RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE

Receivership and Insolvency (E) Task Force Aug. 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 Two-B)

Draft Pending Adoption

Draft: 8/19/24

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

The Receivership and Insolvency (E) Task Force met in Chicago, IL, Aug. 14, 2024. The following Task Force members participated: Ann Gillespie, Chair, represented by Kevin Baldwin (IL); Glen Mulready, Vice Chair, represented by Donna Wilson (OK); Lori K. Wing-Heier represented by David Phifer (AK); Mark Fowler represented by Lorenzo Alexander and Marie McKitt (AL); Michael Conway represented by Rolf Kaumann and Cindy Hathaway (CO); Andrew N. Mais represented by Jane Callahan (CT); Karima M. Woods represented by N. Kevin Brown (DC); Michael Yaworsky represented by Yamile Benitez-Torviso (FL); Doug Ommen represented by Daniel Mathis (IA); Vicki Schmidt represented by Chut Tee (KS); Sharon P. Clark represented by Russell Coy (KY); Timothy J. Temple represented by Matthew Stewart and David Caldwell (LA); Kevin P. Beagan represented by Christopher Joyce (MA); Robert L. Carey represented by Robert Wake (ME); Chlora Lindley-Myers represented by Shelley Forrest (MO); Mike Causey represented by Angela Hatchell (NC); Jon Godfread represented by Colton Schulz (ND); Eric Dunning represented by Tadd Wegner (NE); Justin Zimmerman represented by David Wolf (NJ); Judith L. French represented by Sean Sheridan (OH); Andrew R. Stolfi represented by Kirsten Anderson (OR); Michael Humphreys represented by Laura Lyon Slaymaker and Joe Cho (PA); Elizabeth Kelleher Dwyer represented by Matt Gendron (RI); Carter Lawrence represented by Trey Hancock (TN); Cassie Brown represented by Jessica Barta (TX); Scott A. White represented by Dan Bumpus (VA); Mike Kreidler represented by Charles Malone (WA); and Nathan Houdek represented by Mark McNabb (WI).

1. Adopted its Spring National Meeting Minutes

Schultz made a motion, seconded by Wilson, to adopt the Task Force's March 17 minutes (*see NAIC Proceedings – Spring 2024, Receivership and Insolvency (E) Task Force*). The motion passed unanimously.

2. Adopted its 2025 Proposed Charges

Baldwin said the 2025 proposed charges do not contain any substantive edits. The charges were released for a 14-day public comment period that ended Aug. 9. No comments were received.

Gendron made a motion, seconded by Malone, to adopt the 2025 proposed charges of the Task Force and its working groups (Attachment One). The motion passed unanimously.

3. Adopted the Report of the Receivership Financial Analysis (E) Working Group

Wilson said the Receivership Financial Analysis (E) Working Group met Aug. 14 in regulator-to-regulator session, pursuant to paragraph 3 (specific companies, entities, or individuals) of the NAIC Policy Statement on Open Meetings, to discuss companies in receivership and related topics.

Slaymaker made a motion, seconded by Gendron, to adopt the report of the Receivership Financial Analysis (E) Working Group. The motion passed unanimously.

4. Adopted the Report of the Receivership Law (E) Working Group

Slaymaker said the Receivership Law (E) Working Group met July 24. During this meeting, the Working Group heard an overview and update on the status of states' adoption of the Federal Home Loan Bank's (FHLB's) legislation regarding exemptions to stays and injunctions in receivership. Since this topic was first discussed in

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

and the guaranty funds. NCIGF subcommittee has put together language to exclude NCIGF from this bill or future bills. She said the NCIGF is in communication with congressional staff to discuss why NCIGF, GSI and guaranty funds should be excluded, because data is not monetized, aggregated, or sold. Data is used to fulfil statutory obligations to pay and settle covered claims. Compliance with APRA may require more staff that would be unduly burdensome. She said NCIGF believes it falls into the category of service provider, which has less burdensome requirements under the bill, but may require changes to policies and practices. She said the subcommittee thought it may also apply to receivers and the estate they are responsible for, if they possess the covered data as defined in the bill. However, NCIGF did not see how states were specifically addressed in the bill.

