

RECEIVERSHIP AND INSOLVENCY (E) TASK FORCE

Receivership and Insolvency (E) Task Force April 6, 2022, Minutes

Restructuring Mechanisms (E) Working Group Referral (Attachment One)

NCIGF Presentation (Attachment Two)

Draft Pending Adoption

Draft: 4/12/22

Receivership and Insolvency (E) Task Force
Kansas City, MO
April 6, 2022

The Receivership and Insolvency (E) Task Force met in Kansas City, MO, April 6, 2022. The following Task Force members participated: Cassie Brown, Vice Chair, represented by Brian Riewe (TX); Lori K. Wing-Heier represented by David Phifer (AK); Michael Conway represented by Rolf Kaumann (CO); Andrew N. Mais represented by Jared Kosky (CT); David Altmaier represented by Anoush Brangaccio (FL); Colin M. Hayashida represented by Patrick P. Lo (HI); Doug Ommen represented by Kim Cross (IA); Dana Popish Severinghaus represented by Kevin Baldwin (IL); Vicki Schmidt represented by Justin McFarland (KS); Gary D. Anderson represented by Christopher Joyce (MA); Timothy N. Schott represented by Robert Wake (ME); Chlora Lindley-Myers represented by Shelley Forrest (MO); Mike Causey represented by Jackie Obusek (NC); Eric Dunning represented by Lindsay Crawford (NE); Michael Humphreys represented by Laura Lyon Slaymaker and Crystal McDonald (PA); Elizabeth Kelleher Dwyer represented by Matt Gendron and Patrick Smock (RI); Carter Lawrence represented by Trey Hancock (TN); Jon Pike represented by Reed Stringham (UT); and Mike Kreidler represented by Charles Malone (WA).

1. Adopted its 2021 Fall National Meeting Minutes

Ms. Cross made a motion, seconded by Mr. Stringham, to adopt the Task Force's 2021 Fall National Meeting minutes (*see NAIC Proceedings – Fall 2021, Receivership and Insolvency (E) Task Force*) minutes. The motion passed unanimously.

2. Received the Report of the Receiver's Handbook (E) Subgroup

Mr. Baldwin said the Receiver's Handbook (E) Subgroup has not met in 2022. However, it has established drafting groups that have met in 2022 to draft revisions to Chapter 3, Chapter 4, and Chapter 5 of the *Receiver's Handbook for Insurance Company Insolvencies* (Receiver's Handbook). The Subgroup plans to schedule a meeting to expose those revisions for public comment.

3. Received a Referral from the Restructuring Mechanisms (E) Working Group and Exposed a Request for NAIC Model Law Development

Mr. Riewe said the Restructuring Mechanisms (E) Working Group sent a referral to the Task Force (Attachment One). The Working Group was charged to look at state laws regarding insurance business transfers (IBTs) and corporate divisions (CDs). The Working Group is in the process of developing a white paper on the topics. One area it identified where model laws may need to be amended was regarding how policyholders retain guaranty fund coverage after such transactions. The referral outlines the positions of both the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) and the National Conference of Insurance Guaranty Funds (NCIGF). Mr. Riewe said for property/casualty (P/C), the referral states that needed revisions have been identified for the *Property and Casualty Insurance Guaranty Association Model Act* (#540). The NCIGF suggested that possible technical gaps may exist in states that have adopted Model #540 within the definitions of "covered claim," "member insurer," "insolvent insurer," and "assumed claims transaction." The referral includes a draft Request for NAIC Model Law Development to amend Model #540. The Working Group has not received any opposition to addressing the coverage gap in Model #540.

Mr. Riewe said the Task Force will consider advancing the Request for NAIC Model Law Development to the Financial Condition (E) Committee. While there are suggested model law edits within the request, the language is

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not final. There will be opportunity to draft the language after the request has been approved by Executive (EX) Committee.

Mr. Riewe said that upon the Executive (EX) Committee's approval, he recommends delegating the Receivership Law (E) Working Group to finalize the edits to Model #540.

Barbara Cox (Barbara Cox LLC, representing NCIGF) said NCIGF supports the Request for NAIC Model Law Development to amend Model #540.

Mr. Gendron, Mr. Baldwin, and Mr. Wake stated they support the Task Force's consideration of this Request for NAIC Model Law Development. Mr. Wake said the Task Force should also consider a review of the *Life and Health Insurance Guaranty Association Model Act* (#520) to determine if any amendments are necessary to preserve guaranty association coverage in assumption novation. Mr. Riewe said he agrees with Mr. Wake's comments.

Hearing no objection, Mr. Riewe said the Request for NAIC Model Law Development will be exposed for 30-day public comment period ending May 6.

4. Heard a Presentation from the NCIGF

Roger Schmelzer (NCIGF) delivered a presentation of the NCIGF on the topic of pre-receivership coordination and information sharing (Attachment Two). He said the number of insolvencies has declined over the past 20 years. He said the NCIGF is not bringing complaints. The short runway is an outdated business model for the protection of insurers. Companies that fail are more complex, including multi-state, multi-line carriers; a high volume of electronic claims files; claims operations that are delegated to third-party administrators (TPAs)/multiple information technology (IT) systems; and today there are fewer people with specialized insolvency data management expertise due to fewer insolvencies. He said the NCIGF's need is consistent and timely transfer of usable claims data to guaranty funds and receivers at the time of insolvency. This is only going to happen if there is enhanced pre-liquidation coordination between receivers, state insurance regulators, and guaranty funds. Mr. Schmelzer said the NCIGF has invested in IT solutions and that currently guaranty funds handle roughly 90% of claims data extraction activities in insolvencies.

Mr. Schmelzer said the public policy solution is the confidential exchange of fundamental information between state insurance regulators, receivers, and guaranty funds well before the liquidation order is signed. There are four advantages. First, there may be insights gained from the data exchange that might affect the regulatory decision on timing as ideally the liquidation order would not be signed until all parties agreed the data is ready to be transferred. Second, guaranty fund operations may need time to scale operations to handle the scope of the liquidation. Third, the receivers will have usable data sooner. Fourth, it would reduce the cost of insolvency management.

Mr. Schmelzer said the confidential information that would be shared is triggered when state insurance regulators see an insurer is headed to insolvency. The type of information would be policy information, claims records, and information about TPA relationships. This information is important as it relates to cyber liability coverage and services that need to be offered.

Mr. Schmelzer said there has been progress made with the recent amendments to model laws and revisions to the *Financial Condition Examiners Handbook*. There is also ongoing work on the Receiver's Handbook and the recent discussion on the Restructuring Mechanisms (E) Working Group referral.

Ms. Cox said to share information at an earlier time may require states implement statutory changes. She said a proposal in Illinois calls for changes to Model #540, the *Insurance Holding Company System Regulatory Act* (#440),

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and the *Model Law on Examinations* (#390). She said another approach is a memorandum of understanding (MoU). She said California is exploring this option with its guaranty fund and has put the MoU on hold pending the Task Force's consideration of this proposal. Both drafts are included in Attachment Two. She said everyone is concerned by confidentiality. She said the guaranty fund system is populated by industry personnel. They serve on the NCIGF board of directors, state guaranty association board members, and committees. She said to protect confidentiality, the information would not be shared with the NCIGF or state board members. She said the NCIGF has a plan to work through that.

Patrick Hughes (Faegre Drinker Biddle & Reath) said that is one idea to face these challenges. He said updates to NAIC handbooks is another way to document and potentially join various legal authorities and the coordination with receivers, state insurance regulators, and guaranty funds. Updating various handbooks may be able to be advanced more easily. He said NCIGF is trying to reach practical solutions and have sought feedback from state insurance regulators to develop this proposal. He said every state may not be the same and may have different legal structures and preferences as to which options works.

Mr. Schmelzer said he recognizes that other foreign jurisdictions may not believe the U.S. resolution system is as coordinated as it should be. Guaranty funds and state insurance regulators have worked to disprove that belief, and this is another important step. He said under the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the federal government has an opportunity if state insurance departments do not respond quickly enough. The guaranty funds need to be as robust as possible.

Hearing no objection, Mr. Riewe said the Receivership Law (E) Working Group will be referred to consider options to address the issues raised by the NCIGF, including review of the MoU and draft statutory language. Mr. Baldwin and Ms. Slaymaker, Receivership Law (E) Working Group co-chairs, agreed.

5. Heard an Update on Federal Activities

Patrick Celestine (NAIC) said the NAIC's proposed State Insurance Receivership Priority (SIRP) Act establishes a clear claim filing deadline in the Federal Priority Act (FPA) for the U.S. Department of Justice (DOJ) to file claims of the U.S. to insolvent insurance company estates and to ensure state insurance regulators are not held personally liable if claims of the government are not paid first. Several members of the Task Force and NAIC staff are working with U.S. Rep. Madeleine Dean's (D-PA) office and the DOJ to finalize edits to the SIRP Act. It is expected to be introduced to the U.S. House of Representatives this year.

