

RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE

Receivership and Insolvency (E) Task Force August 14, 2024, Minutes

Receivership and Insolvency (E) Task Force 2025 Proposed Charges (Attachment One)

Report of the Receivership Law (E) Working Group (Attachment Two)

FHLB Exemption Legislation in States' Receivership Laws (Attachment Two-A)

Provisions of Model #555 (Attachment One-B)

Draft Pending Adoption

2013, 29 states have adopted similar exemption legislation, and two states have pending legislation. NAIC staff have made available a list of the states with legislation and the states' legal citations on the Task Force's web page to assist the remaining states that may be approached with proposed legislation. Additionally, for state insurance regulators who may want to review the language that other states have adopted, the details are posted to StateNet. State insurance regulators can also contact NAIC staff for information.

Slaymaker said the Working Group heard a presentation on the results of the litigation in Pennsylvania on Penn Treaty Network America (Penn Treaty) and how the issues from that litigation about continuation of coverage and over-the-cap claims relate to the current *Insurer Receivership Model Law* (#555). The three key issues regarding Penn Treaty were: 1) the provision that the rights and liabilities of the parties should be fixed at the time of the liquidation or at such time as the court orders; 2) the provision for the termination of coverage no later than 30 days following the liquidation order, absent certain specific circumstances; and 3) the principle that subclasses of policyholder claims cannot be created in the priority scheme.

Slaymaker said the three issues could be addressed if a state has provisions similar to Model #555 Sections 501 and 502 in its law. It is also helpful to have Section 801. In 2019, the Task Force looked at states' laws and determined wide variances between states that had Section 502, those that had an older version, and those that had no similar provision. All states that do not have the current version of Model #555 Sections 501, 502, and 801 are strongly encouraged to review and update receivership laws to avoid similar issues that may arise in future insolvencies.

Schultz made a motion, seconded by Wolf, to adopt the report of the Receivership Law (E) Working Group (Attachment Two). The motion passed unanimously.

5. Heard a Report on International Resolution Activities

Wake said the International Association of Insurance Supervisors (IAIS) Resolution Working Group is reviewing comments received on the public consultation of the revisions to Insurance Core Principle (ICP) 12 (Exit from the Market and Resolution) and ICP 16 (Enterprise Risk Management for Solvency Purposes) related to recovery and resolution. After receiving feedback from the IAIS Supervisory Material Review Task Force, the Resolution Working Group is expected to meet Sept. 11–12 in Basel, Switzerland, to review the draft response and prepare a report for its parent committee, the IAIS Policy Development Committee.

6. Heard an Update from RRC on Upcoming IAIR Events

Jan Moenck (Risk & Regulatory Consulting—RRC) said the International Association of Insurance Receivers (IAIR) has several upcoming events planned. The IAIR will hold a virtual training event Sept. 10 focused on ethics and a two-day training event Oct. 16–17 focused on early detection of financial issues. The IAIR plans to hold its next issues forum, guaranty fund forum, and roundtable session in conjunction with the Fall National Meeting.

7. Heard an Update from the NCIGF on the Proposed Federal APRA

Ashley Rosenberger (National Conference of Insurance Guaranty Funds—NCIGF) said the NCIGF has formed a subcommittee to review the scope and applicability of the proposed federal American Privacy Rights Act (APRA) to data of the NCIGF and states' guaranty funds. She said the APRA creates obligation for certain defined organizations that possess consumers covered data as the bill defines it, and it provides consumers with specific rights and powers with respect to their covered data. Based on this review, APRA may apply to NCIGF, its subsidiary Guaranty Support Inc. (GSI), and its property and casualty guaranty funds, which have covered data as described in the bill. APRA was designed to apply to organizations that gather and monetize data or sell it. NCIGF believes it is not an intended entity. The language in APRA may not be precise enough to exclude the NCIGF, GSI

Adopted by the Receivership and Insolvency (E) Task Force, Aug. 14, 2024

2025 Proposed Charges
RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE

The mission of the Receivership and Insolvency (E) Task Force is to be administrative and substantive on issues concerning insurer insolvencies and insolvency guarantees. Such duties include, without limitation: 1) monitoring the effectiveness and performance of the state administration of receiverships and the state guaranty fund system; 2) coordinating cooperation and communication among state insurance regulators, receivers, and guaranty funds; 3) monitoring ongoing receiverships and reporting on such receiverships to NAIC members; 4) developing and providing educational and training programs in the area of insurer insolvencies and insolvency guarantees to state insurance regulators, professionals, and consumers; 5) developing and monitoring relevant model laws, guidelines, and products; and 6) providing resources for state insurance regulators and professionals to promote efficient operations of receiverships and guaranty funds.

