

CHAPTER 5: CLAIMS

VII. RECEIVERSHIPS INVOLVING FEDERAL HOME LOAN BANK AGREEMENTS

A. Overview of Federal Home Loan Banks

Insurance companies are increasingly likely to be members of, and have a borrowing relationship with, one of the 12 Federal Home Loan Banks (each, an “FHLBank”). The FHLBanks are federally chartered cooperatives under the Federal Home Loan Bank Act (the “FHLBank Act”), regulated by the Federal Housing Finance Agency (the “FHFA”), and their business practices are subject to the terms and limitations of the FHLBank Act and FHFA regulations. Although each FHLBank is a separate legal entity with its own geographical territory and its own specific policies, the FHLBanks share a common mission and have similar business models.¹

1. Definitions Specific to FHLBank Transactions

The following are common terms that a receiver is likely to encounter when dealing with an FHLBank, and may be more specifically defined in FHLBank documents:

- a. “Advance” means a secured loan from the FHLBank to its member in accordance with such terms and conditions as are applicable to such loan under an Advances Agreement, and includes without limitation a funding agreement executed under an Advances Agreement.
- b. “Advances Agreement” means one or more written agreements, including any written, document, policy, or procedure of the FHLBank and incorporated by reference into such written agreements between the FHLBank and its members pursuant to which the FHLBank makes or agrees to make advances and provide other extensions of credit or other benefits to the member and the member, among other things, grants to the FHLBank a security interest in certain collateral.
- c. “AHP” means the Affordable Housing Program of the FHLBank.
- d. “Assuming Insurer” means an Insurer that has entered into a purchase and assumption agreement with the Insurance Department by which the Assuming Insurer has agreed to assume some or all Obligations of a member.
- e. “Member” means an Insurer that is a member of an FHLBank. Such member will own FHLBank capital stock and may from time to time have outstanding advances or other obligations to the FHLBank, which have not been satisfied in full, or have not expired or been terminated.
- f. “Capital Stock” means all capital stock of the FHLBank owned by a member. Each FHLBank has its own capital plan (which is published on the FHLBank’s website), with its own specific capital stock requirements and policies, but generally, each FHLBank requires a member to purchase membership stock (calculated annually) and activity-based stock (required amount fluctuates with the amount of a member’s

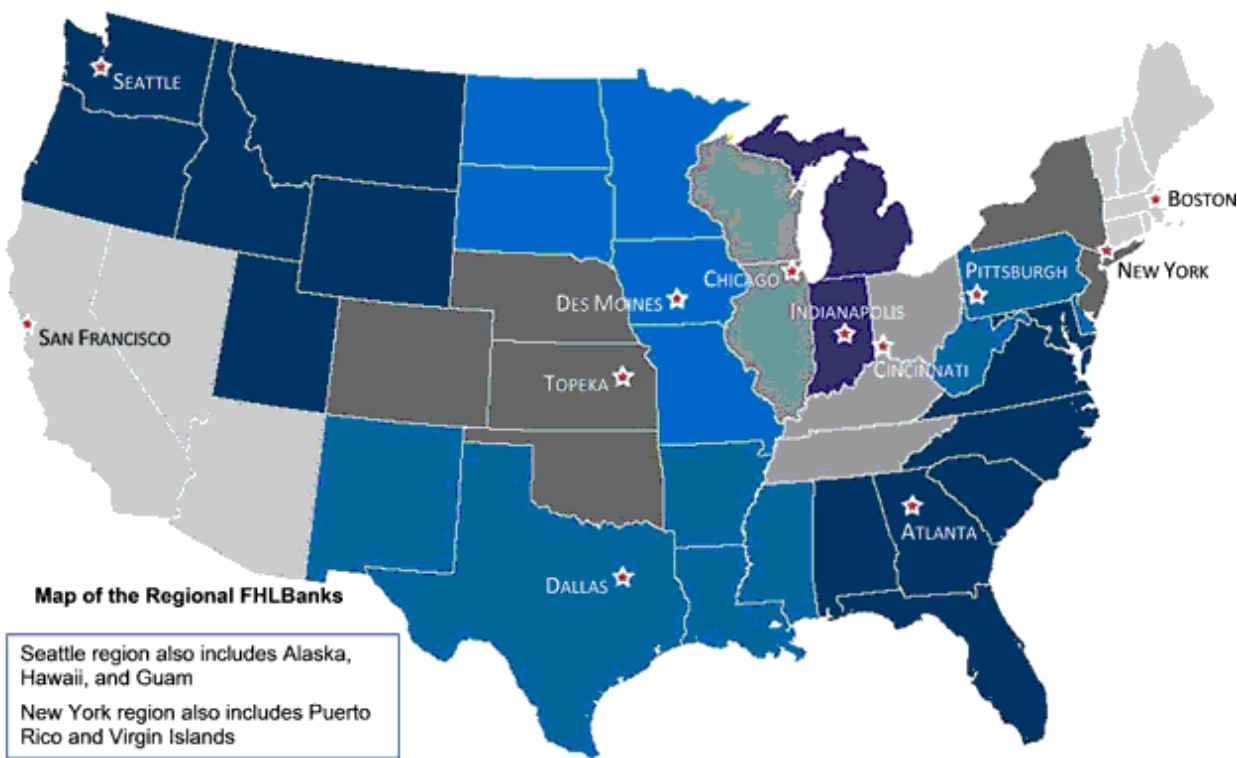
¹ For additional information regarding the mission and purpose of the FHLBanks, http://www.fhlbanks.com/overview_whyfhlb.htm

advances or other obligations outstanding). By statute, Capital Stock is Collateral for a member's Obligations to the FHLBank.