6. Heard an Update on International Activities

Mr. Wake said he worked with NAIC staff, the NOLHGA, and the NCIGF to complete a survey of the International Association of Insurance Supervisors (IAIS) to gather information to inform the development of an application paper on policyholder protection schemes. Mr. Wake said the U.S. recently completed its in-person meetings for the IAIS-targeted jurisdictional assessment regarding the holistic framework, which included an assessment of insurance receivership, and recovery and resolution planning.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/2022 Spring National Meeting/Committee Meetings/Financial Condition (E) Committee/RITF_Minutes040622.docx

MEMORANDUM

TO: Receivership and Insolvency (E) Task Force

FROM: Restructuring Mechanisms (E) Working Group

DATE: March 28, 2022

RE: Referral Regarding Potential Change to NAIC Model

The NAIC formed the Restructuring Mechanisms (E) Working Group because of recent changes to state laws in the areas of Insurance Business Transfer (IBT) and Corporate Divisions (CD). The Working Group is in the process of drafting a white paper that, among other things, documents the issues the statutes are designed to address and some of the legal issues. Specific to that point, during public discussions, the Working Group received input from both the National Conference of Insurance Guaranty Funds (NCIGF) and the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) on how policyholders can retain guaranty fund coverage after such a transaction. The following summarizes such input, which is further explained at the end of this memorandum.

NCIGF – The NCIGF’s position is that where there was guaranty fund coverage before the IBT or CD, state insurance regulators should ensure that there is coverage after the IBT or CD. An IBT or CD should not reduce, eliminate, or in any way affect guaranty fund coverage. A CD or IBT should not create, expand, or in any way affect coverage. The NCIGF suggested that possible technical gaps may exist in states that have adopted the *Property and Casualty Insurance Guaranty Association Model Act* (#540) and proposed specific changes to the model to address.

NOLHGA – Described the three conditions that are needed for guaranty fund coverage after an IBT or CD. In general, restructuring statutes (or state insurance regulators reviewing proposed restructuring transactions) should clearly provide that assuming or resulting insurers must be licensed so policyholders maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to a restructuring transaction. This means the resulting insurer must be licensed in all states where the transferring insurer was licensed or had ever been licensed with respect to the policies being transferred.

To that end, attached is a Request for NAIC Model Law Development form, which sets forth proposed changes to Model #540, as suggested by the NCIGF. The Working Group is not the technical expert in this area, but it does support the intent of retaining guaranty fund coverage; therefore, the Working Group asks the Receivership and Insolvency (E) Task Force to review the attached and determine where such changes could generally be supported. We are not trying to determine if this is the exact change to make to the model at this time, but rather whether the Task Force supports the project and would

be willing to complete an update to the language if approved by the Financial Condition (E) Committee and the Executive (EX) Committee. To the extent possible, perhaps the Task Force could expose the attached Request for NAIC Model Law Development form, debate it, and return it to the Working Group prior to the Summer National Meeting, where the request could be made to the Financial Condition (E) Committee.

Please let the Working Group know if you have any questions.

The following is a more comprehensive summary of the positions of the NGIGF and the NOLHGA:

The Working Group received input from the NOLHGA about the concerns for insurance consumers of personal lines life and health insurance business. The NOLHGA indicated that for there to be guaranty association coverage in the event of a life or health insurer insolvency, there are three conditions that must be present. Those conditions are:

1. The consumer seeking protection must be an eligible person under the guaranty association statute; typically, this is achieved by being a resident of the guaranty association's state at the time of the insurer's liquidation.
2. The product must be a covered policy.
3. The failed insurer for which protection is being sought must be a member insurer of the guaranty association of the state where the policyholder resides. To be a member insurer, the insurer must be licensed in that state or have been licensed in the state to write the lines of business covered by the guaranty association.

In most states, coverage can also be provided for an "orphan" policyholder of the insurer by the guaranty association in the insolvent insurer's domestic state. Orphan policyholders are policyholders who are residents of states where the guaranty association cannot provide coverage because the insolvent insurer is not a member insurer due to not being licensed at the time required by the *Life and Health Insurance Guaranty Association Model Act* (#520). The orphan policyholder situation can arise when a policyholder purchases a policy in a state where the issuing company is licensed—i.e., is a member of the guaranty association—but subsequently moves to a state where the issuing insurance company was never licensed; i.e., is not a member of the guaranty association. The provision in Model #520, and the laws of most states, that provides that orphan policies are covered by the guaranty association in the insolvent insurer's domestic state is designed to plug the gap in these rare situations.

A key factor when considering a life or health IBT or CD transaction is whether the resulting insurer is or will be a member insurer in each state. If the resulting insurer is a member insurer of the same guaranty associations as the transferring insurer, guaranty association coverage will be preserved and not changed for all policyholders. Of course, specific guaranty association coverage will be determined if/when the resulting insurer is placed under an order of liquidation with a finding of insolvency. If the resulting insurer is not a member insurer of the same guaranty associations as the transferring insurer, policyholders may lose guaranty association coverage or be covered as orphans by the guaranty association in the insurer's

domestic state. Orphan coverage was not designed to plug the gap in this situation. Shifting the coverage obligation to the domestic state guaranty association could result in guaranty association coverage being concentrated in that state.

To address these concerns with respect to IBT and CD transactions involving life or health insurance, restructuring statutes (or state insurance regulators reviewing proposed restructuring transactions) should clearly provide that assuming or resulting insurers must be licensed so policyholders maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to a restructuring transaction. This means the resulting insurer must be licensed in all states where the transferring insurer was licensed or had ever been licensed with respect to the policies being transferred.

One interpretation of Model #540 is that based on the definitions of “Covered Claim,” “Member Insurer,” “Insolvent Insurer,” and “Assumed Claim Transaction,” an orphan policyholder could not be covered by the state guarantee association. Consequently, there is a concern that no guaranty association coverage would be provided if policies are transferred to a nonmember insurer. Many property/casualty (P/C) guaranty fund statutes require that the policy be issued by the now-insolvent insurer, and it must have been licensed either at the time of issue or when the insured event occurred. However, these limitations are designed to avoid coverage being provided when the policy at issue did not “contribute” to the association, which would not exist in the case of an assessable policy later transferred to an insurer that was not a member at the time the policy was issued. Moreover, the restrictions exist to prevent claims resulting from a company regulated as surplus lines, or a similar structure, to benefit from the protections afforded licensed business when a licensed company is liquidated.

The NCIGF’s position is that where there was guaranty fund coverage before the IBT or CD, state insurance regulators should ensure there is coverage after the IBT or CD. An IBT or CD should not reduce, eliminate, or in any way affect guaranty fund coverage. A CD or IBT should not create, expand, or in any way affect coverage. The NCIGF suggested that possible technical gaps may exist in states that have adopted Model #540. These gaps could include the definitions of “Covered Claim,” “Member Insurer,” “Insolvent Insurer,” and “Assumed Claims Transaction” found in Section 5 of the model.

Fulfilling this intent will likely require that P/C guaranty fund statutes be amended in each of the states where the original insurer was a member of a guaranty association before the transaction becomes final. The NCIGF indicated that it created a subcommittee to address this issue and oversee a coordinated national effort to enact the necessary changes in each state. It should be noted that the same membership and timing issues that are raised by IBTs could also be raised in the case of any other policy novation, including the assumption reinsurance transactions.

REQUEST FOR NAIC MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective Parent Committee and the NAIC's Executive Committee is required. The NAIC's Executive Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail as necessary to help in this determination.

Please check whether this is: ☐ New Model Law or ☒ Amendment to Existing Model

1. Name of group to be responsible for drafting the model:

Restructuring Mechanisms (E) Working Group

2. NAIC staff support contact information:

Dan Daveline
ddaveline@naic.org
816-783-8134

3. Please provide a brief description of the proposed new model or the amendment(s) to the existing model. If you are proposing a new model, please also provide a proposed title. If an existing model law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.

- ***Property and Casualty Insurance Guaranty Association Model Act (#540)***

In 2019, the Financial Condition (E) Committee formed the Restructuring Mechanisms (E) Working Group who was charged with the following:

1. Evaluate and prepare a white paper that:
 - a. Addresses the perceived need for restructuring statutes and the issues those statutes are designed to remedy. Also, consider alternatives that insurers are currently employing to achieve similar results.
 - b. Summarizes the existing state restructuring statutes.
 - c. Addresses the legal issues posed by an order of a court (or approval by an insurance department) in one state affecting the policyholders of other states.
 - d. Considers the impact that a restructuring might have on guaranty associations and policyholders that had guaranty fund protection prior to the restructuring.
 - e. Identifies and addresses the legal issues associated with restructuring using a protected cell.

