

PROJECT HISTORY - 2007

INSURER RECEIVERSHIP MODEL ACT (#555) (Section 801)

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

The proposed amendments to Section 801 of the Insurer Receivership Model Act (“IRMA”) focus on the priority status of claims made during receivership proceedings under warranties and policies of mortgage guaranty and financial guaranty insurance. As originally adopted, Section 801 excluded claims under policies of mortgage and financial guaranty insurance from the general policyholder class, Class 3. As a result of this exclusion, these claims were included in Class 6, the same priority as claims of unsecured creditors.

The amendments maintain the exclusion of claims under mortgage and financial guaranty insurance from Class 3 but elevate such claims from Class 6 to a new Class 4. The new Class 4 includes “claims under financial guaranty insurance or other forms of insurance offering protection against financial risk, mortgage guaranty insurance and warranties.” The claims previously designated as Class 4 are renumbered to become Class 5, and the remaining classes are likewise renumbered. The amendments also include a drafting note highlighting that the priority treatment of claims under warranties depends on whether warranties are regulated as insurance.

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

Receivership Model Act Revision (E) Working Group

States Participating:

Pennsylvania, Chair	Massachusetts
Arkansas, Vice Chair	Missouri
New Mexico	Nebraska
California	New York
Connecticut	Ohio
Delaware	Oklahoma
Florida	Tennessee
Illinois	Texas
Iowa	Utah

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

The 2006 charges of the Receivership and Insolvency (E) Task Force include responsibility to monitor the progress of IRMA through the adoption process and perform additional work as directed by the parent committee. The Receivership and Insolvency (E) Task Force delegated any additional work needed to amend or revise IRMA to the Receivership Model Act Revision (E) Working Group (“Working Group”). The need for this amendment was proposed directly to the Working Group by members and representatives of the affected industries.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated

During the first quarter of 2006, representatives from the mortgage and financial guaranty insurance industry approached the Receivership Model Act Revision (E) Working Group seeking an amendment to improve the priority status of claims under the affected policies. This was prompted by a statement from FitchRatings that the financial strength ratings of mortgage insurers could be unfavorably affected by the priority treatment of claims under mortgage insurance policies. The priority status afforded by IRMA, as adopted, was considered to indicate a moderate possibility of policyholder recovery in the event of receivership proceedings.

Based on this information and further information from the financial guaranty insurance sector, the Working Group considered several options for rectifying what was an unintentional effect of extensive revisions to the receivership model. Working Group members responsible for the drafting of Section 801 stated that the original intent of excluding claims under policies of mortgage and financial guaranty insurance was not to create an unfavorable perception about the legitimacy of these types of insurance as compared to other insurance of Class 3 priority. It was also observed placing these claims in Class 6, as originally adopted, could create a conflict with federal priority as outlined by the Supreme Court in *United States Dep't of Treasury v. Fabe*, 508 U.S. 491 (1993).

The decision to place these claims in a separate class from the general policyholder class was intended to provide greater protection to policyholders of insurers that write only financial guaranty or mortgage guaranty insurance. If such a monoline writer were subject to receivership proceedings, no Class 3 claims would exist, thus the claimants would have *de facto* Class 3 status. The Working Group agreed to amend Section 801 to better protect individual policyholders of monoline writers of mortgage and financial guaranty insurance, while recognizing that these lines may not be regulated in a manner consistent with other lines.

Interested parties who participated in the drafting process were the Genworth Mortgage Insurance Corporation, the Mortgage Guaranty Insurance Corporation and the Association of Financial Guaranty Insurers. The interested parties reported that the amendments should provide a cure for the concerns expressed by FitchRatings.

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)

The Working Group received comments these issues at the Spring 2006 and Summer 2006 National Meetings. Interim meetings allowed for further refinement of the proposed amendments. Written comments were accepted at the Working Group level in two intervals of at least 30 days. The amendments were unanimously adopted by the Working Group on July 11, 2006, and received by the Receivership and Insolvency (E) Task Force at the Fall 2006 National Meeting. No written comments were received at the Task Force level, and the Task Force adopted the amendment unanimously on October 23, 2006. The Financial Condition (E) Committee unanimously adopted the amendment at the Winter 2006 National Meeting.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response)

The only issue garnering controversy at the Working Group level was the proposal by the financial guaranty insurance industry to remove the exclusion for claims under such policies from Class 3 and instead afford Class 3 status to claims by monoline financial guaranty insurers under reinsurance agreements with an insolvent monoline financial guaranty reinsurer. Working Group members expressed concern that this proposal would treat reinsurers in one line of business differently from reinsurers in all other lines. The proposal was offered because market consolidation in the financial guaranty sector has significantly reduced the separation between primary writers and reinsurers. Citing *Fabe* concerns about treating claims under reinsurance the same as claims of direct policyholders, the Working Group rejected the proposal. The proposed amendment does not recognize claims of reinsurers in these lines differently from reinsurers in any other line.

