*

A multi-state resolution will be undertaken with a high degree of national coordination under the state-based system. Senior financial regulators comprise the NAIC’s Financial Analysis Working Group, which coordinates and provides peer review for the oversight of financially troubled insurers. Likewise, through the NAIC’s Receivership Financial Analysis Working Group, senior resolution professionals can coordinate planning and execution of multi-state receiverships. NOLHGA and NCIGF coordinate policyholder protection for multi-state insolvencies.

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, timeline for asset recovery (including through litigation), and coordination with other states and jurisdictions where the insurer has business. Therefore, the length of any receivership action is difficult to predict and may take years to complete in order to effectuate the best possible outcome for policyholders and other creditors.

The [other state insurance department] would handle any resolution of [affiliated insurance entity domiciled in another state]. [Other state]’s receivership scheme ~~would be~~ similar to [this state]’s scheme in that any receivership would be overseen by the local court.

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 and the national state-based guaranty system. 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 was licensed would be triggered to cover the policyholder liabilities in accordance with the guaranty association as defined by insurance laws of those states. The Commissioner as receiver and [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' affected guaranty funds associations. Once triggered, guaranty associations will begin to pay claims and, for life/health insurance liquidations, continue coverage, typically without delay.

[Insurance Code] provides the Commissioner several regulatory actions-tools that can be used 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]. RBC requirements have include absolute actions that must be taken given if the reported RBC level of the reporting entity insurance company is at or below a certain threshold. The hazardous condition requirements are much broader in nature and 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 and magnitude of the financial issues that are prompting the need for regulatory action. [Where applicable, note that a temporary moratorium may be imposed on policyholder withdrawals or surrenders.]

## 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 established by an insurer under [insert jurisdiction's legal/statutory provisions governing the creation of separate accounts] to segregate from the insurer's general assets funds backing certain of the insurer's liabilities. A separate account must be used to manage policyholder funds placed infor variable insurance products to provide the investment options permitted by those products. Insurers have also used separate accounts to support certain fixed products, including fixed payout annuity obligations under pension risk transfer annuities. These accounts ~~is~~ are maintained separately from the general account, and the purpose of each separate account is ~~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 used to support variable products 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 used in support of the variable business. We also note that variable product—separate account policyholders may not be subject to any of the rehabilitation or liquidation moratoriums on policy withdrawals or surrenders funded by a separate account.

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, ceding insurers' status as general creditors, and the potential complexity and multitude of the reinsurance agreements may result in different considerations of how to handle a rehabilitation vs. liquidation that should be described here.]*

Pursuant to [Insurance Code], policies or contracts of reinsurance are not covered by the guaranty association unless, in the case of life and health insolvencies, ~~the~~ assumption certificates have been issued by the reinsurer to the direct insureds. Property and casualty guaranty funds do not cover reinsurance in any situation.

**Commented [A2]:** Note that this section seems to conflate separate accounts with variable products. While all variable products must utilize a separate account, separate accounts are also used for non-variable products where the funds in the separate account support certain liabilities but do not provide investment returns for the benefit of policyholders and are not registered with the SEC. We suggest revisions to acknowledge these other uses of separate accounts and distinguish where the text is referring only to variable product separate accounts.

**Commented [A3]:** There are no provisions in the guaranty association statutes that discuss separate accounts and general accounts. Moreover, such accounts are not relevant to how guaranty associations determine coverage.

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 captives and risk retention groups (RRGs) are subject to most states' receivership laws, insureds within captives or RRGs generally 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.]*

**RESOLUTION ACTIONS**

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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~~ directing 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.

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~~ Commissioner 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-is then granted~~ authority to marshal and take title to all assets of the insurer's estate and runs the day-to-day operations. An Order of Rehabilitation and Plan of Rehabilitation will be tailored to the specific circumstances around the rehabilitation and the goals of the receiver. In most U.S. jurisdictions, the Commissioner serves as receiver. (The appointment of deputy receivers and other consultants is discussed below.)