Background for Proposed Change

This proposed change is being precipitated by discussions within the NAIC's Restructuring Mechanisms (E) Working Group initiative, which is focused on documenting in the form of a White Paper, the various issues related to insurance business transfers (IBT) and corporate division (CD) transactions. The number of states adopting laws that permit either of these transactions is still relatively low, however one of the most significant issues that has been discussed during the meetings of the Working Group is the need for policyholders of such transactions to retain guaranty fund coverage. Representatives of the National Conference of Insurance Guaranty Funds (NCIGF) have suggested that an amendment to a state's guaranty fund act, or other related law is necessary to address this issue. They have specifically suggested that the NAIC update the Property and Casualty Insurance Guaranty Association Model Act to incorporate specific language they have developed to address this issue. This will better enable those states that have incorporated #540 into their laws to update their laws for this important issue. This change is needed to ensure policyholders in all states retain their coverage, which is necessary regardless of how few states adopt changes to their laws to allow IBT and CD transactions.

Scope of the Proposed Revisions to Model 540

The scope of the request is limited to addressing the issue of guaranty fund coverage and as a result would be limited to specific suggestion of additional language within the definition of “Covered Claim” within #540. The following is the additional language (underlined language) that is being proposed to be added to Section 5, Definitions, within #540.

H. “Covered claim” means the following:

- (a) The claimant or insured is a resident of this State at the time of the insured event, provided that for entities other than an individual, the residence of a claimant, insured or policyholder is the State in which its principal place of business is located at the time of the insured event; or
- (b) The claim is a first party claim for damage to property with a permanent location in this State.
- (c) Notwithstanding any other provision in this Act, an insurance policy issued by a member insurer and later allocated, transferred, assumed by or otherwise made the sole responsibility of another insurer, pursuant to a state statute providing for the division of an insurance company or the statutory assumption or transfer of designated policies and under which there is no remaining obligation to the transferring entity (commonly known as “Division” or “Insurance Business Transfer” statutes), shall be considered to have been issued by a member insurer which is an Insolvent Insurer for the purposes of this Act in the event that the insurer to which the policy has been allocated, transferred, assumed or otherwise made the sole responsibility of is placed in liquidation.
- (d) An insurance policy that was issued by a non-member insurer and later allocated, transferred, assumed by or otherwise made the sole responsibility of a member insurer under a state statute described in subsection (a) shall not be considered to have been issued by a member insurer for the purposes of this Act.

4. Does the model law meet the Model Law Criteria? ☒ Yes or ☐ No (Check one)

(If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).

a. Does the subject of the model law necessitate a national standard and require uniformity amongst all states? ☒ Yes or ☐ No (Check one)

If yes, please explain why:

This proposed change is needed to ensure policyholders in all states retain their guaranty fund coverage, which is necessary regardless of how few states adopted changes to their laws to allow IBT and CD transactions.

It should be noted that with respect to guaranty fund coverage for life and health insurance, the National Organization of Life and Health Insurance Guaranty Associations are suggesting a different approach in addressing the same issue which centers around the need for such transaction to require the assuming or resulting insurer to be licensed in all states where the issuing insurer was licensed or ever was licensed to retain the needed coverage for policyholders.

b. Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law?

☒ Yes or ☐ No (Check one)

5. What is the likelihood that your Committee will be able to draft and adopt the model law within one year from the date of Executive Committee approval?

☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

6. What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law?

☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary: See previous discussion.

7. What is the likelihood that state legislatures will adopt the model law in a uniform manner within three years of adoption by the NAIC?

☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

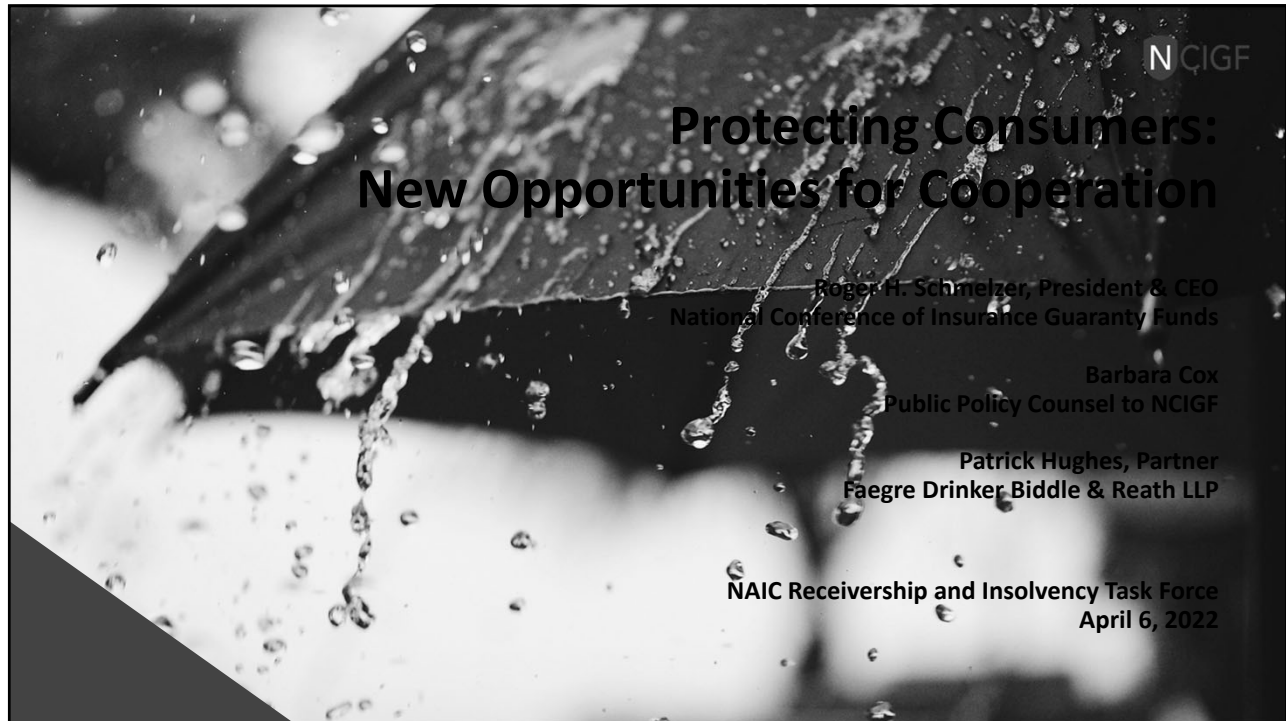
At this juncture, the changes in concepts being considered are simple and because they have the potential to reduce expenses incurred by receivership estates, we believe such changes will be widely supported by all parties.

8. Is this model law referenced in the NAIC Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?

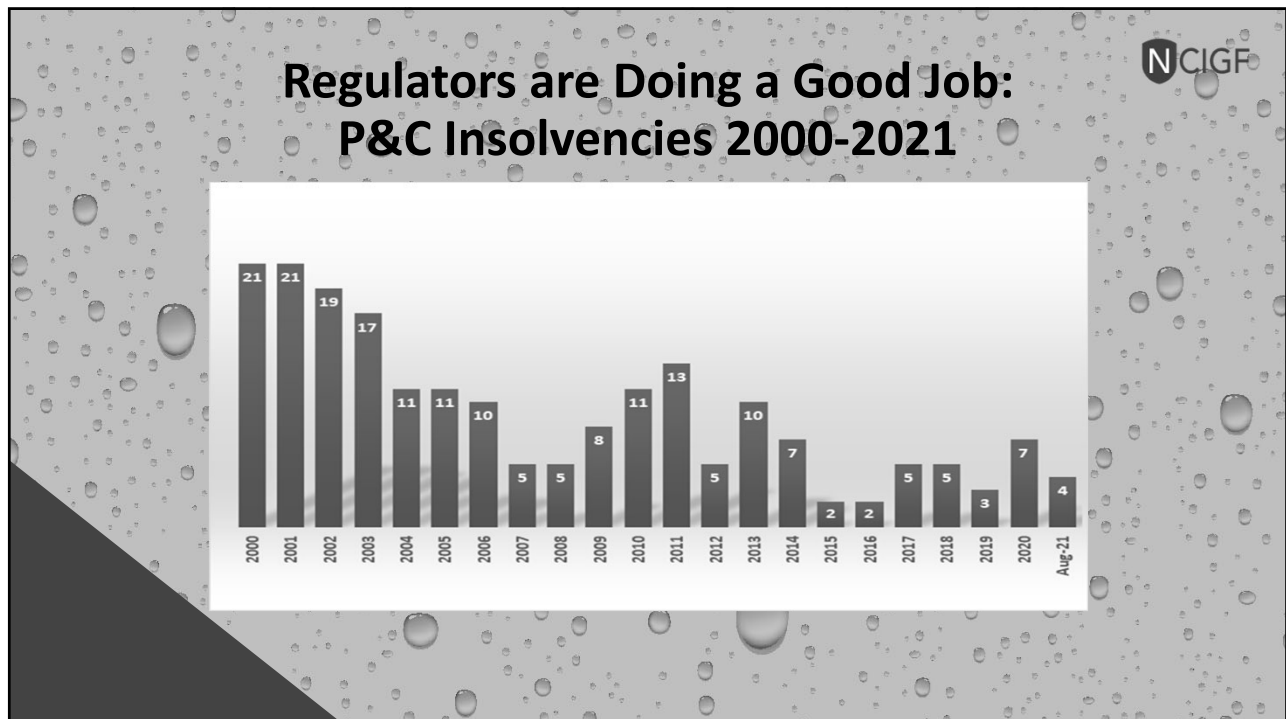
Not referenced in Accreditation Standards.

9. Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.

No.



1



2



The Short Runway Insolvency is an Outdated Biz Model for the Protection of Insurance Consumers

The few companies that fail are more complex than ever:

- Multi-state, multi-line carriers
- High volume of electronic claims files
- Claims operations delegated to TPAs/Multiple IT systems
- Limited specialized insolvency data management expertise due to fewer insolvencies

3



The Need

Consistent and timely transfer of usable claims data via UDS to guaranty funds and receivers at the time of insolvency

Achieved through enhanced PRE-LIQUIDATION coordination (Regulators/Receivers/Guaranty Funds)

- ✓ Smooth, seamless (as possible), transitions are important for the reputation of the U.S. state regulatory system
- ✓ Delay and appearance of chaos undermines stakeholder confidence

Public Policy & Technology Solutions Exist

4

Level Setting: UDS

- ✓ Specialized NAIC Communications Protocol developed for GFs and Receivers to read and process claims
- ✓ Not an industry standard, but regulator approved; data must be converted for receivers and guaranty funds to meet their statutory obligations to consumers—this can be tricky
- ✓ NCIGF has developed and maintains Data Mapper and SUDS, the support software for UDS

UDS-Back to the Receiver: Monthly, Quarterly and Annual Reporting from GFs

5

Urgency


- ✓ Ongoing periodic benefits for workers compensation claimants
- ✓ In auto claims, essential transportation for work or medical needs
- ✓ Smooth, seamless as possible, transitions are important for the reputation of the US state regulatory system
- ✓ Delay and appearance of chaos is never good

Impediments


- ✓ Files controlled by third parties using various data systems
- ✓ Third parties may not treat transition with the same urgency as receivers and Gas
- ✓ As liquidation is imminent, TPA may be laying off people due to loss of business
- ✓ High volume of data – imaged files – takes time to transition
- ✓ Antiquated Data systems

6


The Technology Solution



NCIGF MEMBERS HAVE INVESTED HEAVILY IN THESE COMPETENCIES AND ESTABLISHED A SUBSIDIARY (GSI) TO ASSIST RECEIVERS WITH THE EXTRACTION AND CONVERSION OF CLAIMS DATA TO UDS




NCIGF AND GSI CAN STEP IN AT THE EARLY, CHAOTIC, BUT CRUCIALLY IMPORTANT PARTS OF AN INSOLVENCY. WE MAKE SURE DATA GETS WHERE IT NEEDS TO GO, THEN STEP AWAY ONCE THE TRANSITION BECOMES MORE ORDERLY



ESSENTIAL TO MAKING THIS WORK FOR ALL PARTIES IS DELIVERY OF THESE SERVICES THROUGH A LEGALLY SEPARATE SUBSIDIARY TO MITIGATE CLAIMS-PAYING RESPONSIBILITIES TO NCIGF AND ITS MEMBER GUARANTY FUNDS

7



The Public Policy Solution

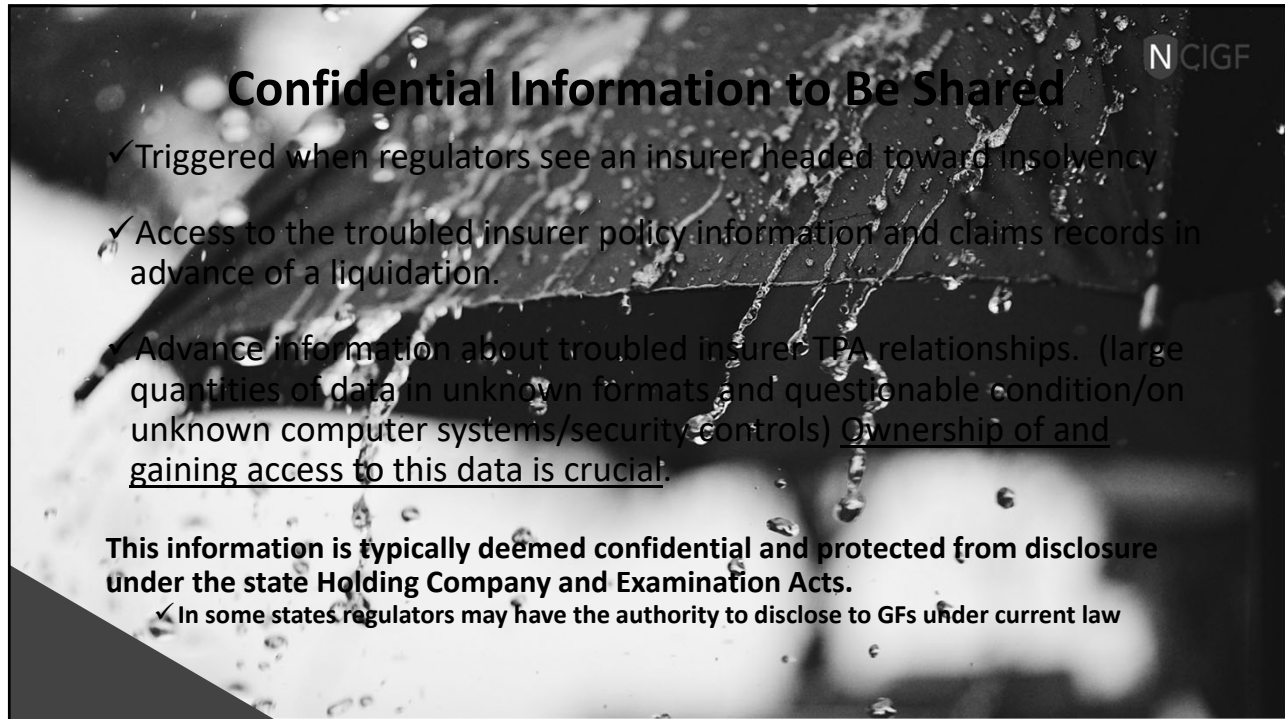
A Confidential Exchange of Fundamental Information

- **Regulators, Receivers & GFs**
- **Well Before the Liquidation Order is Signed**

Advantages

- ✓ Regulators can gain valuable insight into data transition readiness and complex product lines
- ✓ GFs involved can more fully prepare to pay claimants
- ✓ Receivers will have usable data sooner in order to track reinsurance recoveries and process POCs.