- g. "Collateral" means all property, real, personal, and mixed, in which either a member, or an affiliate of the member, has granted a security interest to the FHLBank or the FHLBank has otherwise acquired a security interest. Each FHLBank has its own policies regarding collateral that the FHLBank will accept to secure advances and other obligations, the minimum amount of collateral required, and how the value of such collateral is calculated for purposes of pledging to the FHLBank].
- h. "Obligations" are any and all indebtedness, obligations and liabilities of the member to the FHLBank pursuant to the terms and conditions of the Advance Agreement or any other agreement between the member and the FHLBank, subject to applicable law.

2. Geographical Map of FHLBank Districts and FHLBank Contact Information for Receivers

The following is a geographical map of the FHLBank districts and list of FHLBank contact information (as of 2013). An insurance company can only be a member of the FHLBank in the district where the insurer is domiciled or where it maintains its principal place of business as defined by FHFA Regulations.



FHLBank	Title/Department	Phone
FHLBank Atlanta	Member Support Operations	mergers@fhlbatl.com
FHLBank Boston	Director of Credit	617-292-9705
FHLBank Chicago	General Counsel	312-565-5805
FHLBank Cincinnati	Vice President, Credit Risk Management	513-852-7525
FHLBank Dallas	Chief Banking Operations Officer	214-441-8546
FHLBank Des Moines	VP/Credit Risk Officer	515-281-1054
FHLBank Indianapolis	Chief Credit and Marketing Officer	317-465-0459
FHLBank New York	General Counsel	212-441-6822
FHLBank Pittsburgh	Chief Credit Officer	412-288-3425
FHLBank San Francisco	Chief Credit Officer	415-616-1000
FHLBank Seattle	Chief Counsel	206-340-2300
FHLBank Topeka	Chief Credit Officer	785-438-6055

B. Coordination of Efforts with a FHLBank

The relationship between an insurance receiver and a lender to the insurer in receivership that is a member of the FHLBank system can present a number of unique issues.

There is no prescribed order of steps for managing a troubled insurer's obligations to an FHLBank. The following may facilitate the process:

1. Gain an Understanding of the History and the Current Status of the FHLBank Program²

It is imperative that the receiver understand fully the history and components of the program. Important aspects of this basic information include:

a. Contacts

Who are the individuals at the bank (including outside counsel and advisors) who manage the bank's role with the insurer and how can they be reached, especially if contact on short notice becomes necessary. Similarly, who will be "point" for the receiver in managing the ongoing relationship? Providing the bank a contact person upon inception of delinquency proceedings will temper the possibility that the bank will take summary protective action for lack of information.

b. Complete Documentation

The receiver should strive to obtain and review carefully all of the documents governing

² The guidance in sections B.1, B.8, B.9, and B.10 are intended only to offer practical suggestions for managing the relationship between the receiver and the FHLBank based on the experience of the Shenandoah Life Insurance Company in receivership, related discussions and circumstances as existed generally at the time of this writing. It is important to note that every situation has its own characteristics and circumstances and that the relationship between one insurer and one FHLBank is likely to differ materially from any other such relationship. Further, no effort is made in this guidance to explore the legal or policy bases for the parties' rights and liabilities, nor to evaluate suggested legislative or regulatory improvements.

the relationship, including the initial documents establishing the relationship and those related to subsequent advances and repayments.

c. Inception Date and Terms

The terms on which the relationship was established are likely to govern all subsequent advances and repayments. Not only is the formal agreement important, but so are emails and other communications that may provide a more complete understanding of the parties' actual expectations and concerns. Whether or not legally sufficient to alter the formal agreement, course of conduct may be critical guidance on how transactions actually were to be conducted.

d. History of Advances and Repayments

The relationship may have been in place for years and involved a number of advances and repayments. It is important that the receiver gain a thorough understanding of this history to determine whether certain remedial steps (such as stock redemption or release of excess collateral) are indicated immediately.

e. History of Collateral

For similar and other reasons, the collateral requirements upon which the parties agreed when the relationship was established, and how the posting and release of that collateral has evolved over time, are very important factors in understanding what company assets are properly hypothecated or pledged to the FHLBank (and therefore unavailable to pay other claims or expenses), and which assets may be so identified on the company's records but may in fact be eligible for release from such FHLBank claims. Note that the agreement(s) with the FHLBank may require that the insurer post collateral of a stated value in excess of outstanding advances and may also prescribe a reduction in the value assigned to that collateral (the "haircut"), with the combined effect of leaving the bank over-collateralized. It may be possible to negotiate some relief from the over-collateralization of outstanding advances.

f. History of Acquisition and Redemption or Disposition of Bank Stock

As a condition of becoming a member of the FHLBank system, and therefore eligible for advances, the insurer will likely have been required to purchase a certain amount of "membership" stock in the FHLBank. There is typically no independent market on which that stock can be sold and the only way in which the insurer can dispose of it is to sell it back to the FHLBank on redemption terms established by the parties' agreement. Normally the agreement requires that the insurer retain the membership stock so long as the agreement remains in place and advances remain outstanding.