7. Any Other Important Information (e.g., amending an accreditation standard).

The amendment, if adopted, would become part of IRMA, which is currently being processed under the Financial Regulation Standards and Accreditation (F) Committee framework for consideration as an amendment to the existing receivership accreditation standard.

PROJECT HISTORY - 2007

INSURER RECEIVERSHIP MODEL ACT (#555)
(Section 712 - Administration of Loss Reimbursement Policies)

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

The Insurer Receivership Model Act (IRMA) was originally adopted by the NAIC on December 4, 2005, but did not contain a provision on large deductible insurance policies. Large deductible policies are insurance policies, most common in the workers' compensation area, where the insurer has "first dollar" responsibility for payment of claims, regardless of whether a particular loss is within the deductible amount. In return, the policyholder promises to reimburse the insurer for all payments within the deductible amount. Large deductible policies are typically in excess of \$100,000, and are often accompanied by collateral arrangements to secure the insured's deductible obligations. Section 712 – Administration of Loss Reimbursement Policies was added to IRMA to treat loss reimbursements in the receivership context as general assets of the insolvent estate. Section 712 also provides that any funds that come into the insolvency estate (either through repayments or through the draw down of collateral) that are allocable to claims that a guaranty association has paid shall be immediately remitted to the guaranty association. Such payments remitted to a guaranty fund are considered early access payments under Section 803 of IRMA. The term "large deductible policy" was changed to "loss reimbursement policy", and references to worker's compensation policies were removed, to reflect that Section 712 applies to all insurance policies regardless of the size of the deductible or the type of coverage provided.

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

Receivership and Insolvency (E) Task Force (RITF)

States Participating:

New Jersey, Chair	Louisiana
Tennessee, Vice Chair	Massachusetts
Arkansas	New Mexico
California	New York
Connecticut	North Carolina
Delaware	Ohio
District of Columbia	Oklahoma
Florida	Pennsylvania
Hawaii	Rhode Island
Illinois	Texas
Indiana	Utah
Iowa	Washington
Kentucky	

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

The following charge was given to the RITF in 2006:

Monitor progress of IRMA through adoption process, provide assistance as requested and perform additional work as directed by parent committee. *Essential*

The Financial Condition (E) Committee in its interim meeting dated November 7-8, 2005, gave the following charge:

A charge to consider a large deductible provision in 2006.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated

In the Fall of 2005, the Financial Condition (E) Committee asked the Model Act Revision Working Group (MARG) of the RITF to study the issue of large deductibles and, if advisable, draft model language. MARG met on January 12, 2006, to discuss the working group's charge to consider the development of a large deductible provision in IRMA by the Spring 2006 National Meeting. On February 14, 2006, MARG adopted a model provision to amend IRMA by adding a new section in Article VII, which was presented to the RITF on March 6, 2006. At this meeting the RITF indicated that written comments should be submitted by April 10, 2006, after which the RITF would hold an interim conference call to discuss the issue further. A subgroup was formed in April of 2006 to consider comments from receivers of the Reliance Insurance Company in Liquidation, who had significant practical experience with administering large deductible policies. This subgroup prepared a draft of IRMA Section 712 (the Arkansas Proposal) on May 10, 2006, which was presented to the RITF at its Summer National Meeting on June 12, 2006. Revisions to IRMA Section 712 were then submitted to the RITF, which were discussed on a conference call dated July 25, 2006. This version of Section 712 was again discussed on a conference call of the RITF dated August 23, 2006, at which time another subgroup was appointed to review an alternative proposal to Section 712 (the Delaware Proposal), which consisted of representatives from Delaware (Chair), Arkansas, Massachusetts and Ohio. On September 11, 2006, the RITF instructed the subgroup to prepare two alternative and conceptually different drafts of Section 712 addressing large deductibles. In a conference call dated October 23, 2006, the subgroup submitted a draft of Section 712 (the Delaware Proposal) to the RITF, which directed that comments be posted on the Delaware Proposal by November 23, 2006. The RITF and the Financial Conditions (E) Committee adopted the Delaware version of Section 712 at the NAIC's Winter National Meeting on December 11, 2006.