8



NCIGF

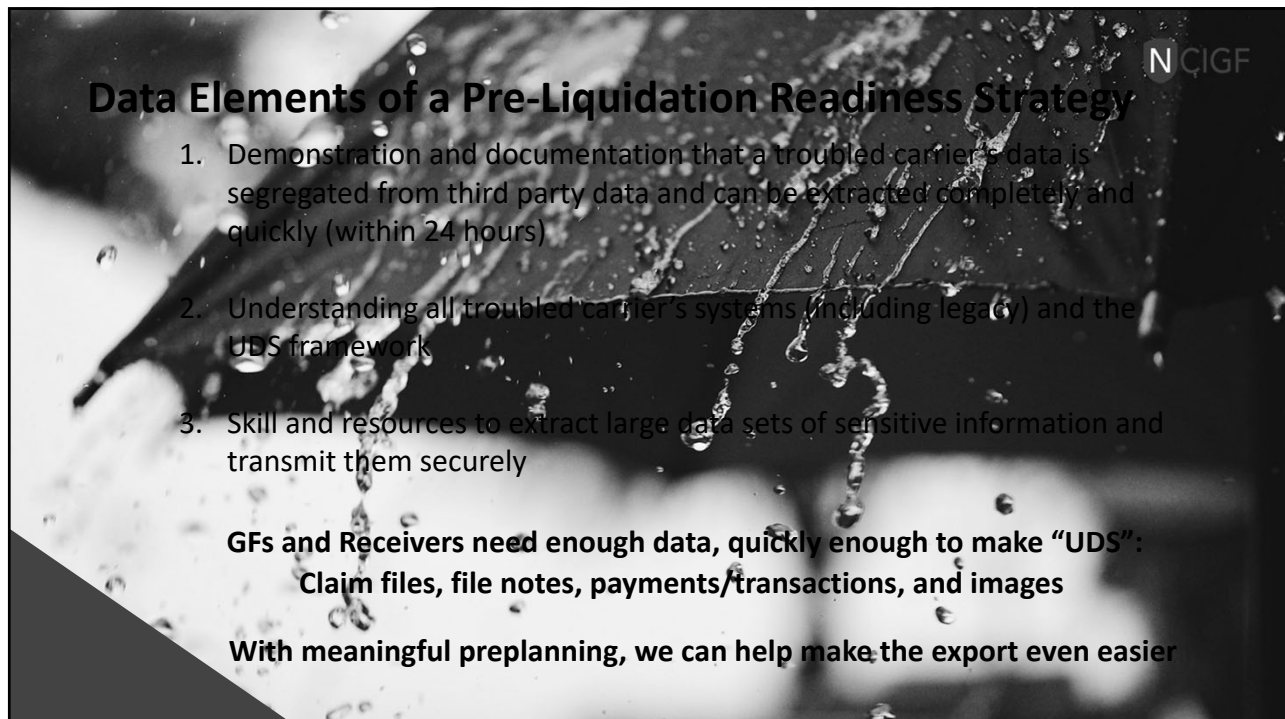
Confidential Information to Be Shared

- ✓ Triggered when regulators see an insurer headed toward insolvency
- ✓ Access to the troubled insurer policy information and claims records in advance of a liquidation.
- ✓ Advance information about troubled insurer TPA relationships. (large quantities of data in unknown formats and questionable condition/on unknown computer systems/security controls) Ownership of and gaining access to this data is crucial.

This information is typically deemed confidential and protected from disclosure under the state Holding Company and Examination Acts.

- ✓ In some states regulators may have the authority to disclose to GFs under current law

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NCIGF

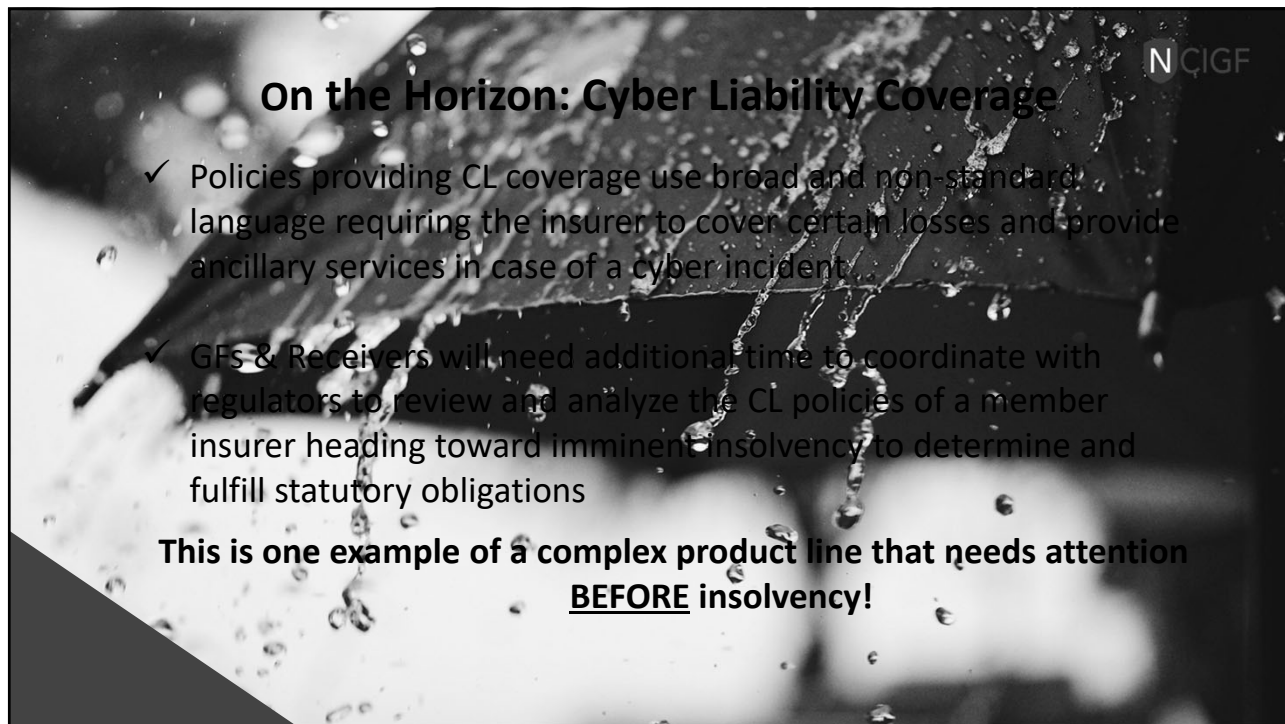
Data Elements of a Pre-Liquidation Readiness Strategy

1. Demonstration and documentation that a troubled carrier's data is segregated from third party data and can be extracted completely and quickly (within 24 hours)
2. Understanding all troubled carrier's systems (including legacy) and the UDS framework
3. Skill and resources to extract large data sets of sensitive information and transmit them securely

GFs and Receivers need enough data, quickly enough to make "UDS":
Claim files, file notes, payments/transactions, and images

With meaningful preplanning, we can help make the export even easier

10



On the Horizon: Cyber Liability Coverage NCIGF

- ✓ Policies providing CL coverage use broad and non-standard language requiring the insurer to cover certain losses and provide ancillary services in case of a cyber incident.
- ✓ GPs & Receivers will need additional time to coordinate with regulators to review and analyze the CL policies of a member insurer heading toward imminent insolvency to determine and fulfill statutory obligations

This is one example of a complex product line that needs attention BEFORE insolvency!

11



Developments Moving the Needle NCIGF

2021 Holding Company Act Changes Already Adopted by the NAIC As a Result of a Referral from RITF!

- ✓ More controls on affiliated companies holding claims data and other essential information.
- ✓ IT Examination Working Group has adopted additional steps for the examination structure to address new holding company law requirements.

Combined with new requirements for TPA UDS competency @ appropriate RBC level, these are critical readiness tactics already in place

12



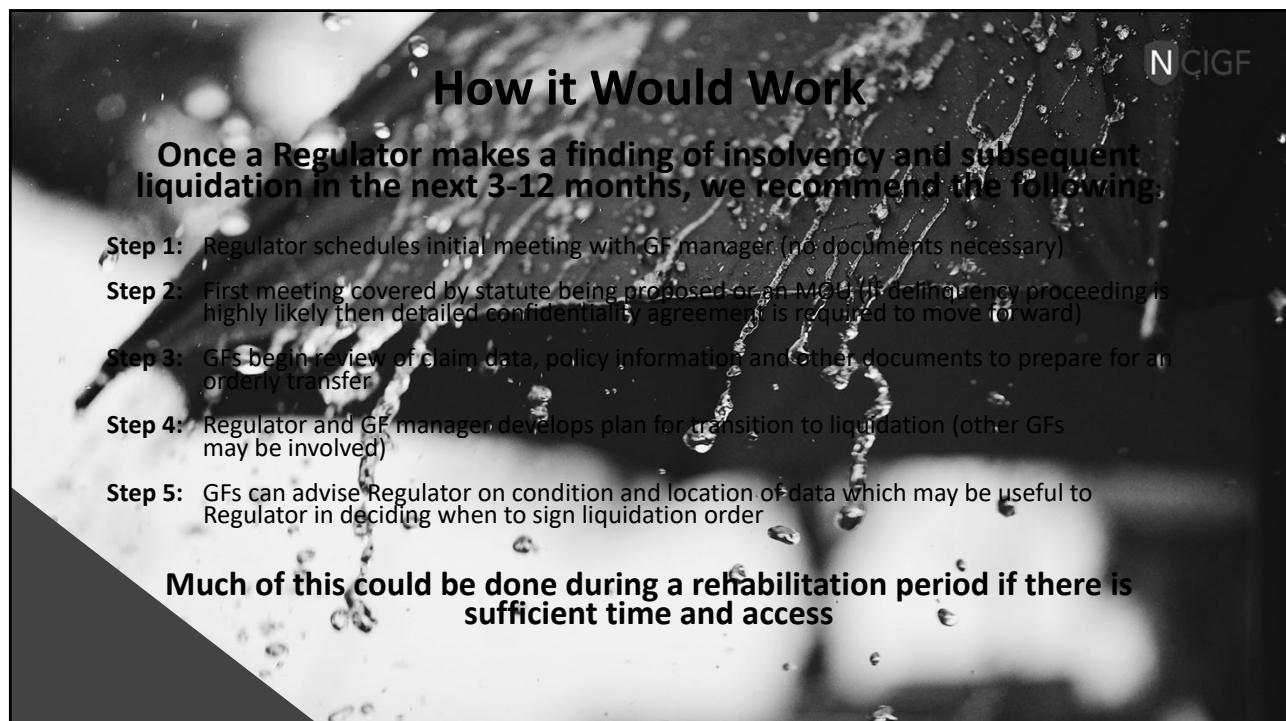
We Have Proposed A Next Step

NAIC model law amendments or guidance to facilitate pre-receivership cooperation and coordination