### Liquidation

An order of Liquidation is sought when the ~~receiver~~ Commissioner determines ~~there is no possibility that (further) efforts~~ to rehabilitate the insurer ~~would be futile or increase the risk of harm to policyholders, creditors or the public~~, and the best option to protect policyholders ~~and~~, creditors ~~and the public~~ is to liquidate the insurer. ~~(An insurer can be placed in liquidation without having been in rehabilitation or any other receivership proceeding first.)~~ In a property and casualty Liquidation, all new and renewal business ceases. ~~However, for life insurance, health insurance (including long-term care) and annuities, policies and contracts will be continued by the guaranty associations in accordance with the terms of the policies and contracts and applicable guaranty association statutes.~~ Again, the receiver ~~receives-is granted~~ 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 outside receivership, T~~the Commissioner has broad authority to object to ordinary dividends and must prior approve any extraordinary dividends.)

### 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 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-resolution~~ action. It is dependent on ~~the success of correctly~~ 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.

### 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 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.
- Supervision typically is a confidential proceeding, allowing the Commissioner to work with the company to correct the hazardous financial conditions without raising concerns of policyholders, creditors or others.
- [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.”]

#### Operations of a Supervision (subject to specific content of an order)

- 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 generally 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 plan 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 transactions; transfer property; incur debt; merge or consolidate with another insurer.

#### 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-NOLHGA or NCIGF] and the guaranty associations of the existence of a Supervision order acts as a notice of a potential receivership liquidation 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.

#### 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."]*

## **2. ORDER OF SEIZURE OR CONSERVATION**

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Under [Insurance Code] an Order of Seizure [or in other state jurisdictions may refer to this as an Order of Conservation. Both referred to as "Seizure" in this section] is the next more severe step after Supervision in the hierarchy of ~~delinquency-resolution~~ actions. A Seizure is designed to make an 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 are one or more statutory grounds justifying ~~for~~ a formal delinquency (i.e., Rehabilitation or Liquidation), or 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.

#### 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 generally 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.]*

#### Confidentiality and Notification/Communication

- *[If applicable in the state, insert confidentiality statement.]* Seizure orders are confidential, and 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." 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 possible 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].*

#### 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"]*.

**Commented [A4]:** Please see note above about life and health guaranty association triggering for an impaired insurer. Even if the above language is retained (as revised), we do not see the need to make repeated references to an option that has rarely been exercised.

- 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 ~~delinquency~~ resolution proceeding. 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 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 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 (or a deputy 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~~may include a temporary moratorium on cash withdrawals, surrenders or policy loans except in defined hardship matters. If the Rehabilitator sells or 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 [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 loans outstanding with the Federal Home Loan Bank (FHLB), the FHLB 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~~rehabilitation, e.g., if the ~~US~~ entity is a reinsurer or a direct writer with significant assumed book of business.]*
- ~~*[This bullet applies to resolution plans involving life, annuity and health insurers.]* A Rehabilitation order 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 state.~~
- 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]*. Other state insurance departments often will seek to either revoke or suspend the company’s authority to transact business in that state. The Commissioner may coordinate with those other states to ensure revocation or suspension is handled in the best interests of policyholders.

**Commented [A5]:** We do not recall this ever happening. Moratoriums are more thoroughly covered on the next page, and we suggest keeping that discussion rather than this sentence.

**Commented [A6]:** Given complexities around the topic, consider a less specific statement such as: “Treatment of derivative counterparties will be subject to [insert state law if applicable].”

**Commented [A7]:** Please see note above about life and health guaranty association triggering for an impaired insurer. Even if the above language is retained (as revised), we do not see the need to make repeated references to an option that has rarely been exercised.

- 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.

#### Oversight of a Rehabilitation

- The Commissioner ~~may generally would~~ appoint ~~a one or more~~ Deputy Rehabilitators. The *[Specify the title of any department director of receivership, ~~or~~ other position, ~~or~~ standing receivership support organization]* is usually appointed as Deputy Rehabilitator or manages the ~~Rehabilitators~~ *rehabilitation staff* if they are outside consultants. Given the insurer's size and complexity, the Deputy Rehabilitator~~s~~ 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-significant national~~ 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 Rehabilitator~~s~~ 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~~Rehabilitator and the Court's approval. The Rehabilitation ~~p~~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 Rehabilitator generally is required to follow the principle that no creditor should be worse off in a Rehabilitation than the creditor would be treated in a liquidation. The Rehabilitation Plan will follow the creditor priorities as stated in [Insurance Code].~~ The Deputy Rehabilitator~~s~~ would seek ~~the~~ guaranty association input on any sale or reinsurance of company blocks of business. The Deputy Rehabilitator~~s~~ and the ~~R~~e 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-resolution~~ 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-being~~ insolvent or the fact that the continued transaction of business would be hazardous to policyholders, creditors ~~and-or~~ the public.