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)

Both the Delaware and Arkansas Proposals for IRMA Section 712 were the subject of extensive exposure periods, public hearings and other means (e.g., conference calls) by which widespread input from industry, consumers and legislators were solicited, as discussed in paragraph 4 above. Beginning with the NAIC 2005 Winter National Meeting, drafts of the proposed revisions were reviewed and discussed at each National Meeting and during RITF and subgroup conference calls. Comments were requested and were received and considered throughout the drafting process. In addition, all of the drafts of the proposed revisions were posted on the NAIC web site and distributed by email to interested parties. Comments were received by numerous groups, including industry groups such as the National Conference of Insurance Guaranty Funds (NCIGF), Property Casualty Insurers Association of America (PCI), American Insurance Association (AIA), Western Guaranty Fund Services, Minnesota Property & Casualty Guaranty Association, Mississippi Insurance Guaranty Association, Oregon Insurance Guaranty Association, and Bingham McCutchen LLP.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response)

The most significant issue and item of controversy during the due process were the alternative proposals to IRMA Section 712; i.e., the Delaware Proposal and the Arkansas Proposal. The Delaware Proposal, as eventually adopted by the RITF and previously discussed, would treat loss reimbursements as general assets of the insolvent estate, but would give guaranty funds the right to early access to these loss reimbursements. Alternatively, under the Arkansas Proposal the guaranty association, and not the receivership, directly receives reimbursements on the payment of large deductible claims. Many of the interested parties actively involved with the guaranty associations favored the Arkansas Proposal. In the Spring National Meeting of the RITF dated March 6, 2006, it was noted that the NAIC membership recently adopted a large deductible white paper (Workers' Compensation Large Deductible Study prepared by the NAIC/IAIABC Joint Working Group in March 2006), which took the position that the reimbursement on large deductible policies should be paid to the guaranty funds to the extent the guaranty funds advanced the funds to pay the claims. The Arkansas Proposal was drafted to reflect this position. However, it soon became evident that a majority of the RITF favored the Delaware approach, which was eventually approved by roll call vote of the RITF over the Arkansas Proposal, with 14 states in favor (Delaware, District of Columbia, Florida, Illinois, Iowa, Kentucky, Massachusetts, New Mexico, North Carolina, Ohio, Rhode Island, Texas, Utah and Washington), five opposed (Arkansas, Indiana, Louisiana, Oklahoma and Pennsylvania) and two abstentions (New Jersey and New York).

7. Any Other Important Information (e.g., amending an accreditation standard).

None.

PROJECT HISTORY - 2005

INSURER RECEIVERSHIP MODEL ACT (#555)

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

The Insurer Receivership Model Act (IRMA) is intended to comprehensively address the administration of an impaired or insolvent insurer from conservation and rehabilitation to liquidation and winding up of an estate. This model serves as the foundation of modernization efforts in the receivership area called for in both the Insurance Regulatory Modernization Action Plan and the Framework for a National System of State-Based Regulation. IRMA was a collective effort of people dedicated to enhancing the efficiency and economy of receiverships.

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

The Receivership Model Act (E) Revision Working Group of the Financial Condition (E) Committee's Receivership And Insolvency Task Force drafted the Insurer Receivership Model Act. The drafting process started in 2001 and the following persons chaired the working group: Doug Hartz (MO) (2001), Diane Garber (MO) (2001 – 2003), Wayne Johnson (FL) (2003) and Frank Martin (PA) (2004 – 2005). The following states were members of the working group: Arkansas, Arizona, California, Connecticut; Delaware, Florida, Iowa, Illinois, Kentucky, Michigan, Missouri, Nebraska, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas and Utah.