- ✓ Further revisions to state holding company laws and regulations, exam laws and guaranty fund acts in some states. Others could do this with a memorandum of understanding (MOU) providing for and preserving confidentiality.
- ✓ Information sharing would improve cooperation and coordination
- ✓ Addresses our mutual interest of protecting insurance consumers
- ✓ NCIGF has amendments and a draft MOU ready for consideration

Traction: 2022 Proposals in IL & CA based on the NCIGF amendments

13



How it Would Work

Once a Regulator makes a finding of insolvency and subsequent liquidation in the next 3-12 months, we recommend the following:

- Step 1:** Regulator schedules initial meeting with GF manager (no documents necessary)
- Step 2:** First meeting covered by statute being proposed or an MOU (if delinquency proceeding is highly likely then detailed confidentiality agreement is required to move forward)
- Step 3:** GFs begin review of claim data, policy information and other documents to prepare for an orderly transfer
- Step 4:** Regulator and GF manager develops plan for transition to liquidation (other GFs may be involved)
- Step 5:** GFs can advise Regulator on condition and location of data which may be useful to Regulator in deciding when to sign liquidation order

Much of this could be done during a rehabilitation period if there is sufficient time and access

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Protecting Communications, Part I

NCIGF

- ✓ Guaranty Funds have a huge incentive to maintain confidentiality.
- ✓ Guaranty Funds understand the sensitivity of this information and the need to keep it confidential
- ✓ Guaranty Funds have a proven track record with confidential agreements with Receivers that are standard for every rehabilitation/liquidation
- ✓ NOLHGA and the life funds have been collaborating closely at the troubled company level for several years.
- ✓ The role of the property casualty funds (and NCIGF) may differ, but this precedent matters and demonstrates feasibility.

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Protecting Communications, Part II

NCIGF

- ✓ MOU extends the confidentiality required by the statute to any guaranty fund receiving the information
- ✓ MOU could be an alternative approach where states have this authority under current law
- ✓ Our model MOU can be tailored to address any specific confidentiality concerns
- ✓ Confidential information will NOT be shared with state Board members until such time there is a public court proceeding

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Our Proposal is Consistent With the Public Policy NCIGF

Evolution of P&C Guaranty Funds and NCIGF

2008 Financial Crisis: DFA Title II is still in effect and requires state readiness for companies of any size (not only SIFIs)

Regulators Depend Upon NCIGF's Coordination of the State Guaranty Fund Response to Multi-State Insolvencies

- Title II Receivership coordination plans adopted by state regulators stress coordination with NCIGF both before and in response to a crisis (Receivers Handbook pp. 629-630).
- NCIGF and coordination between NAIC and NCIGF is cited 44 times in Receiver's Handbook with numerous references to NCIGF website
- NCIGF and NOLHGA are invited to participate in the confidential Receivership Financial Analysis Working Group (RFAWG) at the NAIC

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Thank You For Your Time! NCIGF

This Conversation is Underway

- ✓ Constructive & collaborative
- ✓ Readiness in general, data transfer specifically
- ✓ Goal: A near seamless safety net for consumers
- ✓ Strengthen state insurance regulation

We Are on the Same Team!

Roger H. Schmelzer, President & CEO
NCIGF
rschmelzer@ncigf.org

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Guideline for Troubled Company Information Sharing and Coordination with Guaranty Associations

Drafting Note: Pre-liquidation information sharing and coordination with guaranty associations has become even more critical in the modern insurance environment. Ideally such sharing and coordination should take place early on when a company becomes a “troubled company.” Regulators should consider involving guaranty funds even before the company is put in a receivership status.¹ It is essential that guaranty funds have usable claims data in order to service claims once a company is found insolvent and ordered into liquidation. (This is when most property casualty funds are “triggered.”) Moreover, complex new products such as cyber security are being written by insurance companies. Older products such as large deductible workers compensation often use complex collateral arrangements and collection protocols. Advance study and information sharing in such cases is essential for a smooth transition into liquidation if a liquidation does occur.

Regulators may have concerns regarding whether there is adequate statutory authority to share information before a receivership. The guideline below offers statutory language that could be used to amend state law to clearly permit sharing and coordination in cases where regulators feel it is appropriate. Confidentiality concerns are paramount and are addressed in the text provided below. Note that amendments to the property casualty guaranty fund model act, the Model Holding Company Act and the Examinations Act may be necessary. Amendments to all of these Models is offered.

In some states, a regulator may determine that current state law and regulatory practice already permits pre-receivership coordination. If this is the case a regulator may want to consider memorializing the terms of information sharing and coordination with a Memorandum of Understanding (MOU). A template for such an MOU is also provided as a separate document.

PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION MODEL ACT

NCIGF Suggested Revisions to Section 10

Section 10. Duties and Powers of the Commissioner

A. The commissioner shall:

- (1) Notify the association of the existence of an insolvent insurer not later than three (3) days after the commissioner receives notice of the

¹ The NAIC Troubled Company Handbook suggests that such coordination begin when a company’s RBC levels are --- or below. (Cite)

determination of the insolvency. The association shall be entitled to a copy of a complaint seeking an order of liquidation with a finding of insolvency against a member company at the same time that the complaint is filed with a court of competent jurisdiction;

- (2) Provide the association with a statement of the net direct written premiums of each member insurer upon request of the board of directors.

B. The commissioner may:

- (1) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this State of a member insurer that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on a member insurer that fails to pay an assessment when due. The fine shall not exceed five percent (5%) of the unpaid assessment per month, except that a fine shall not be less than \$100 per month;
- (2) Revoke the designation of a servicing facility if the commissioner finds claims are being handled unsatisfactorily.
- (3) Examine, audit, or otherwise regulate the association.
- (4) If the Commissioner determines that any member insurer as defined in Section 5K above may be subject to a future delinquency proceeding under Article XIII of this Code (insert citation to the liquidation section of the Code), then in order to assist in the performance of the Commissioner's duties, the Commissioner may:
 - (i) share confidential and privileged documents, material, or information reported pursuant to an enterprise risk filing with the Association regarding that member insurer; and
 - (ii) share confidential and privileged documents, material, the contents of an examination report, a preliminary examination report or its results, or any matter relating there to, including working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the Commissioner or to any other person in the course of any examination with the Association regarding that member insurer.

□

PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION MODEL ACT

(iii) The Commissioner may disclose the information described in this subsection to the Association so long as the Association agrees in writing to hold that information confidential, in a manner consistent with this Code, and uses that information to prepare for the possible liquidation of the member insurer. Access to the information disclosed by the Commissioner to the Association under this subsection shall be limited to the Association's staff and its counsel. The Board of Directors of the Association may have access to the information disclosed by the Commissioner to the Association once the member insurer is subject to a delinquency proceeding under this Code (insert citation to the liquidation section) subject to any terms and conditions established by the Commissioner.

(iv) The Commissioner may disclose the information described in this subsection with Associations in other states, and with any organization of one or more state Associations of similar purposes, so long as the recipient of such information agrees in writing to hold that information confidential, in a manner consistent with this Code, and uses that information to prepare for the possible liquidation of the member insurer. Access to the information disclosed by the Commissioner under this subsection shall be limited to the Association's staff and its counsel. The Board of Directors of the Association may have access to the information disclosed by the Commissioner to the Association once the member insurer is subject to a delinquency proceeding under this Code (insert citation to the liquidation section) subject to any terms and conditions established by the Commissioner.

(v) Should the Commissioner determine a liquidation is likely, he or she may cooperate with the Association and with any organization of one or more state Associations of similar purposes to provide for an orderly transition to liquidation in order to minimize any delay in the handling and payment of claims.

(3)

Drafting Note: This section does not require periodic examinations of the guaranty associations but allows the commissioner to conduct examinations as the commissioner deems necessary.

- C. A final action or order of the commissioner under this Act shall be subject to judicial review in a court of competent jurisdiction.