Further, with each advance, the insurer may have been required to purchase additional bank stock as "activity stock", typically in quantities constituting a small percentage of each advance. As with "membership" stock, there is no independent market on which activity stock can be sold, and the only way in which the insurer can dispose of it is to sell it back to the FHLBank on redemption terms established by the FHLBank's capital plan and the parties' agreement. The agreements or explicit terms and conditions of the stock may give the FHLBank discretion to postpone the redemption of membership and activity stock.

Because the stock is illiquid and therefore of little value to the receiver in managing the rehabilitation or liquidation, exploring prompt redemption of outstanding stock may be prudent.

g. Investment of Advances

It is important to determine whether the collateral obligations created by advances have resulted in the hypothecation of other assets of the insurer in a way that may have resulted in asset-liability mismatches and potential liquidity problems. It is not unusual to find a disproportionate share of the insurer's high-grade, liquid, assets pledged as collateral for advances the proceeds of which were instead invested to potentially create beneficial leverage or interest rate arbitrage. Over time, and with deteriorating conditions in the capital market, this can create serious challenges for the receiver. The potential substitution of collateral should be explored with the FHLBank to ameliorate these challenges. However, an FHLBank is limited by regulation on the types of collateral it may accept.

h. Performance in Relation to Repayment Obligations

By design, the FHLBank program is structured so that the FHLBank does not take on much risk in connection with advances to members, including insurers. The pricing (interest rates charged) for the advances do not typically contemplate material risk of default, and collateral requirements are intended to all but eliminate such risk. The receiver should familiarize himself or herself with the history of the relationship to determine whether there are outstanding concerns for the bank that should be addressed promptly so that the bank does not feel compelled to exercise its rights to the collateral in a manner that might prove disruptive to the receivership. Outstanding defaults or near-defaults should be identified and remedied to preserve the collateral.

i. Current Balance of Advances

Obviously, the amount of outstanding advances and resulting repayment obligations must be understood well by the receiver, particularly in relation to collateral pledges. The records of troubled insurers may not be sufficiently complete or accurate to allow for proper monitoring of these outstanding balances and efforts should be made to reconcile the insurer's records to those of the bank.

j. Repayment Due Dates and Segregated Cash Account Balance

Advances are made with specific repayment obligations. These obligations will address both interest and principal payment obligations, with specific dates established for both. It is common for segregated-cash-account requirements to be imposed from which the bank can draw some or all of these payments. The receiver needs to identify how much cash the insurer is required to maintain in specified accounts by the agreement(s) and the dates and amounts of required interest and principal payments. Plans should be made to assure liquidity and the ability to comply with these requirements or to make other payment arrangements. If forbearance or accommodations become necessary or desirable, those should be negotiated promptly, if the bank has the ability to provide them.

k. Excess Cash

If the insurer finds itself with more cash than required in the specified account(s), discussions should be undertaken with the FHLBank, and without prejudice to the receiver's right to seek a court ordered release, to obtain release of excess cash collateral to the receiver, recognizing that cash held by the FHLBank is a portion of the Collateral for the insurer's obligations.

l. Prepayment Fees

Typically the agreements discourage early repayment of advances because such repayments may be inconsistent with hedges and other arrangements made by the bank in connection with the advances to the insurer. Prepayment may therefore trigger prepayment charges or fees owed by the insurer. However, the bank's need to charge those prepayment fees may be reduced or eliminated by changing circumstances affecting the hedges or other arrangements made by the bank. The receiver should therefore consider whether prepayment may be advantageous (for example because of associated collateral release or stock redemption). If prepayment would be helpful to the receiver's strategy, discussions with the bank should ensue to determine the most optimal prepayment timing that will result in the lowest applicable prepayment fees.

m. Cash Required

As noted, the agreements typically require the insurer to maintain specified liquidity, likely in segregated accounts at the bank, for the protection of the bank. The receiver will need to address these requirements.

2. Notice of Receivership to the FHLBank

a. Notify FHLBank of Receivership

Immediately following the establishment of the receivership, the receiver should contact the FHLBank (see initial FHLBank contact information above) to inform the FHLBank that the Insurer has been placed into receivership.

b. Identify Authorized Individuals

The receiver should forward electronically to the FHLBank all legal agreements, court orders, and/or notices that evidence the appointment of the receiver and a delegation of authority designating individuals authorized to transact business on behalf of the receiver in a mutually satisfactory form. To protect the receiver, the FHLBank may place the account of the member "on hold," prohibiting any additional member/receiver-initiated activity until the required agreements and authority delegations are received.

c. Schedule Initial Conference Call or Meeting

The receiver and the FHLBank should schedule a mutually convenient time to hold a conference call meeting following the establishment of receivership.