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

The charge that was given to the working group was to “produce a revised Insurers Rehabilitation and Liquidation (Insurer Receivership) Model Act, using the current model act as a starting point and incorporating the Uniform Receivership Law, as adopted by the Interstate Insurance Receivership Commission, where appropriate, with a final revised Insurer Receivership Model Act to be delivered by the 2004 Winter National Meeting. Continue to update the Insurer Receivership Model Act annually to reflect current best practices for issues as identified by the NAIC in its other charges related to insurer receiverships.” Excerpted from the 2004 Charges of the Receivership & Insolvency Task Force.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated

IRMA was developed in an open and deliberative process at the working group level as well as the task force and committee levels. The devotion and expertise contributed to the development of this model law was tremendous as it involved input from regulators and others that have handled or been involved in multiple, complex, and at times, controversial receiverships. The major players in the area of receiverships had significant input into this model, including the guaranty associations for life & health and property & casualty and the reinsurers. Specifically, the following interested parties, among others, provided substantive input into the IRMA drafting process National Organization of Life & Health Insurance Guaranty Associations, National Conference of Insurance Guaranty Funds, Reinsurance Association of America, American Counsel of Life Insurers, American Insurance Association, Property Casualty Insurers Association of America, State Farm Insurance Company and representatives of the Home Receivership Estate. In addition, several attorneys in private practice with expertise in insurance receivership or bankruptcy contributed to the process without compensation.

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)

The working group spent a great deal of time over the last four years in more than 70 two- to three-hour conference calls, in four- to eight-hour sessions at each NAIC quarterly meeting during that period, and at multiple two-day interim meetings in accelerated discussions on a new model law governing receiverships. Interested parties participated in every meeting or conference call. Since March 2004, more than 60 drafts of the model showing adopted sections and proposed revisions were provided to members of the working group, subgroups and drafting groups, interested regulators and interested parties for comment and review.

The Financial Condition (E) Committee received IRMA for consideration in May 2005. The committee had a special ninety-minute public hearing at the Summer 2005 National Meeting and received written comments prior to that meeting. The committee had a thirty-day exposure period and received comment letters from interested parties in mid-July. The committee conducted an interim meeting in Chicago, Illinois on August 2 - 3, 2005 and spent one full day receiving oral comments from interested parties including asking questions regarding areas of concern. The committee held two-hour conference calls on

August 17, 2005, and October 28, 2005, that were open to interested parties but limited to regulator-only discussion. On November 7 - 8, 2005, the committee held an interim meeting and spent eight hours receiving comments from and dialoguing with interested parties as well as voting on proposed changes to the model.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response)

The two most controversial issues at the working group level and the committee level related to provisions affecting the guaranty associations and reinsurance collections.

Guaranty associations wanted the automatic right of intervention (Section 105I) and automatic party in interest status (Section 104S) in liquidation proceedings, both rights which are not included in the current model receivership law. Regulators were concerned that some states do not afford special treatment to guaranty associations by giving them an automatic right of intervention or party status. The Financial Condition Committee included three options for states to choose regarding intervention of guaranty associations: 1) silent on this issue; 2) intervention only upon application to and approval by receivership court; or 3) intervention as a matter of right. A guaranty association is not an automatic party in interest but rather must petition the court.

The notice and hearing provision (Section 107) modernizes the receiver's interaction with the court and is intended to increase the efficiency and economy of the receivership proceeding while protecting other parties' abilities to participate. This provision also provides that if the court determines that an objection to an action proposed by the receiver was frivolous, filed for delay or other improper purpose the court can award fees and costs to the receiver. Some interested parties objected to this provision citing fairness concerns but this "loser pays" provision only applies to actions the court determines to be frivolous or filed merely for delay, not to all unsuccessful objections and is consistent with state law in many instances.

The immunity and indemnification provision (section 115) is an enhancement to the existing model because conservators and rehabilitators, who are arguably subject to greater liability, are covered. The receiver's contractors such as attorneys and accountants are immune from liability to the same extent as the receiver. Immunity and indemnification do not extend to liability caused by intentional, willful or wanton misconduct. Gross negligence is not expressly excluded. Since any claim of misconduct by a contractor would accrue to the receiver, not to claimants or stakeholders of the receivership estate, the receiver maintains the ability to proceed against a contractor, and indemnification does not apply.

There are new provisions for addressing conservation (Article III). The purpose of this Article is to provide for a type of delinquency proceeding where it is not clear if the insurer can be rehabilitated. The intent is to avoid rehabilitation proceedings conducted merely for the purpose of preparing the estate for the entry of a liquidation order. Some interested parties complained that the powers of the conservator are too broad. The committee believed that the purpose of conservation was best served by the enumerated powers.