NCIGF Recommended Changes to the NAIC Model Holding Company Act

Section 8. Confidential Treatment

- A. Documents, materials or other information in the possession or control of the Department of Insurance that are obtained by or disclosed to the commissioner or any other person in the course of an examination or investigation made pursuant to Section 6 and all information reported or provided to the Department of Insurance pursuant to Section 3B(12) and (13), Section 4, Section 5 and Section 7.1 are recognized by this state as being proprietary and to contain trade secrets, and shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties. The commissioner shall not otherwise make the documents, materials or other information public without the prior written consent of the insurer to which it pertains unless the commissioner, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by the publication thereof, in which event the commissioner may publish all or any part in such manner as may be deemed appropriate.
- (1) For purposes of the information reported and provided to the Department of Insurance pursuant to Section 4L(2), the commissioner shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any NCIGF Recommended Changes to NAIC Model Holding Company Act group capital information received

from an insurance holding company supervised by the Federal Reserve Board or any U.S. group wide supervisor.

- (2) For purposes of the information reported and provided to the [Department of Insurance] pursuant to Section 4L(3), the commissioner shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-U.S. group wide supervisors.

Drafting Note: This group capital calculation and group capital ratio includes confidential information and filings received from insurance holding companies supervised by the Federal Reserve Board. Similarly, the liquidity stress test may include confidential information and filings received from insurance holding companies supervised by the Federal Reserve Board. The confidential treatment afforded to group capital calculation filings includes any Federal Reserve Board group capital filings and information.

- B. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner or with whom such documents, materials or other information are shared pursuant to this Act shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Subsection A.
- C. In order to assist in the performance of the commissioner's duties, the commissioner:
 - (1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, including proprietary and trade secret documents and materials with other state, federal and international regulatory agencies, with the NAIC, and with any third-party consultants designated by the commissioner, with state, federal, and international law enforcement authorities, including members of any supervisory college described in Section 7, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material or other information, and has verified in writing the legal authority to maintain confidentiality.
 - (2) Notwithstanding paragraph (1) above, the commissioner may only share confidential and privileged documents, material, or information reported pursuant to Section 4L(1) with commissioners of states having statutes or regulations substantially similar to Subsection A and who have agreed in writing not to disclose such information.

- (3) Notwithstanding paragraphs (1) and (2) above, the Commissioner may share confidential and privileged documents, material, or information reported pursuant to Section 4L(1) or otherwise described in paragraph A of this section with the [name of state property casualty insurance guaranty association] by any member insurer defined in [section in guaranty association act defining member insurer] if the Commissioner determines that the member insurer may be subject to a future delinquency proceeding under [provisions related to delinquency proceeding] of this Code. The Commissioner may disclose the information described in this subsection so long as the parties agree in writing to hold that information confidential, in a manner consistent with this Code, and use that information to prepare for a possible delinquency proceeding of the member insurer. Access to the information disclosed by the Commissioner to the [state guaranty fund] shall be limited to the [state guaranty fund's] staff and its counsel. The Board of Directors of the [state guaranty fund] may have access to the information disclosed by the Commissioner to the [state guaranty fund] once the member insurer is subject to a delinquency proceeding under [provisions relating to delinquency proceeding] of this Code subject to any terms and conditions established by the Commissioner.

The Commissioner may also, pursuant to this subsection, disclose the information described in this subsection with Associations in other states, and with any organization of one or more state Associations of similar purposes, so long as the recipient of such information agrees in writing to hold that information confidential, in a manner consistent with this Code, and uses that information to prepare for a possible delinquency proceeding of the member insurer. Access to the information disclosed by the Commissioner under this subsection shall be limited to the Association's staff and its counsel. The Board of Directors of the Association may have access to the information disclosed by the Commissioner to the Association once the member insurer is subject to a delinquency proceeding under this Code (insert citation to the liquidation section) subject to any terms and conditions established by the Commissioner.

Should the Commissioner determine that a delinquency proceeding is likely, he or she may cooperate with the Association and with any organization of one or more state Associations of similar purposes to provide for an orderly transition to liquidation in order to minimize any delay in the handling and payment of claims.

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MODEL LAW ON EXAMINATIONS

NCIGF Recommended Changes to Section in 5F

Section 5. Examination Reports

.....

F. Privilege for, and Confidentiality of Ancillary Information

- (1) (a) Except as provided in Subsection E above and in this subsection, documents, materials or other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in the course of an examination made under this Act, or in the course of analysis by the commissioner of the financial condition or market conduct of a company shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.
- (b) Documents, materials or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the National Association of Insurance Commissioners and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:

- (i) Created, produced or obtained by or disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries in the course of the National Association of Insurance Commissioners and its affiliates and subsidiaries assisting an examination made under this Act, or assisting a commissioner in the analysis of the financial condition or market conduct of a company; or
 - (ii) Disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries under Paragraph (3) of this subsection by a commissioner.
- (c) For the purposes of Paragraph (1)(b), “Act” includes the law of another state or jurisdiction that is substantially similar to this Act.
- (2) Neither the commissioner nor any person who received the documents, material or other information while acting under the authority of the commissioner, including the National Association of Insurance Commissioners and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to Paragraph (1).
- (3) In order to assist in the performance of the commissioner’s duties, the commissioner:
 - (a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Paragraph (1), with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information;
 - ~~(b)~~ May receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as

confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; ~~and~~

- (c) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Paragraph (1), with the [name of state property casualty guaranty association] regarding any member insurer defined in [section in guaranty association act defining member insurer] if the commissioner determines that the member insurer may be subject to a future delinquency proceeding under [provisions related to delinquency proceeding] of this Code. The commissioner may disclose the information described in this subsection so long as the parties agree in writing to hold that information confidential, in a manner consistent with this Code, and use that information to prepare for a future delinquency proceeding of a member insurer. Access to the information disclosed by the commissioner to the [state guaranty fund] shall be limited to the [state guaranty fund's] staff and its counsel. The Board of Directors of the [state guaranty fund] may have access to the information disclosed by the Commissioner to the [state guaranty fund] once the member insurer is subject to a delinquency proceeding under [provisions relating to delinquency proceeding] of this Code subject to any terms and conditions established by the commissioner.

The commissioner may also, pursuant to this subsection (3)(c), disclose the information described in this subsection with Associations in other states, and with any organization of one or more state Associations of similar purposes, so long as the recipient of such information agrees in writing to hold that information confidential, in a manner consistent with this Code, and uses that information to prepare for -a possible delinquency proceeding of the member insurer. Access to the information disclosed by the commissioner under this subsection shall be limited to the Association's staff and its counsel. The Board of Directors of the Association may have access to the information disclosed by the commissioner to the Association once the member insurer is subject to a delinquency proceeding under this Code (insert citation to the liquidation section) subject to any terms and conditions established by the commissioner.

Should the commissioner determine that a delinquency proceeding is likely, he or she may cooperate with the Association and with any organization of one or more state Associations of similar purposes to provide for an orderly transition to liquidation in order to minimize any delay in the handling and payment of claims.

- (d) ~~[Optional provision]~~ And m~~May~~ enter into agreements governing sharing and use of information consistent with this subsection.

PC-390-5

DRAFT

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is among the [state] Department of Insurance (“DOI”), the [Receiver of the insolvent company – if appointed] and the [guaranty fund in the state of domicile of the troubled company, the other insurance guaranty funds which have executed this agreement (collectively “Guaranty Funds”) and the National Conference of Insurance Guaranty Funds.(NCIGF)

Definitions:

- 1.1 “Agreement” or “MOU” refers to this Memorandum of Understanding;
- 1.2 “Confidential Information” refers to any:
 - a) documents, data or other information relating to any domestic insurance company in the State of [state] where the Commissioner has determined that the financial condition of such company creates a material risk of Receivership that are not publicly available or public records, whether written or not, including but not limited to claims files and data; financial analyses, modeling and projections; trade secrets, technical processes and know-how; agency agreements, arrangements, accounts, proposals, lists, and other information; policyholder lists and information; costs and pricing information; internal procedures, strategies and plans; and computer programs;
 - b) work product or other information regarding any such Company that is confidential and/or privileged; and
 - c) communications between the Parties regarding any potential or pending legal actions involving any such company that is a threat to such companies’ solvency.
- 1.3 “Evaluation Material” refers to all information, oral or written, including but not limited to Confidential Information as defined herein, that is furnished to Guaranty Funds or NCIGF under the terms of this Agreement, and all analyses, compilations, studies, or other materials prepared by Guaranty Funds or NCIGF containing or based in whole or in part upon such information.
- 1.4 “Company or Companies” refers to any domestic property and casualty insurance company in the State of [state] where the Commissioner has determined the financial condition of such company creates a material risk of receivership.
- 1.5 “Commissioner” refers to the Commissioner of Insurance of the State of [state].
- 1.6 “Party” and “Parties” refer to the Commissioner, the Receiver, if appointed, the signatory Guaranty Funds and the NCIGF.
- 1.7 “Receivership Court” refers to the [court with jurisdiction over the receivership]
- 1.8 “Receivership” refers to the rehabilitation or liquidation of any domestic insurance

company in the State of [state].