3. Considerations for the Initial Conference Call or Meeting with the FHLBank

a. Identify Contact Person(s)

The FHLBank, the receiver, and the Assuming Insurer, if applicable, should each identify their primary contact person(s) and business activity coordinator(s). The receiver should also provide to the FHLBank a key point person(s) who will remain involved with the disposition of all residual issues pertaining to the receivership through completion.

b. Identify Outstanding Obligations, Pledged Collateral, and Capital Stock

During the initial conference call meeting, the receiver should request that the FHLBank identify all outstanding advances and any other outstanding obligations of the member, including AHP subsidy exposures, letters of credit, and correspondent services exposures. Furthermore, the receiver should request that the FHLBank provide information regarding the amount and nature of collateral pledged, the balance of any member cash accounts or safekeeping accounts, and the member's capital stock.

c. Establish Receivership Timeline

During or prior to the initial conference call meeting, the receiver should inform the FHLBank of the planned receivership timeline; and the identity of any other parties involved in the receivership process.

d. Discuss Payment of Obligations and Collateral Releases

The FHLBank will need to know what the receiver's intentions are with respect to the obligations and if it desires to retain continued correspondent services activities during the receivership. Depending on the facts and circumstances, and subject to renegotiation with the receiver, FHLBank may allow the receiver to:

- Leave the obligations outstanding in accordance with their existing terms and conditions, including scheduled interest and principal payment dates and collateral requirements;
- Prepay the obligations, subject to FHLBank policies and procedures regarding prepayments; or
- Transfer the obligations to an Assuming Insurer acceptable to all the parties.

The receiver should request that the FHLBank discuss the process and timing for release of any collateral once all or any part of the outstanding obligations have been satisfied, assumed, or secured with other collateral. If a court ordered or statutory stay is in effect, the receiver and the FHLBank may need to execute an agreement detailing the agreed upon payment of obligations and treatment of collateral.

e. Prepayments

If the receiver wants to pay down advances prior to the scheduled maturity date, the receiver should contact the FHLBank and request that the FHLBank calculate an estimation of the final payment due as of that agreed upon prepayment date. The requested estimation should include outstanding principal, accrued interest up to the date of prepayment, and applicable prepayment/settlement fees.

f. Assuming Insurer

If the Obligations of the member are expected to be transferred to an Assuming Insurer, such transfer is subject to the approval of the receiver, the FHLBank and the receivership court.³ If approved, the FHLBank likely will require that the Assuming Insurer execute an assumption agreement, and such agreement will stipulate that the Assuming Insurer is responsible for the timely payment of assumed Obligations, direct or contingent, in accordance with the terms and conditions of the Advances Agreement and any other agreements in effect between the member and the FHLBank.

g. Summary of Call

Following the initial conference call, the receiver should request that the FHLBank provide a detailed closing statement for the receiver along with a summary of other matters discussed and agreed upon during the call. The summary of the call could provide the framework for the development of a Memorandum of Understanding between the parties.

4. Disposition of Obligations

The FHLBank will expect payment from the receiver in the event Obligations are outstanding unless the Obligations have been purchased by or assigned to an acceptable Assuming Insurer.

With the approval of the receiver, FHLBank, and the receivership court, the obligations may be transferred to an Assuming Insurer through the execution of an Assumption Agreement that will be provided by the FHLBank. Such Obligations will be required to be collateralized in a manner acceptable to the FHLBank prior to any release of collateral pledged by the failed member. Such collateral requirements may differ from the requirements the Assuming Insurer may be accustomed to if it is a member of another Federal Home Loan Bank.

Obligations that the receiver has decided not to resolve immediately will need to remain collateralized in accordance with the Advances Agreement.

5. Release of Collateral (Assuming all member obligations have either been satisfied or assumed and fully collateralized by the assignee)

If mortgages have been listed and/or delivered to the FHLBank or to a third-party custodian, the FHLBank will initiate the delivery of those mortgages to the receiver or the receiver's designee in a timely manner and the FHLBank will file a UCC-3 termination statement⁴ upon request.

³ If the assumption is consummated during a receivership proceeding, then the receivership court would have to approve the transaction and if the assuming insurer is a US insurer, then the domiciliary insurance department would also have to approve the transaction.

⁴ When a secured lender obtains a lien on collateral pledged to it, the lender files a UCC -1 so that there is a public record putting other creditors on notice of the lien. A UCC-3 is a termination statement filed by a secured lender to update the UCC record to reflect the lien has been released.

If cash or securities have been pledged by the member, the FHLBank's interest in those assets will be promptly released and the assets will be delivered to the receiver or receiver's designee based on instructions provided.

Partial payment of obligations may allow for partial release of collateral in accordance with the FHLBank's collateral release practices.

6. Capital Stock

Typically, Capital Stock holdings of the member may be retained by the receiver or transferred to an Assuming Insurer, if such Assuming Insurer is a current member of the FHLBank. If the Assuming Insurer is not a member of the FHLBank, then the Capital Stock may be repurchased if permissible under applicable laws, regulations, regulatory obligations, and the FHLBank's capital plan and the proceeds of the Capital Stock transferred to the Assuming Insurer or receiver as long as the proceeds of the capital stock are not required to be retained by the FHLBank as collateral or as capital required against remaining outstanding business activity, in accordance with the FHLBank's policies, procedures, or practices.

Treatment of Capital Stock and any payment of dividends are subject to the provisions and restrictions set forth under applicable laws, regulations, regulatory obligations, and the FHLBank's capital plan.

