

PROJECT HISTORY - 2011

GUIDELINE FOR IMPLEMENTATION OF STATE ORDERLY LIQUIDATION AUTHORITY (#1700)

1. Description of the Project, Issues Addressed, etc.

Following passage of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) in 2010, the Receivership and Insolvency (E) Task force realized the need for a comprehensive review of how the state-based receivership community would respond in the event of a federal determination of systemic risk involving an insurance company or affiliate of an insurance. Specifically, Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 provides for the orderly liquidation of certain financial companies, including qualifying insurance companies, with the Federal Deposit Insurance Corporation (FDIC) generally seeking the appointment as receiver. However, in the case of qualifying insurance companies, the liquidation or rehabilitation of such a financial company will be conducted as provided under state law pursuant to 12 U.S.C. § 5383(e). If at the end of the 60-day period provided for under 12 U.S.C. § 5383(e)(3) the commissioner has not filed the appropriate state judicial action to place the insurer into orderly liquidation, the FDIC shall have the authority to stand in the place of the commissioner and file the appropriate judicial action in the appropriate state court to place the insurer into orderly liquidation under the laws and requirements of the state. The new model guideline statutory language is not an amendment to the NAIC receivership models but is intended as a Guideline for use by those states seeking to review their authority under existing state law for purposes of initiating rehabilitation or liquidation proceedings in accordance with the federal statute.

2. Name of Group Responsible for Drafting the Model and States Participating

The Dodd-Frank Receivership Implementation (E) Working Group was formed by the Task Force to address this issue. The states participating were Illinois, California, Connecticut, Florida, Iowa, Indiana, Louisiana, Ohio, Pennsylvania, and Texas.

The Working Group members consisted of: Patrick Hughes (IL), Harry Levine and David Wilson (CA), Jon Arsenault (CT), Wayne Johnson and Sha'ron James (FL), Jim Mumford (IA), Kevin Baldwin (IL), Cindy Donovan (IN), Arlene Knighten (LA), Kristen Brown and Lynda Loomis (OH), Laura Lyon-Slaymaker (PA), and James Kennedy (TX).

3. Project Authorized by What Charge and Date First Given to the Group

The charge was delegated from the Task Force to the Dodd-Frank Receivership Implementation (E) Working Group. The charge was as follows: Review and consider portions of the recently adopted Dodd-Frank Wall Street Reform and Consumer Protection Act to determine what, if any state laws, regulations or procedures are necessary for state receivers and the NAIC to be prepared for its requirements related to receivership activities, as well as, monitor, review and provide input on federal rulemaking and studies related to insurance receivership.

4. A General Description of the Drafting Process and Due Process

The Dodd-Frank Receivership Implementation (E) Working Group formed a Legal Issues Drafting Group that was tasked with drafting an NAIC model guideline to help some states better prepare for a Title II event. The Subgroup consisted of the following members: Kevin Baldwin (IL), Arlene Knighten (LA), Kristen Brown and Lynda Loomis (OH), and James Kennedy (TX). The drafting group met via regulator-to-regulator conference call on four separate occasions in 2011, spending considerable time deliberating the receivership implementation issues.

In January 2011, the Legal Issues Drafting Group drafted a document titled Preliminary Outline Of Legal Items For Consideration By The Dodd-Frank Receivership Implementation (E) Working Group.

On February 4, 2011, the Working Group met via conference call with interested parties and regulators. During the call Kevin Baldwin provided an update from the Legal Issues Drafting Group. The update discussed the legal issues outline which identified potential concerns with state laws and regulations in the event of a Dodd-Frank receivership. Also, the legal issues outline proposed the Working Group seek the authority to develop an NAIC model guideline that states could use, as opposed to a model law or regulation. The Working Group exposed the outline for public comment for a period of 19 days with a comment deadline of Wednesday, February 23, 2011.

The Working Group met at the NAIC Spring National Meeting on March 27, 2011. At the meeting, Mr. Hughes directed the Working Group to receive and discuss comments relating to the public exposure. Florida made a motion to receive the edits that were distributed and to approve the preliminary outline. California seconded the motion and it passed.

The Working Group held a conference call on June 3, 2011. During the call, Mr. Baldwin discussed that the intention of the model guideline is to provide guidance and serve as a template for potential state law drafting revisions. Mr. Baldwin discussed that individual states might want to review existing state law to ensure appropriate authority is available in the event of a Dodd-Frank Act determination with a domestic insurer. The guideline provides that any of the triggers for a Dodd-Frank Act receivership constitute an automatic ground for receivership under state law. It also provides for some timing and procedural rules that would work to effectively implement the state-based receivership in the rapid order that is called for under the Dodd-Frank Act. Mr. Baldwin stated that the guideline is included for the states to utilize, to the extent that they feel necessary, when changes need to be made to existing state laws. The document was once again exposed for public comment.

The Working Group held a conference call on August 1, 2011. The purpose of the call was to discuss comments received from the June 3 public exposure of the model guideline.

Following the Aug. 1 conference call, the document was revised and exposed for public comment on Aug. 8, with comments due by the close-of-business Aug. 12. No comments were received within the deadline period.

The Working Group held a conference call on Aug. 16. A motion was proposed and accepted to send model guideline to the Receivership and Insolvency (E) Task Force (RITF). The Receivership & Insolvency Task Force adopted on August 30, 2011.

5. A Discussion of the Significant Issues

The following significant issue was discussed with regard to this model guideline.

Denied Commissioner Petition

Interested parties commented that there was ambiguity in the model guideline relating to circumstances where a state court has denied the commissioner's petition. The Working Group adjusted the preamble of the model guideline to provide clarity on the issue.

6. Any Other Important Information

None.