

September 14, 2023

Honorable James Donelon
Honorable Glen Mulready, Vice Chairman
Receivership and Insolvency (E) Task Force

Subject: August 16 Exposure Draft on Guaranty Fund Coverage for Restructured Business

Dear Commissioner Donelon and Commissioner Mulready:

We are submitting a short letter to reiterate our position on the proposed guaranty fund model law amendment to address restructuring transactions as exposed by the RITF on August 16.

First and foremost, we urge the NAIC to act as expeditiously as possible to adopt this draft and make it available in the states. Most state guaranty fund laws currently do not explicitly address restructured business, and we are concerned that most current state guaranty fund laws would not cover the resulting claims should the transferee entity become insolvent and be ordered into liquidation. Since the most recent laws on this matter permit restructuring of various personal lines and workers compensation business, a modification of guaranty fund law is critical to protect claimants.

As you know, NCIGF's policy is coverage neutrality – that is, if there was guaranty fund coverage before the transaction the coverage should remain in place after the transaction. Conversely, coverage that did not exist prior to the transaction should not be created by the transaction. We believe this position aligns with the charge to the Receivership Law Working Group and the most recent drafts circulated by the Restructuring Mechanisms Working Group. We attach our previous comments which expand on this point.

We feel that the proposed amendment to the covered claim definition at Section 5G(2), as a standalone revision, is consistent with the NCIGF policy. We would be comfortable recommending it to our members and others who may be involved in addressing restructured business guaranty fund coverage in the various states.

Further, we believe that the strike through of the 2009 amendments (including the adjustment to 5G(1)) intended to address assumption transactions is appropriate given that 1) as adopted by the NAIC in 2009 the language does not address IBTs and CDs, 2) the amendments have only been adopted in three states and 3) the proposed revisions provide a more streamlined approach for coverage of various types of restructured business including certain assumption reinsurance transactions.


The optional paragraph 5G(3) in the exposure draft goes beyond the coverage neutrality position in that it would cover business that did not originate from a guaranty fund member company. That is, such claims would not have been guaranty fund covered claims if they had not been transferred. NCIGF does not support 5G(3). The additional modifications to the model intended to address “look-back” assessments on previously uncovered business may unduly complicate state efforts to amend their guaranty fund acts. However, we understand that some regulators believe the optional G(3) language should be made available and we respect this position.

Finally, we wish to extend our appreciation to Robert Wake, General Counsel for the Maine Bureau of Insurance, for his extensive technical work in the drafting process that resulted in the August 16 exposure draft and his continued support of efforts to protect policyholders.

Note that NCIGF is not commenting on the cyber security amendments included in the exposure draft at this time although we do support their inclusion in the exposure draft.

Many thanks for considering our comments. Please feel free to contact me or Barbara Cox for additional information.

Very truly yours,



President & CEO
National Conference of Insurance Guaranty Funds

Attachment – NCIGF Letter of June 23, 2023

June 20, 2023

Kevin Baldwin and Laura Slaymaker
Co-Chairmen of the Receivership Law (E) Working Group

Subject: May 23 Exposure Draft on Guaranty Fund Coverage for Restructured Business

Dear Kevin and Laura:

We appreciate the Receivership Law Working Group's consideration of our proposed guaranty fund model law amendment to address restructuring transactions. As you know, NCIGF's policy is coverage neutrality – that is, if there was guaranty fund coverage before the transaction the coverage should remain in place after the transaction. Conversely, coverage that did not exist prior to the transaction should not be created by the transaction. We believe this position aligns with the charge to the Model Law Working Group and the most recent drafts circulated by the Restructuring Working Group.¹

We feel that the proposed amendment to the covered claim definition at 5G(2), as a standalone revision, is consistent with the NCIGF policy. We would be comfortable recommending it to our members and others who may be involved in addressing restructured business guaranty fund coverage in the various states.

Further, we believe that the strike through of the 2009 amendments (including the adjustment to 5G(1)) intended to address assumption transactions is appropriate given that 1) as adopted in 2009 the language does not address IBTs and CDs and 2) the amendments have only been adopted in three states.

The optional paragraph 5G(3) in the exposure draft goes beyond the NCIGF coverage neutrality position and is not supported by the NCIGF. Likewise, the additional language which we understand is intended to offer options to support G(3) (such as additional definitions and options to provide for a look back to recover guaranty fund assessments that may have been collected had the business originally been covered business) is not necessary without G(3). It also may unduly complicate state efforts to amend their guaranty fund acts because of its complexity.

Note that NCIGF is not commenting on the cyber security amendments included in the exposure draft at this time. However, we do look forward to continued discussion of these amendments.

¹ See the Request for NAIC Model Law Development adopted by the E Committee 7/21/22 – “The scope of the request is limited to addressing the issue of continuity of guaranty fund coverage when a policy is transferred from one insurer to another.” See also Best Practices Procedures for IBT/Corporate Divisions discussion draft dated 4-4-23 – “For corporate divisions involving property and casualty insurance, the applicant's representation that that the laws of each U.S. jurisdiction where any such policies issued by the dividing insurer are allocated address restructuring transactions such that rights to guaranty fund coverage are not reduced, eliminated, or otherwise changed as a result of the transaction. Emphasis added. We are not aware of any objections expressed on this portion of the discussion draft.

Many thanks for considering our comments. Please feel free to contact me or Barbara Cox for additional information.

Very truly yours,



President & CEO

National Conference of Insurance Guaranty Funds

¹ See the Request for NAIC Model Law Development adopted by the E Committee 7/21/22 – “The scope of the request is limited to addressing the issue of continuity of guaranty fund coverage when a policy is transferred from one insurer to another.” See also Best Practices Procedures for IBT/Corporate Divisions discussion draft dated 4-4-23 – “For corporate divisions involving property and casualty insurance, the applicant's representation that that the laws of each U.S. jurisdiction where any such policies issued by the dividing insurer are allocated address restructuring transactions such that rights to guaranty fund coverage are not reduced, eliminated, or otherwise changed as a result of the transaction. Emphasis added. We are not aware of any objections expressed on this portion of the discussion draft.