In Section 504A(3)(b), the model explicitly adds a power that many regulators believe has been implicit in the powers of the receiver. (Also see Drafting Note to Section 801A). This provision expressly allows the liquidator, upon approval of the receivership court, to pay administrative costs of the estate where the payment will assist or result in the collection or recovery of property of the insurer. An example is where a claimant of the estate is not going to prosecute a claim, but if the claim were pursued, the estate would realize a recovery of property. This provision recognizes the liquidator's power to incentivize the prosecution of the claim, provided there is a net benefit to all creditors of the estate by a resultant increase in the distributable assets. The payment does not constitute a violation of the priority of distribution because it has no effect on the amount or timing of any subsequent distribution on the underlying claim.

This model incorporates a procedure to enable liquidators to address estates with long-tail claim liabilities in order to minimize continuing administrative expenses (Sections 611 and 614/615). Under existing models, receivers have attempted to actuarially estimate the remaining liabilities and bill reinsurers based on those estimates – which may be higher or lower than actual liability. Reinsurance Association of America strongly opposed any language that would require reinsurers to commute and settle claims or that would include a component of incurred but not reported losses in the calculation of reinsurance balances. The committee voted to have one option in the model, that is, allowing the receiver to petition for arbitration of reinsurance receivables only when 75% of the estates' liabilities have been settled or if the reinsurer is in financial difficulty. The provision allows the liquidator or the reinsurer to reject the arbitration panel's decision, in which case the commutation payment would be placed into a trust for the benefit of the estate and funds would be withdrawn from the trust as claims are paid. The RAA told the committee that they were supportive of the provision that ended up in the model. They had objected to an additional option, which the committee removed.

The priority of distribution provision (Section 801A) adopted by the task force created a new Class 2 for administrative expenses including defense costs of the guaranty associations. At the working group and task force levels, this provision was a compromise between the receivers and the guaranty associations as guaranty associations wanted all of their expenses in Class 1 and receivers wanted defense costs and costs related to policyholder benefits included in Class 3, the general policyholder class. The committee included two options that a state may choose from: (1) create Class 2 and guaranty association administrative expenses are in this class; (2) create Class 2 and certain guaranty association administrative expenses are in this class, but P/C defense costs and other costs related to policyholder benefits are in the general policyholder class. This second option was added to address the concern that defense costs and cost containment costs of guaranty associations are more appropriately considered policyholder benefits and therefore deserve the same treatment as the policyholder benefits of policyholders not eligible for coverage by a guaranty association.

This model provides that early access payments (Section 803) shall be made to guaranty associations as soon and as frequently as possible, at least yearly if distributable assets exist and are treated as advances against distributions. It requires the liquidator to petition the court within 120 days of the liquidation order and annually thereafter for approval to make early access distributions or report that there are no distributable assets at that time. The model requires early access payments to be made within 60 days of receivership court approval. Guaranty associations have suggested requiring more frequent distributions, inclusion of a formula for determining early access distributions and a requirement that early access be reapplied for by the liquidator whenever significant new assets are recovered. At least one state contends that early access payments be based on actual claim payments by guaranty funds. This provision provides a simple rule that all assets not needed for administrative expenses be forwarded to guaranty associations and would simplify calculations and recovery of excess distributions if needed.

Two issues were referred to the Model Act Revision Working Group for further consideration: (1) provision to petition court for receiver to administer all claims, and (2) large deductible provision. A provision was proposed at the committee level to address concerns about a lack of coordination and cost efficiency when multiple guaranty associations are triggered in an insolvency or when complex claims are handled by the liquidator and also by the guaranty association. Some interested parties strongly opposed this provision and claimed it would conflict with guaranty fund laws and no evidence existed to support its inclusion in the model act. The committee agreed to defer the issue for consideration by the Receivership Model Act Revision Working Group during its ongoing review of the P/C insurance guaranty fund model. The resulting charge is to address the need for improvements in coordination among guaranty associations and the receiver's ability to control claims handling expenses in liquidation proceeding.

The large deductible provision was proposed very late in the working group's consideration and revived at the task force and committee levels. It addresses a type of policy, most common in the workers' compensation area, where the insurer has "first dollar" responsibility for payment of claims regardless of whether a particular loss is within the deductible amount. In return the policyholder promises to reimburse the insurer for all payments within the deductible amount. With the support of industry trade groups, guaranty funds propose that, in the event of insolvency, the reimbursement should be funneled to the guaranty fund responsible for paying claims under large deductible policies. This provision has been adopted in a few states but the provision has been universally difficult to apply. The committee deferred the issue for consideration at the working group level.

7. Any Other Important Information (e.g., amending an accreditation standard).

It is intended that selected portions of this model will be the basis for a revised accreditation standard.