- 1.9 “Receiver” refers to [name of deputy receiver if appointed] or any of his or her successors.
- 1.10 “Covered Claim” shall have the same meaning as contained in the applicable statutes of the Guaranty Funds.

II. Recitals

- 2.1 The Commissioner is responsible for the financial regulation of Companies. From time-to-time the financial condition of one or more of such Companies creates a material risk of Receivership.
- 2.2 Should a Receivership occur of a Company, the Commissioner will appoint a special deputy receiver who will be responsible for the handling of such Receivership.
- 2.3 If the Receivership of a Company includes an order of liquidation with a finding of insolvency, the Guaranty Funds will have the responsibility for the payment of “Covered Claims” arising from such Receivership.
- 2.4 The Parties agree that in order to properly prepare for any Receivership, to provide for a smooth transition to liquidation should it become required, and in order to avoid delay in the payment of “Covered Claims,” it is essential to share Confidential Information among them with respect to any Company the Commissioner determines is at material risk of Receivership.
- 2.5 It is agreed by the Parties that, subject to the Commissioner’s discretion, the Commissioner can freely consult with the Receiver (if appointed), the Guaranty Funds, and NCIGF, with respect to any Company, including but not limited to, the dissemination of Confidential Information and Evaluation Material as defined herein. It is understood that such consultations are to be held in strictest confidence and the Commissioner may, in his or her discretion, withhold the name of the Company being discussed from the Guaranty Funds and the NCIGF.
- 2.6 The Guaranty Funds have determined that in order to protect consumers and to better fulfill their mission (*see* cite to applicable Guaranty Funds’ statutes) it is necessary and proper for them to enter into this Agreement and likewise it is necessary and proper for the NCIGF, as a membership organization that supports the Guaranty Funds in their mission, to enter into this Agreement. The DOI and Receiver have determined that this Agreement enables them to better serve the insurance consumers in [involved states] and to better protect them from the adverse consequences of a Company liquidation.

III. Use and Treatment of Evaluation Material

- 3.1 Subject to the terms of this Agreement, the Commissioner and Receiver will grant the Guaranty Funds and NCIGF Evaluation Material as they determine is appropriate. The

Evaluation Material shall be used by the Guaranty Funds and NCIGF to determine potential obligations of the Guaranty Funds, prepare for the possible assumption of such obligations, and to perform such statutory obligations in the event they become obligated to pay “Covered Claims” under policies of insurance issued by a Company. The Guaranty Funds and NCIGF shall be allowed to copy such Evaluation Material for their own use consistent with the terms of this Agreement.

- 3.2 The Guaranty Funds and the NCIGF agree to maintain the confidentiality of all Evaluation Material provided to them, and of any privileges with respect to such information. The Guaranty Funds and the NCIGF agree not to disclose any Evaluation Material to any person or entity, except as expressly provided herein.
- 3.3 The Guaranty Funds and the NCIGF may share Evaluation Material with their respective counsel, consultants or agents as it deems necessary, provided that such persons agree to comply with terms of this Agreement, including but not limited to the remedies provided under Part IV. In the event of a breach of this Agreement by any person to whom Evaluation Material has been provided, the Party or Parties providing such information shall also remain liable for the breach.
- 3.4 The Guaranty Funds and the NCIGF agree that no Evaluation Material shall be provided to any insurance companies or the owners, directors, officers, employees, agents, representatives, or affiliates of any insurance companies, except as necessary to discharge statutory duties, for official action or consideration by the Board of Directors.
- 3.5 In the event that the Guaranty Funds or the NCIGF are served with process seeking the production of Evaluation Material, including but not limited to a subpoena or order of a court of competent jurisdiction, an investigation by a government entity, or discovery demand issued in connection with any action, the Guaranty Funds and NCIGF, as appropriate, shall notify the Commissioner and Receiver in writing as promptly as practicable. The Guaranty Funds and NCIGF, as appropriate, shall take reasonable actions to protect the confidentiality and, if applicable, the privileged status of such information, unless otherwise requested by the Commissioner or the Receiver. If a protective order or other remedy is not obtained prior to the date that compliance with the request is legally required, the Guaranty Funds and the NCIGF, as appropriate, will furnish only that portion of the Evaluation Material or take only such action as is legally required.

IV. Remedies

- 4.1 The Guaranty Funds and the NCIGF agree that money damages would not be a sufficient remedy for a breach of this Agreement, and that the Commissioner or Receiver shall be entitled to equitable relief, including injunctive relief, as a remedy for such breach. Such remedy shall be in addition to all other remedies available at law or in equity, and shall not be deemed the exclusive remedy for a breach of this Agreement. Any action to enforce this Agreement shall be brought in the [appropriate court for the proceeding].
- 4.2 In the event of an action alleging a breach of this Agreement, the prevailing party shall be

entitled to reimbursement for its reasonable attorney's fees. Any attorney's fees awarded to the Guaranty Funds or the NCIGF shall be handled as an administrative expense in the proceeding, subject to [cite to applicable law]. Any attorney's fees awarded to the Commissioner or Receiver shall be paid from the Guaranty funds and NCIGF's funds, and shall not be submitted as a claim in the proceeding.

- 4.3 No failure or delay by any Party in exercising any right, power or privilege shall operate as a waiver thereof. Any exercise of a right, power or privilege shall not be considered to preclude any other or further exercise thereof.
- 4.4 There shall be no liability on the part of the Commissioner or Receiver or the Company(ies) to the Guaranty Funds or NCIGF relating to or arising from the Evaluation Material or any other documents, material, information or communications provided under this Agreement.

V. Warranties and Representations

- 5.1 The Commissioner, the Guaranty Funds, and the NCIGF to the extent consistent with their statutory and other obligations, shall in good faith cooperate and communicate promptly with each other with respect to the performance of their duties under this Agreement.
- 5.2 The Guaranty Funds and the NCIGF represent that they have the authority to enter into this Agreement and fulfill their obligations under this Agreement.
- 5.3 Each undersigned person represents that he or she is authorized to sign this Agreement on behalf of the Party he or she represents.
- 5.4 The Guaranty Funds and the NCIGF understand and acknowledge that the Commissioner or Receiver makes no representations or warranties as to the accuracy or completeness of any Evaluation Material provided under this Agreement.

VI. Termination

- 6.1 This Agreement may be terminated at any time by agreement among the Parties or by any single Party in writing with 30 days' notice, provided that all Evaluation Material obtained prior to such termination shall remain confidential, unless otherwise agreed by the Parties, and except as otherwise provided by law. Further, this Agreement shall be terminated upon a determination in writing by the Commissioner or the Receiver that the Company no longer presents a material risk of Receivership.
- 6.2 The Guaranty Funds and the NCIGF are permitted to use Evaluation Material in the manner and for purposes described herein until delivery by the Receiver or Commissioner of a written notice specifying the date of termination of this Agreement. Upon a receivership order wherein one or more Guaranty Funds are triggered this Agreement shall terminate in all respects without the obligation to destroy Evaluation material or maintain it as confidential.

- 6.3 Except as provided in Paragraph 6.2, in the event of a termination of this Agreement, the Guaranty Funds and NCIGF shall immediately undertake to destroy all Evaluation Materials, and all copies, summaries, analyses and notes of the contents or parts thereof, and shall provide an affidavit attesting to the destruction of all such Evaluation Materials being provided to the Receiver, if appointed, and the Commissioner within 30 days after termination, and no part thereof shall be retained by the Guaranty Funds or NCIGF in any form without the prior written consent of the Commissioner or Receiver.

VII. Miscellaneous Provisions

- 7.1 Nothing in this Agreement shall be deemed to create an attorney-client relationship between any Party's counsel and any other Party.
- 7.2 This Agreement shall be governed by and construed in accordance with the laws of the State of [state of domicile of the insolvency].
- 7.3 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes, and all of which together shall constitute one and the same instrument.
- 7.4 This Agreement shall be effective upon the date signed by each party and shall also apply to any and all Evaluation Material that has previously been shared between the Parties.
- 7.5 All communications under this Agreement shall be in writing and shall be sent by email to the addresses specified below. A copy of any such notice shall also be personally delivered or sent by either first class registered or certified U.S. Mail, return receipt requested, postage prepaid, or by a bonded mail delivery service, to the address set out below:

The Commissioner:

[name, address, phone, email address]

The Receiver:

[name, address, phone, email address]

Guaranty Funds:

[list of contact information for signatory funds]

- 7.6 The Parties agree to meet periodically, at least annually, to discuss issues arising under this Agreement and its implementation with respect to any specific Company.

[SIGNATURES OF PARTIES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement on this ____ day of _____, 2019:

Commissioner

By: _____
Its: _____
Date: _____

Receiver (if appointed)

By: _____
Its: _____
Date: _____

NCIGF:

By: _____
Its: _____
Date: _____

Guaranty Fund:

Separate signature pages may be appropriate.