Baldwin said this may be a topic for the Receivership Law (E) Working Group to review.

8. Heard an Update on an Insurer in Liquidation

Mark Bennett (Cantilo & Bennett LLP) said the U.S. Court of Appeals for the DC Circuit issued a ruling Aug. 9, 2024, in the case of Richardson, as Receiver of Nevada Health Co-Op v. U.S., where the receiver prevailed. The Court of Appeals ruled the U.S. government had no right to offset the Affordable Care Act's (ACA's) Consumer Operated and Oriented Plan's (Co-Op's) start-up loans against the $55 million in statutory amounts owed to Nevada Health under the ACA's risk corridor, reinsurance, risk adjustment, and cost sharing reduction programs.

Bennett said it is uncertain how this and other related rulings could impact federal claims in future estates. He said there are still lengthy delays in receiving responses from the U.S. government to requests for federal waivers. Jane Koenigsman (NAIC) said state sponsors are needed to propose an amendment to the Federal Priority Act to address the timeliness of receipt of federal waivers.

Having no further business, the Receivership and Insolvency (E) Task Force adjourned.

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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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Draft: 8/1/24

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 statues, 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.

Baldwin said there may be a few differences in how states have incorporated the exemption into the law. Some states have included the FHLB exemption in the section authorizing stays. In Illinois, where stays are issued under the receivership court's general statutory and adjunctive powers, the FHLB exemption was instead placed in the avoidable preference statute.

Baldwin said Rhode Island and Utah are the most recent to adopt exemptions this year. Legislation was also introduced in Connecticut earlier this year.

Baldwin highlighted two resources for state insurance regulators. First is a list of states' legislative actions that will be posted to the Receivership and Insolvency (E) Task Force's web page (Attachment Two-A). The list is aimed at assisting any state insurance regulators that the FHLB may approach to have more information about which other states have incorporated these legislative requests into state law. The details of the legislative provisions in each state's law will be posted to StateNet for state insurance regulators or can be requested from NAIC staff. Baldwin asked that any state insurance department with pending legislation or that recently enacted this provision and is not on the list please notify NAIC staff so that the list can be updated.

2. Heard a Presentation on the Outcome of Recent Litigation Regarding Penn Treaty

Slaymaker said that at the Receivership and Insolvency (E) Task Force's meeting during the Spring National Meeting, state insurance regulators were reminded why it is important to consider legislative amendments to address provisions in the law that had previously been identified as important during the Task Force's macroprudential assessment. The topic of continuation of coverage and exclusions for life and health business was one of those provisions. The Task Force did a study in 2019 that showed wide variances between states that had adopted Section 502 of Model #555, those with an older version of Section 502, and those with no provision. There was recent litigation in Pennsylvania related to the continuation of coverage and over-the-cap claims with the Penn Treaty Network America Insurance Company (Penn Treaty) receivership. It is important for all states to understand the outcome of this case and how it relates to provisions in each state's laws or the need for such a provision.

Michael Broadbent (Cozen O'Connor) discussed the provisions of Model #555 that address the three key issues identified by the Penn Treaty litigation (Attachment Two-B). Penn Treaty was the second largest long-term care (LTC) insurer that entered rehabilitation in 2009 and liquidation in 2017. During that liquidation phase, the liquidators sought to set aside a portion of the assets to pay for over-the-limit or over-the-cap benefits (i.e., benefits that the policyholders would have been entitled to absent the liquidation) on claims that exceeded the guaranty association limits. Pennsylvania law does not have the related Model #555 provisions. The Pennsylvania law had a few specific provisions that the court analyzed in relation to three important issues. First was 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. Second, and perhaps most important, was the provision for the termination of coverage no later than 30 days following the liquidation order, absent certain specific circumstances. Third was the principle that subclasses of policyholder claims cannot be created in the priority scheme. This means that the benefits within each policy cannot be split, such that some benefits are paid within one class, and other benefits are in another class. There needs to be a single class of policyholder claims.