Ongoing Support of NAIC Programs, Products, or Services

1. The **Receivership and Insolvency (E) Task Force** will:
 - A. Monitor and promote efficient operations of insurance receiverships and guaranty associations.
 - B. Monitor and promote state adoption of insurance receivership and guaranty association model acts and regulations, and monitor other legislation related to insurance receiverships and guaranty associations.
 - C. Provide input and comments to the International Association of Insurance Supervisors (IAIS), the Financial Stability Board (FSB), and other related groups on issues regarding international resolution authority.
 - D. Monitor, review, and provide input on federal rulemaking and studies related to insurance receiverships.
 - E. Provide an ongoing review of the *Receiver's Handbook for Insurance Company Insolvencies* (Receiver's Handbook), other related NAIC publications, and the Global Receivership Information Database (GRID), and make any necessary updates.
 - F. Monitor the work of other NAIC committees, task forces, and working groups to identify and address any issues that affect receivership law and/or regulatory guidance.
 - G. Perform additional work as directed by the Financial Condition (E) Committee and/or received through referrals by other groups.

2. The **Receivership Financial Analysis (E) Working Group** will:
 - A. Monitor receiverships involving nationally significant insurers/groups to support, encourage, promote, and coordinate multistate efforts in addressing problems.
 - B. Interact with the Financial Analysis (E) Working Group, domiciliary regulators, and lead states to assist and advise on the most appropriate regulatory strategies, methods, and/or action(s) regarding potential or pending receiverships.

3. The **Receivership Law (E) Working Group** will:
 - A. Review and provide recommendations on any issues identified that may affect states' receivership and guaranty association laws (e.g., any issues that arise as a result of market conditions, insurer insolvencies, federal rulemaking and studies, international resolution initiatives, or the work performed by or referred from other NAIC committees, task forces, and/or working groups).
 - B. Discuss significant cases that may affect the administration of receiverships.

NAIC Support Staff: Jane Koenigsman

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Receivership Law (E) Working Group
Virtual Meeting
July 24, 2024

The Receivership Law (E) Working Group of the Receivership and Insolvency (E) Task Force met July 24, 2024. The following Working Group members participated: Kevin Baldwin, Co-Chair (IL); Laura Lyon Slaymaker, Co-Chair (PA); Joe Holloway and Jack Hom (CA); Jane Callanan (CT); Yamile Benitez-Torviso (FL); Kim Cross (IA); Tom Travis (LA); Christopher Joyce (MA); Robert Wake (ME); Tom Mitchell (MI); Shelley Forrest (MO); David Ashton (TX); and Charles Malone (WA).

1. Heard an Overview and Update on States' Adoption of Receivership Law Provisions for FHLB Exemption to Stays and Injunctions

Baldwin said that at the Spring National Meeting, the Receivership and Insolvency (E) Task Force asked the Working Group to re-educate and develop helpful aids to assist states that may be approached to adopt this FHLB exemption to stays and injunctions.

Baldwin said that in the fall of 2012, the Federal Home Loan Bank (FHLB), at the request of its regulator, the Federal Housing Finance Agency (FHFA), sent a request to the Receivership and Insolvency (E) Task Force with a legislative proposal with draft language to the *Insurance Receivership Model Act* (#555) or equivalent state statutes, to include pledges, security, and collateral relating to an FHLB security agreement within the exemptions to stays and injunctions in Section 108 regarding avoidable preferences and liens in Section 604. The proposal would result in FHLB collateral for loans made to insurers being treated similarly to loans made to member banks under federal bankruptcy laws.

Baldwin said that in 2013, the NAIC's Federal Home Loan Bank Legislation (E) Subgroup and Receivership and Insolvency (E) Task Force concluded a study of the proposal and issued a report in which they concluded that state insurance regulators do not support or oppose the FHLB's legislative proposal. State insurance regulators recognized that access to FHLB funding can be beneficial for insurers seeking liquidity options. The report offered several recommendations to the state insurance regulators, including: 1) the need for states to assess their own laws; 2) suggesting alternative language to address communication by an FHLB of the process and timing for the release of excess collateral, payment of fees, and available options for the insurer to renew or restructure; and 3) the need for regulatory oversight and pre-receivership planning of an insurer's use of FHLB agreements.

Baldwin said the key benefit of FHLB membership is the ability to provide liquidity funding options to insurance company members without the added collateral that the FHLB may have required if the exemptions are not in place. Many state insurance regulators did not want to jeopardize access to that liquidity option or make it more difficult or costly for insurers. The concern expressed by state insurance regulators and receivers was the generally high collateral requirements required under FHLB membership agreements and whether a receiver would have adequate time upon entering a receivership order without a stay to assess the agreements, the collateral requirements, and asset quality before the FHLB takes action under the agreement. However, some states expressed that in terms of priority of claims, the FHLB would already be considered a secured creditor up to the amount of its collateral, so the agreement would be treated similarly to other secured creditor agreements, but for the temporary stay. Baldwin said that since 29 states have adopted an exemption so far, the benefits of FHLB lending appear to outweigh the concerns in a majority of states.

to pay the benefits of continued coverage. In the absence of Section 801 or something similar, the argument could be made that Section 502 achieves the outcome, but he feels it is helpful to have that expressly provided for in the statute. More available evidence of what the statute intends limits the questions that a court may face to the extent of disagreement.

Baldwin said this presentation was a good start for state insurance regulators to think about this issue within states' laws.

Having no further business, the Receivership Law (E) Working Group adjourned.

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