#### The Order

- Liquidation orders are public documents and are subject to judicial oversight by [Name of the Court].
- The Liquidation order ~~does-vests~~ 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 in order to achieve the best possible outcome for policyholders and other creditors.

#### 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 ~~and~~ 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 could most likely~~ include a temporary moratorium on cash surrenders or policy loans except in defined hardship matters. If the Liquidator sells or reinsurers 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 loans outstanding with the Federal Home Loan Bank, the Federal Home Loan Bank 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.,*

**Commented [A8]:** See note above regarding derivative counterparties.

*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 with a finding of insolvency 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 state.
- 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~~ affected guaranty associations (with such conversations happening in advance of a liquidation order being issued).
- 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.

#### 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].

**Commented [A9]:** Apply any changes made to Rehabilitation section



The Deputy Liquidators would work with the guaranty association input on any sale or reinsurance of uncovered 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 based on the type of domestic insurer.]*

- ~~Under a Liquidation order, g~~Guaranty associations are triggered ~~under certain conditions for when a member insurers meeting meets~~ the definition of "insolvent insurers" (i.e., is placed under an order of liquidation with a finding of insolvency).
- Each guaranty association has limits on the amount of coverage they provide for each type of ~~policy benefit insurance~~ as well as aggregate limits per policyholder. These amounts vary somewhat by state.
- The Deputy Liquidators ~~would work with and~~ the affected guaranty associations ~~(through NOLHGA or NCIGF) would work together to consider the possibility of to potentially reinsure or transferring~~ the existing blocks of business to new insurers ~~when possible, or on the run-off of~~ remaining blocks of business. Whether in the case of a sale or run-off, guaranty association coverage is determined by the affected guaranty associations in compliance with state law.
- The life and health guaranty association may guarantee, assume or reinsure any or all of the insolvent insurer's covered policies or provide additional funds to another carrier in an assumption of the business. Also, ~~with the Commissioner's approval, the~~ guaranty associations generally have the authority may to issue an alternative policy, modify a current policy, implement temporary policy moratoriums, or pay policy claims subject to coverage limits, among other actions. Some of these options rarely are exercised (e.g., issuing alternative policies).
  - *[Specific to life/annuity]* The guaranty associations may be required by statute to modify guaranteed or credited interest rates on certain policies.

#### POLICYHOLDER PROTECTION SCHEMES (AKA., GUARANTY ~~FUNDS~~ASSOCIATIONS)

Guaranty associations provide a mechanism for the payment of covered claims under certain insurance policies, ~~or and~~ to continue life, health and coverages annuity policies and contracts. Their purpose is to, aimed to avoid excessive delays in the payment of claims and ~~to the extent allowed by state statute, to~~ minimize the financial loss to covered claimants or policyholders resulting from the insolvency of an insurer, and allow life, health and annuity policyholders to continue (subject to statutory limits) long duration policies that they might otherwise be unable to replace in the market.

A states' guaranty association generally must cover resident claims of an insolvent insurer (placed in a liquidation proceeding) ~~and 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].*
- Benefit and other information about Eeach 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] can be found at *[Insert name of attachment or website]*. A list of coverage and limitations of

**Commented [A10]:** Please see note above about life and health guaranty association triggering for an impaired insurer. Even if the above language is retained (as revised), we do not see the need to make repeated references to an option that has rarely been exercised.

[this state's guaranty association] can be found at *[Insert name of attachment or website]*. Please consult the NOLHGA website [GA Laws] and NCIGF website [Laws and Law Summaries; Comparison of Laws by Provision] for information about eligibility, coverage and limitations for all guaranty associations.

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]~~ their governing statutes for purposes of carrying out the duties of the associations.

#### IMPLEMENTATION

Under [Insurance Code], only the Commissioner has the power to commence ~~delinquency-resolution~~ 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 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

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.

**Commented [A11]:** Consider referencing the Receivers Handbook generally.

**Commented [A12]:** We were unclear as to the referenced "program" here.

Parties to which timely communication is required include the NAIC, ~~NOLGHA-NOLHGA~~ or NCIGF and 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 ~~under specific circumstances, regulators in other jurisdictions other-or~~ 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, distribution of notice to the affected parties, and publication in media outlets, begins.