Broadbent said the Supreme Court of Pennsylvania found that there was no statutory authority or any standard that would guide the proposed plan to pay the over-the-limit benefits using estate assets. The Court was clear that Pennsylvania law terminated coverage at liquidation and did not expressly authorize the use of the estate assets to pay for these benefits. This reflected the idea that if there was neither a clear direction that this was permissible nor a framework for the liquidator to bring the proposal and have it analyzed by the court, then the

liquidator could not pursue a plan to distribute these assets in any circumstance. As part of that decision, the Commonwealth Court of Pennsylvania specifically drew a contrast to Model #555 and highlighted that Pennsylvania had not adopted the provisions. The Court viewed not having adopted those provisions as a reflection that Pennsylvania did not provide the authority for the liquidator to make a plan to pay the over-the-limit benefits.

Broadbent explained these three key issues as they relate to Model #555 provisions. He said under Section 501 of Model #555, rights and liabilities are fixed at the time of liquidation unless the court fixes them otherwise, pursuant to another section of the law or pursuant to its order.

Broadbent said the most significant changes come in Section 502, which addresses the cancellation or continuation of coverage issues critical in the Penn Treaty litigation. One of the concerns of the Court with Penn Treaty was that no later than 30 days after the liquidation order, there was no insurance coverage available for LTC policyholders beyond the benefits provided to them by the guaranty associations. Section 502 addresses that issue directly, and it splits it into: 1) the automatic continuation of coverage, whereby it automatically continues for those obligations that will be satisfied by the guaranty associations; and 2) the permissive continuation of coverage, whereby it permits the liquidator to seek the Court's approval to continue the coverage for that portion of the policy that the guaranty association does not cover. Subsection 502(B) removes life, disability income, LTC, health insurance, and annuities from the automatic application of the 30-day cancellation rule and then provides that those policies can be continued for a longer or shorter period. The date of the cancellation of coverage could be set at the liquidator's request, where the court approves.

Broadbent said the third problem the Court identified in the liquidator's plan was creating subclasses by breaking up the policy benefits. Section 801 addresses that concern directly by placing the claims that fall within the continued coverage period after 30 days of the liquidation order within the same priority class as the other policyholder-level claims, thereby solving the concern that the Court raised in addressing the liquidator's proposal.

Broadbent said all three highlighted issues are addressed in Sections 501, 502, and 801. At a minimum, the provisions provide a framework for analyzing these three questions. By making the continuation of the coverage past 30 days, or the portion not covered by a guaranty association, permissive, the liquidator has to bring a proposal and seek the Court's approval. These provisions of Model #555 provide for the possibility of an over-the-limit benefit and how it should be handled. This is an advantage over the existing approach in most states, which have either part or none of these Model #555 sections. Whether a state insurance regulator believes it is equitable or inequitable to provide for over-the-limit benefits, it is better to have the statutory authorization to propose such benefit payments. The Model #555 provisions give clarity and consistency that benefit all involved parties and would limit some litigation expenses that might arise to the extent of disagreement on whether it is permissible in a particular state or advisable in that estate.

Broadbent said Model #555 provisions fit into finding a framework for the questions presented in the Penn Treaty liquidation and, in his view, are a good argument for state insurance departments to adopt these provisions to provide a structure for future estates.

Baldwin said adopting Subsection 502(B) would be extremely helpful. He asked if Section 801 is necessary or if it would just be helpful because if a state has Subsection 502(B), these claims are still by policyholders and, as a matter of presumption, would be at the same priority level. Claims for continuation of coverage should be at the same priority level as claims incurred prior to fixing rights and liabilities.

Broadbent said it is perhaps unnecessary to have Section 801, but it is helpful. If a state does not have Section 801, he does not know what arguments could be made by someone who wanted to oppose setting aside assets

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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FHLB Exemption Legislation in States' Receivership Laws

(As of July 17, 2024)

Legislative Status by State:

- Enacted Legislation (29): AL, AZ, CO, DE, GA, IL, IN, IA, KS, KY, MD, MI, MN, MO, MS, NE, NC, NH, NJ, OH, OK, PA, RI, SC, TN, UT, VT, WI, WV
- Pending Legislation (2): CT, MA