7. Other Matters

If the member was a participant in other FHLBank programs such as AHP or letters of credit, collateral will be required to support all obligations that continue to exist past the life of the member. The receiver should request that the FHLBank provide a detailed account of all other programs the member participated in and the term of exposure and the amount and type of collateral required.

The receiver and the FHLBank should determine an appropriate frequency of follow-up correspondence throughout the receivership process.

8. Areas of Possible Agreement¹

The receiver seeks to maximize the value of the estate and to protect policyholders, claimants and beneficiaries of the insurer. To this end, the receiver takes all appropriate steps to marshal and preserve assets for distribution in a liquidation or to facilitate rehabilitation or other resolution of the impaired or insolvent insurer. Apart from maximizing the value of the estate, liquidity is important to both the on-going operation of the estate and more timely distributions. While more formal means to accomplish the purposes of the receivership are always available and should be pursued if necessary, money and other resources ought not to be devoted to that pursuit unless good faith attempts to reach consensual resolution with the FHLBank have failed. In particular, receivers may seek agreement with the FHLBank in the following areas:

a. Release of Excess Cash

As noted, the history of the relationship may have resulted in the insurer posting more

cash than required by the agreement in accounts accessible solely by the bank and unavailable to the receiver for other purposes. Release of this excess cash to the general assets of the receivership should be pursued promptly.

b. Release of Excess Collateral

Over time the insurer may have caused more collateral to be pledged to the bank than is required by the agreements (for example because repayments may not have resulted in full release of the associated collateral or because of the appreciation of the collateral). In addition, because of the deteriorating condition of the insurer the bank may have had the right to require that the insurer post additional collateral (sometimes as much 25% over the amount of outstanding advances). It may be possible to convince the bank to release some of this excess collateral so that it can be used for other receivership purposes. This is particularly true if the bank can be assured that reducing collateral will not unduly endanger the probability for full repayment when due.

c. Reduction of Haircut and Excess Collateral Requirements

If the formula for determining excess collateral and haircuts applied to collateral values no longer reflect economic reality, the receiver should work with the FHLBank to recalculate these in the light of current conditions, again resulting in the release of some collateral.

d. Repurchase of Excess Stock

Over time, the insurer may have accumulated more bank stock, especially activity stock, than is required by outstanding advances (i.e. "excess stock"), for example because the bank may have been slow in repurchasing stock following repayment of advances. Although the bank cannot be required to redeem excess stock upon demand by the receiver, except after expiration of a redemption period (typically five years), if the bank's financial condition is not an issue, and barring any statutory or regulatory prohibition, the receiver might seek waiver of the redemption period in order to negotiate the repurchase of excess stock, converting it into liquid assets available for receivership purposes.

9. Managing the Relationship⁵

Apart from seeking accommodations, the receiver should manage the ongoing relationship.

a. Evaluate Pre-Payment

The receiver should consider when it would be optimal to repay outstanding advances and plan accordingly in cooperation with the bank.

b. Evaluate Need for Extensions

It may be necessary or appropriate to renegotiate the repayment schedule with the bank and to evaluate the cost of doing so.

⁵ See Footnote 1

c. Evaluate Substitution of Collateral

Due to asset-liability matching considerations or for other reasons, it may be helpful to explore the possibility of substituting collateral posted against outstanding advances.

d. Determine Desirability of Maintaining the FHLBank Program

The FHLBank program typically provides the insurer a facility for financing or access to liquidity on desirable terms. The receiver should consider whether continuation of the program may play a useful role in rehabilitation or liquidation plans. If sale of the company is being considered, preservation of the program may add value to potential buyers, making the insurer that much more attractive.

e. Develop Exit Strategy if Desirable

Conversely, the receiver may conclude that terminating the FHLBank program is the best option. In that case a thoughtful program for concluding the relationship in cooperation with the bank should be developed and implemented.

10. Share Experience with the NAIC⁶

In any case, because this is a relatively new development in the world of insurance receiverships, sharing the receiver's experience with the NAIC and other receivers is indicated provided that appropriate confidentiality can be maintained under applicable law. Developing a body of knowledge will facilitate the management of these programs by banks and receivers involved in subsequent cases.

⁶ See Footnote 1

CHAPTER 1: TAKEOVER AND ADMINISTRATION

* * * * *CHAPTER DETAIL ELIMINATED TO CONSERVE SPACE* * * * *

V. RECEIVERSHIP ADMINISTRATION

A. Planning

The regulator who expects to successfully prosecute a receivership action must become familiar with the insurer's operations and business as soon as possible, as must any potential special deputy and staff. Regulators may benefit from discussions with the department's financial regulatory personnel. The checklists included in the exhibits at the end of this chapter include a list of documents that should be reviewed.

1. Identify Problems

It is important for the intended receiver to meet with the regulator's staff as soon as possible, preferably before the receivership order is entered, to discuss the perceived causes of the insurer's difficulties and the potential for a successful rehabilitation or liquidation. Information from financial examiners, financial analysts, market conduct examiners and licensing agents might assist the receiver in determining the causes of the insolvency.

It is also important for the receiver to meet with the insurer's officers and/or directors, when possible. These meetings are usually clear indicators of how cooperative or hostile the insurer's management will be after appointment. Hostile environments require additional personnel and security measures at the takeover site to secure the assets and records. In some circumstances, it may be important to maintain confidentiality about an intended takeover, in which case a meeting with management may not be possible.

