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State Insurance Receivership Priority Act

- *To better protect consumer interests when an insurer fails, the NAIC supports legislation to amend the Federal Priority Act. The amendment would set a deadline for the federal government to file claims against insolvent insurance companies and protect regulators from personal liability.*

- *Unlike the Bankruptcy Code, the Federal Priority Act has no time limit for the U.S. to file its claims against an insolvent insurer's estate. Without a statutory deadline, insolvency proceedings are significantly delayed leading to increased expenses and harm to consumers and creditors.*

Background

When an insurance company becomes insolvent, the insurance commissioner as receiver is usually responsible for fully distributing the insurers assets in a liquidation proceeding to pay claims by insurance consumers and creditors. In many insurance receiverships, the United States government is a creditor to the estate.

The Federal Priority Act (FPA) provides that claims of the United States are to be paid first in such liquidation proceedings. Under the FPA, there is no statutory deadline for the United States to notify an insurance receiver of claims it may have against an insolvent insurance company and personal liability is imposed on insurance receivers that pay any debts prior to government claims. By comparison, the Bankruptcy Code provides for the United States to file its claims within 180 days after the date of the order of relief, unless a later time is provided by the Federal Rules of Civil Procedure.

Because the receiver is personally liable, they cannot proceed with liquidating the insurers' assets unless there is a waiver or release of claims from the United States. Absent a statutory deadline, waiver requests are often left pending for years and are dependent on the discretion of attorneys at the Department of Justice. This has caused significant delays in distributing insolvent insurers' assets, increased administrative costs, and has adversely impacted the financial interests of policyholders and creditors. Commissioners in multiple states have had requests for at least 29 releases pending, with the DOJ, some for as long as 17 years, impacting policyholders in nearly all states and jurisdictions and with a total dollar impact of $3.14 billion. To remedy this, the NAIC seeks a legislative fix that would set clear time limits in the federal priority act for the DOJ to file claims of the United States and eliminate personal liability for receivers.

Key Points

- ✓ Since the United States may currently file a claim at any time, even many years after a proceeding has begun, liquidators of insurers are unable to determine the universe of creditors entitled to share in an estate.

- ✓ Since receivers, usually the insurance commissioners, are held personally liable, releases from the United States are required before they can distribute assets to policyholders and creditors.

- ✓ Absent a statutory deadline, these releases can take years to obtain, thereby increasing administrative expenses and consumer harm.

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