State	Bill Number / Link	Status
ALABAMA	HB 370	Law Enacted 5/11/16
ARIZONA	SB 1049 (part of a larger omnibus bill)	Law Enacted 2/9/21
COLORADO	H. 1215	Law Enacted 3/21/14
CONNECTICUT	SB 323	Introduced 2/29/24
DELAWARE	S. 154	Law Enacted 4/8/14
GEORGIA	HB 552 (originally HB 624)	Law Enacted 5/5/15
ILLINOIS	SB 1297	Law Enacted 8/11/17
INDIANA	S. 1486; 27-9-3.1-12; 27-9-3.1-17; Title 27	Law Enacted 4/6/11
IOWA	S. 2133	Law Enacted 3/14/14
KANSAS	H. 2514	Law Enacted 3/25/14
KENTUCKY	HB 171	Law Enacted 3/30/22
MARYLAND	HB 504; SB 458	Law Enacted 5/30/21
MASSACHUSETTS	SB 641 (https://malegislature.gov/Bills/193/S641)	Introduced 1/19/23
MICHIGAN	S. 937	Law Enacted 6/14/12
MINNESOTA	HF 3255 (part of a larger budget bill)	Law Enacted 6/2/22
MISSOURI	SB 932	Law Enacted 7/1/16
MISSISSIPPI	SB 2227	Law Enacted 3/10/23
NEBRASKA	L. 337	Law Enacted 3/20/13
NEW HAMPSHIRE	SB 66	Law Enacted 7/28/23
NEW JERSEY	A 1746	Law Enacted 11/20/23
NORTH CAROLINA	HB 440	Law Enacted 7/21/17
OHIO	SB 169	Law Enacted 12/22/17
OKLAHOMA	S. 697	Law Enacted 4/22/13
PENNSYLVANIA	HB 2353	Law Enacted 10/14/14

State	Bill Number / Link	Status
RHODE ISLAND	H7432; S2270	Law Enacted 6/17/24
SOUTH CAROLINA	S. 693	Law Enacted 5/26/16
TENNESSEE	HB 673	Law Enacted 5/21/19
UTAH	SB 31	Law Enacted 3/13/24
VERMONT	SB 95	Law Enacted 6/6/23
WASHINGTON	SB 5400	Introduced 1/10/22. Died upon adjournment.
WEST VIRGINIA	HB 2461	Law Enacted 4/1/15
WISCONSIN	AB 822	Law Enacted 4/16/18

History:
In the fall of 2012 the Federal Home Loan Banks (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 that would have FHLB collateral relating to loans made to its insurer-members treated the same in receivership as FHLB collateral relating to loans made to its FDIC-insured member banks is treated in a federal bankruptcy. Specifically, the FHLB proposal offered draft language to the *Insurance Receivership Model Act* (IRMA Model #555) or equivalent state statues, to include pledges, security and collateral relating to a FHLB security agreement within the exemptions to its stays and injunctions (IRMA Section 108) and voidable preferences and liens (IRMA Section 604).

The FHLB proposal is posted to the NAIC website at:
https://content.naic.org/sites/default/files/committee_related_documents/committees_e_receivership_related_fhlb_exec_summary.pdf

In 2013, the NAIC's Federal Home Loan Bank Legislation (E) Subgroup and Receivership and Insolvency (E) Task Force concluded its review of the proposal and issued a report which states that it does not support or oppose the FHLB's legislative proposal. However, the report did offer several recommendations to the states, including the need for states to assess their own laws; suggested alternative language to address communication by a FHLB, at the request of the receiver, of the process and timing for the release of excess collateral, payment of fees and available options for an insurer-member to renew or restructure an advance to defer associated prepayment fees, and etc.; and the need for regulatory oversight and pre-receivership planning of insurer's use of FHLB agreements.

The Task Force Memo is posted to the NAIC website at:
https://content.naic.org/sites/default/files/committee_related_documents/committees_e_receivership_related_fhlb_1311_sg_report.pdf

To: Laura Slaymaker, Deputy Commissioner, Pennsylvania Insurance Department
From: Michael Broadbent, Cozen O'Connor
RE: Receivership Law Working Group; IRMA
Date: July 19, 2024

This Memorandum briefly summarizes the provisions of Insurance Receivership Model Act ("IRMA") addressed to benefits in excess of guaranty association limits on claims arising more than thirty days after the entry of a liquidation order (the "OTL Benefits").