During any meetings with management, the receiver should request that all fidelity bonds, directors and officers policies, and errors and omissions policies be identified, segregated and made accessible. Once the takeover begins, one of the receiver's first acts will be to place all insurance carriers on notice to preserve the rights of the estate.

2. Identify Key Transitional Elements

The insurer's officers, directors and employees may be willing and able to advise the prospective receiver about the existence of service providers and outside consultants employed by the insurer, including legal counsel, accountants and actuaries. The receiver should obtain, or ensure access to, records and contracts that the insurer has with all consultants and service providers. The receiver will have to determine which, if any, of the various service providers to retain. [The receiver should also determine if the insurer is a member of a FHLBank and, if so, identify key individuals at the insurer and at the FHLBank.](#) Additional steps to consider in the pre-takeover phase are in the checklists included in the exhibits at the end of this chapter.

It is also important to maintain meaningful dialogue with the guaranty funds in the states where the insurer was authorized to conduct business, and with NOLHGA or the NCIGF, because the receiver needs to:

- Be aware of any statutory prerequisites to trigger guaranty funds' obligations and plan accordingly;
- Guard against coverage gaps between the guaranty funds' trigger dates and the policy cancellation date, if any, with respect to property/casualty policies and cancelable life or health policies;
- Identify the definitions of "covered claim" or "covered policy" for each state guaranty fund;
- Determine whether a guaranty association or similar association is providing coverage for multi-state health maintenance organizations in other states; and
- Arrange early coordination with NOLHGA for life and health insurers, and with NCIGF for property and casualty insurers, to facilitate a seamless transition of coverage and/or payment of benefits.

3. Working Business Plan

During the planning phase of a receivership, it may be helpful for the receiver to develop an internal working business plan with reasonable timeline and objectives that consider multiple paths, taking into consideration claimants, policyholders, taxpayers and stakeholders (e.g. lenders, shareholder, affiliates, etc.) The development of a multi-option plan (e.g. option A, B or C) in order of most beneficial may help in planning for and supporting each phase of the receivership process and in ultimately developing the Rehabilitation Plan required by the Rehabilitation Order.

4. Monitoring and Progress Reports

Once the receivership proceeding commences, the receiver should consider maintaining weekly or monthly progress reports that serve as high level report cards of the key issues and the progress made in servicing customers and the effectiveness of the working business plan. The progress reports includes a view of the whole insurance company—financial and operational, highlights key data about company activities of each division and also identifies critical compliance areas for financial, operational, legal and statutory guidelines. Included in this monitoring process may be specific accomplishments and updates that should be made available to policyholders and claimants and the courts.

B. Receivership Order

A receivership order authorizes the receiver to conserve, rehabilitate or liquidate the insurer, with various statutory and judicially imposed restrictions that may vary from state to state and case to case. Subject to these restrictions and to the supervision of the court, the receiver controls all aspects of the insurer's operations, from the initial order until the receiver is discharged. The receiver's responsibilities extend to policyholders, creditors, regulators and other interested parties. The receiver should communicate with these parties and keep them informed of the progress of the receivership. Many receivers use Web sites for this purpose. State insurance departments' Web sites may also be available for that purpose.

The order may be issued because the insurer is impaired (generally, a conservation and rehabilitation) or insolvent (liquidation or, in special circumstances, a rehabilitation). The order may also be issued to protect an insurer operating under severe financial impairment, as evidenced by a variety of factors, such as investments in an undiversified portfolio of stocks or bonds, writings to surplus in excess of the allowable amount, issuance of total insurance business by one MGA or TPA, or entering into non-risk bearing surplus relief contracts. [A receivership may also be instituted if current management is found to be detrimental to the management and/or financial stability of the insurer.](#)

Some common issues addressed in receivership orders are:

- Writing of new or renewal business;
- Handling of reinsurance;
- Dividends or transfer of assets without the receiver's approval;
- Payments to affiliates;
- Limitations on new investments;
- Seizure of physical and liquid assets;
- Liquidation of certain investments;
- Change or dismissal of officers and/or directors;
- Ownership of records and data of the insurer or related entities;
- Cancellation of certain MGA, TPA or general agency agreements;
- Limitations on funding by premium finance companies;
- Payment of loss and loss adjustment expense, etc.;
- Moratoria on claims, cash surrenders, withdrawals, policy loans, etc.; and
- Hardship Provisions (refer to state statutes, state guaranty associations or to www.ncigf.org and www.nolhga.com).

Once the receivership order is entered, the receiver is empowered to operate the insurer. Officers may be retained or terminated and directors may be relieved of duties, though these actions must be carefully evaluated because of possible adverse effects on litigation involving directors and officers. In fact, a careful evaluation prior to termination of any employee is recommended. An immediate determination may be made as to the need for outside consultants or professionals, such as accountants, actuaries, computer specialists, attorneys, investment counselors, etc.

The insurer may remain in receivership for a fixed period of time or until the occurrence of specified events, e.g., the rehabilitation of the insurer or the liquidation of the estate and the discharge of the receiver.

C. Notices

Notice of the insurer's status should be in accordance with the receivership court's direction. The court may direct the notice to be issued by mail and/or by publication in a newspaper of general circulation. In the case of a conservation (under IMRA) or rehabilitation, the notices may be issued to assist the receiver in informing the policyholders and sustaining the business of the insurer. Notice may be sent to the following persons, among others, when the court requires, as their rights or interests are affected:

- Policyholders and beneficiaries;
- Guaranty associations;
- State insurance departments;
- Third-party claimants;
- NAIC;
- Internal Revenue Service;
- U.S. Department of the Treasury;
- U.S. Department of Justice;
- State and local offices;
- Banks;
- Brokerage or investment banking firms;
- Managing general agents, general agents and all agents of record;
- Reinsurers;
- Intermediaries;
- Creditors, including secured creditors ([including the Federal Home Loan Bank, if applicable](#));
- Claim adjusters;
- Third-party administrators;
- Premium financiers;
- Vendors;
- Accountants, actuaries, lawyers and other professionals;
- Landlords and tenants;
- Officers and directors;
- Stockholders and other equity holders; and
- Other necessary parties.

Notice may vary depending upon whether the insurer is in rehabilitation or liquidation. Under IRMA, conservation is similar to rehabilitation, and the notice requirement is the same. If the notice is pre-approved by the court, it will avoid potential claims of non-disclosure or omission of material facts.

*** * * * *CHAPTER DETAIL ELIMINATED TO CONSERVE SPACE* * * * ***

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* * * * *CHAPTER DETAIL ELIMINATED TO CONSERVE SPACE* * * * *

<u>Checklist 1 – Pre-TakeOver</u> Task	Project Assigned To	Date Completed	Completed By	Notes
Undertake a thorough review of available information pertaining to the insurer and its operations to obtain a detailed understanding of the insurer to assist the receiver in planning an efficient and effective takeover.				
Obtain or prepare an organization chart of the insurer and its subsidiaries and affiliates. Assign takeover responsibilities for each of the insurer’s departments/functional areas to an appropriate representative of the Receiver’s team and distribute checklists accordingly.				
Review commercial publication reports such as A.M. Best, Dunn & Bradstreet, Standard & Poor’s, and Moody’s in order to obtain an overview of the insurer.				
Secure contact information for the person at the Department of Insurance responsible for this company.				
Receiver’s staff should meet with the Department of Insurance to obtain background information and specific issues with the insurer.				
Obtain from the Department of Insurance their most recent examination work papers, the insurer’s most recent annual and quarterly statements, audited financial statements with auditor’s opinion, actuarial certifications, any SEC filings, tax returns and any other financial statements.				
Obtain copies of any other insurer documents held by the Department such as insurer charter, by-laws, Form A’s and other applications, etc.				
Obtain list of management, including officers and directors, along with biographical affidavits on file with the Department.				

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<u>Checklist 1 – Pre-TakeOver</u> Task	Project Assigned To	Date Completed	Completed By	Notes
If possible, obtain all of the above for any affiliated companies that might be affected by the takeover such as parent, affiliates and/or subsidiaries.				
Obtain overview of the insurer’s situation, including type of proceeding and timing of takeover.				
Obtain information regarding location of offices and storage facilities, staffing and how to deal with satellite offices.				
Obtain information on office layouts and security issues.				
Pre-inspect premises if possible.				
Obtain information on related party transactions and agreements, including leases, service agreements, agreements containing collateral calls , and ownership of shared assets, including personnel.				
Obtain information on items that will affect immediate operational needs such as leases (including those on computers), telephones, Web sites, supply vendors and key personnel.				
Obtain information on agents, TPAs, administrators, MGAs, intermediaries and reinsurers, including locations and contacts.				
Obtain information on auditors/accountants and attorneys.				
Identify banking relationships and obtain information on bank accounts, financial institutions and securities custodians (including Federal Home Loan Bank agreements, if applicable) .				
Obtain information on licenses in other states, statutory deposits, special deposits and communications with other states.				
Determine any possible guaranty association involvement. Contact NCIGF and/or NOLHGA if insurer was licensed in multiple states.				

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<u>Checklist 1 – Pre-TakeOver</u> Task	Project Assigned To	Date Completed	Completed By	Notes
Review and analyze insurer’s annual statement balance sheet by line item to obtain as much information as possible about the assets and liabilities, including any subsequent events, potential problems/unusual circumstances and special items in the Examiner’s report for each line item.				
Review notes and interrogatories to financial statements.				
Review condition and location of insurer’s books and records.				
Coordinate with counsel to assist in preparation of the petition and order and determine parties to be served.				
Determine method(s) of notification of various parties in other locations, e.g., financial institutions; <u>and securities custodians including Federal Home Loan Bank, if applicable, other lenders,</u> etc.				
Reconfirm Receivership team assignments, and determine Receivership team needs in other locations and logistics of getting team members to assigned locations.				
If possible arrange for a meeting with management to discuss ramifications and procedures.				
Prepare agenda for meeting with insurer personnel (or memo for distribution to personnel) that discusses ramifications of order and procedures to be implemented.				
Prepare phone scripts for customer service representatives.				
Prepare information to be posted on Web sites.				
Prepare notices for posting on office doors as may be required.				
Determine if security service is required and hire as needed.				