The OTL Benefits issue was specifically highlighted in the liquidation of Penn Treaty, where the court held that Pennsylvania law automatically terminated all insurance policies and the coverage associated with those policies no later than thirty days after the entry of a liquidation order, except to the extent the policies or coverage was transferred to another insurer or the guaranty associations. *See* 40 P.S. § 221.21. The rights and liabilities of the parties were fixed as of the liquidation order, except to the extent coverage was continued under § 221.21 or certain "Special Claims" language applied. Taken together, these provisions and prior case law precluded policyholders with OTL Benefits claims arising post-liquidation from receiving distributions together with other covered claims in second priority class for "[a]ll claims under policies for losses wherever incurred." 40 P.S. § 221.44(b).

IRMA provides one possible method for addressing the issue as presented in *Penn Treaty*, although other alternatives may be available to meet specific state needs. Under the header of "Continuation of Coverage," IRMA § 502B carves out "life, disability income, long term care or health insurance or annuities" from the standard no-more-than-thirty-days cancellation provision. Instead, the coverage provided by such policies is continued (1) to allow for guaranty association coverage, *and* (2) to the extent approved by the court for policies or portions of policies not covered by guaranty associations. *See* IRMA § 502D. In this way, IRMA makes a logical distinction between the automatic continuation of benefits within guaranty association limits (because such coverage is required to allow the associations to fulfill their obligations) and the permissive continuation of uncovered benefits (because OTL Benefits may appropriate in some cases but not in others).

IRMA expressly authorizes the liquidator to continue the uncovered portion of coverage until "a date proposed by the liquidator and approved by the receivership court to cancel coverage." *See* IRMA §§ 502B, D; *see also* IRMA § 501B (rights and liabilities to be fixed on set date).[1] IRMA also provides guidelines for the use of reinsurance for uncovered policies and uncovered portions of policies that are continued by court approval under the process described in § 502. *See* IRMA § 612.

Importantly, the distribution scheme in IRMA § 801 also provides that claims "incurred during the extension of coverage provided for in Section 502" are in the same priority class as nearly all other policyholder loss claims under the category of "[a]ll claims under policies of insurance." As a result, the Liquidator may request and obtain court approval for continuing coverage on the portion of policies not covered by the guaranty associations, and, having obtained such approval, the Liquidator may use estate assets to pay the OTL Benefits within the class of policyholder claims arising pre-liquidation.

Relevant portions of IRMA § 502 appear below with key language emphasized in bold.

[1] The liquidator can propose a period that is more or less than thirty days. *See* IRMA § 502 Drafting Note (referencing shorter period of time); § 502B (permitting "further exten[sion]" of time); *see also* §§ 502D, 801C.

Section 502

B. **Notwithstanding any policy or contract language or any other statute, all policies, insurance contracts** (other than reinsurance by which the insurer has ceded insurance obligations to another person), surety bonds or surety undertakings, **other than life, disability income, long term care or health insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force as provided in this section**, unless further extended by the receiver with the approval of the receivership court, until the earlier of:

(1) Thirty (30) days from the date of entry of the liquidation order;

(2) The date of expiration of the policy coverage;

(3) The date the insured has replaced the insurance coverage with equivalent insurance with another insurer or otherwise terminated the policy;

(4) The date the liquidator has effected a transfer of the policy obligation pursuant to Section 504A(5); or

(5) The date proposed by the liquidator and approved by the receivership court to cancel coverage.

D. Policies of life, disability income, long term care or health insurance or annuities covered by a guaranty association or portions of such policies covered by one or more guaranty associations, under applicable law, shall continue in force, subject to the terms of the policy (including any terms restructured pursuant to a court-approved rehabilitation plan) to the extent necessary to permit the guaranty associations to discharge their statutory obligations. **Policies of life, disability income, long term care or health insurance or annuities, or portions of such policies, not covered by one or more guaranty associations shall terminate as provided under Subsection B**, except to the extent the liquidator proposes and the receivership court approves the use of property of the estate, consistent with Section 801, for the purpose of continuing the contracts or coverage by transferring them to an assuming reinsurer.