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<u>Checklist 1 – Pre-TakeOver</u> Task	Project Assigned To	Date Completed	Completed By	Notes
Determine frequency of Receiver team meetings after takeover and method of communicating issues to team/Receiver and the decision-making process.				
Contact applicable guaranty association(s) as early as possible.				

* * * * *CHAPTER DETAIL ELIMINATED TO CONSERVE SPACE* * * * *

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<u>Checklist #5 – Customer Service</u> Task	Project Assigned To	Date Completed	Completed By	Notes
<i>Phones</i>				
Meet with insurer’s manager for the customer services section to discuss the insurer’s procedures, staffing and duties required as a result of the order.				
Interview the customer services manager (and/or other personnel as appropriate) to discuss the insurer’s customer services functions and operations to determine how phones, e-mail requests, etc., are handled by the insurer. Document same. Be sure to obtain information regarding the insurer’s night/weekend answering service and automated call distribution system (ACD).				
Meet with the insurer’s customer service representatives to inform them of the receivership processes and take control of the customer service process.				
Secure switchboard.				
Secure account numbers for phone lines.				
Obtain customer service representatives’ passwords for ACD and other systems so as to ensure that the receiver has full access and rights to any ACD system.				
Meet with insurer’s phone programmer—adjust outgoing phone message.				
Distribute prepared phone script, provider refusal forms, accord forms, etc.				
Train customer service reps on phone script, advising that all responses to inquiries are to be consistent with information on script.				
<u>Increase the number of call center staff to handle incoming calls, if</u>				

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<u>Checklist #5 – Customer Service</u> Task	Project Assigned To	Date Completed	Completed By	Notes
necessary.				
Take advantage of large agent network, if applicable, to provide a mass email and physical mailing of key information to active agents.				
Determine need for bilingual reps.				
Determine need to maintain phone logs to determine types and number of calls, types of questions raised and need for additional types of and updated scripted responses so that information is current and meaningful.				
Obtain Department of Insurance complaint logs.				
Establish and monitor dedicated phone line.				
Review customer service representative’s daily/hourly logs.				
Manage customer service representative’s phone/time schedules.				
Monitor backlogs, or development thereof, and determine how to minimize/control.				
Modify instructions to night/weekend answering service as needed.				
Web site				
Provide copy of phone script to Webmaster for inclusion on Web sites.				
Provide Webmaster with other information to be posted on Web sites.				
Develop, post to the website and maintain Frequently Asked Questions (FAQs) for the public.				
Provide information to the possible electronic filing of proof of claim (Claim Net), as appropriate.				

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<u>Checklist #5 – Customer Service</u> Task	Project Assigned To	Date Completed	Completed By	Notes
Monitor/distribute for response any consumer inquiries received via Web site.				

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<u>Checklist #8 – Accounting</u> Task	Project Assigned To	Date Completed	Completed By	NOTES
<i>Securities</i>				
Determine and list investments by type and reconcile to schedule D: <ul style="list-style-type: none"> ▪ Bonds <ul style="list-style-type: none"> ○ Municipal ○ Corporate ▪ U.S. government obligations ▪ T-Bills ▪ Strips ▪ Notes ▪ Agency obligations ▪ Stocks <ul style="list-style-type: none"> ○ Common ○ Preferred ▪ Repurchase agreements ▪ <u>Advance Agreements</u> ▪ <u>Funding Agreements</u> ▪ Cash balance if not above ▪ Partnership agreements ▪ Stock options/warrants ▪ Collateral loans ▪ Other 				
<u>Identify assets that are held as collateral, outstanding advances or otherwise restricted and the circumstances that could initiate calls</u>				

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<u>Checklist #8 – Accounting</u> Task	Project Assigned To	Date Completed	Completed By	NOTES
on such assets.				
Continue contact and follow up with all custodians (and FHLBank, if applicable) regarding new transaction procedures and authorizations.				
Obtain cut-off statements for all custodial accounts.				
Reconcile all investment accounts to cut-off statements, noting any unusual items for further investigation.				
Obtain current market values for all invested assets.				
Establish procedures for monitoring status of current investments and procedures for investing maturities and new funds that will comply with maturity requirements for cash flow needs.				
Establish a protocol with FHLBank, if insurer is a member, to coordinate all activities relating to applicable Advance or Funding Agreement(s).				
Notify paying agents on registered bonds to forward future checks to receiver.				
Obtain a list of securities held for statutory deposit/state deposits; confirm with applicable states.				
Determine type and amounts of all statutory deposits, special or general.				

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<u>Checklist #10 - Claims</u> Task	Project Assigned To	Date Completed	Completed By	NOTES
<i>Liabilities and Other Claims</i>				

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<p align="center"><u>Checklist #10 - Claims</u> Task</p>	<p align="center">Project Assigned To</p>	<p align="center">Date Completed</p>	<p align="center">Completed By</p>	<p align="center">NOTES</p>
<p>Identify, review and evaluate:</p> <ul style="list-style-type: none"> ▪ Accounts payable ▪ Notes payable ▪ Loss and LAE ▪ Funds held for others ▪ Lease obligations ▪ Mortgage obligations ▪ Unearned proceeds ▪ Inter-company payables ▪ Reinsurance not ceded ▪ Professional services ▪ <u>Audit/pre-receivership billings</u> ▪ <u>Federal Home Loan Bank Debt Advance or Funding Agreements</u> ▪ Other 				