

**JOINT SUBMISSION OF NOLHGA AND NCIGF REGARDING
THE NAIC MODEL LAW WORKING GROUP'S SURVEY
OF STATES' RECEIVERSHIP LAWS**

The National Organization of Life and Health Insurance Guaranty Associations and the National Conference of Insurance Guaranty Funds respectfully submit their joint comments regarding the Model Law Working Group's Survey of States' Receivership Laws.

NOLHGA and NCIGF are an integral part of the insurance resolution process in the United States, preparing for and coordinating the provision of guaranty association benefits to U.S. insurance consumers whose insurance carriers become insolvent. NOLHGA's members are principally concerned with protecting consumers of failed life, annuity, and health insurers, and NCIGF's members are principally concerned with protecting consumers of failed property and casualty insurers.

We appreciate the opportunity to comment on the responses to the survey, and offer our continued support and collective experience for the Working Group's ongoing efforts.

Focus on the Scope of the Key Attributes

The Working Group's response to the International Monetary Fund's Financial Sector Assessment Program should closely reflect the scope of the Key Attributes. The explicit scope of the Key Attributes is "[a]ny financial institution that could be systemically significant or critical if it fails,"¹ and "[a]ny insurer that could be systemically significant or critical if it fails and, *in particular, all insurers designated as Globally Systemically Important Insurers.*"² This Joint Comment focuses on receivership laws and practices that respond to that scope and can help prepare the U.S. receivership and guaranty system to respond to the challenge, especially in the life insurance sector, where federal concern for potential systemic implications seems now to be most focused.

We, therefore, respectfully suggest that the Working Group use the survey results to advance state legislation that relates directly to state responsibilities for resolution of a SIFI or a G-SII with substantial business in the United States. While certainly state law reforms are necessary from time to time to clarify law and make the insolvency process more efficient and cost effective, broader efforts, for purposes unrelated to the scope of the Key Attributes, could misdirect advocacy and distract from attempts to build consensus on legislative priorities critical to responding to international and federal standard-setting initiatives and discussions.

¹ Key Attribute 1.1

² Key Attribute, II-Annex 2, 2.1 (emphasis added)

Promote Dodd-Frank Implementation Legislation

The Working Group should encourage state legislatures to adopt provisions substantially similar to the NAIC Guideline for Implementation of State Orderly Liquidation Authority, specifying that a determination under Title II of the Dodd-Frank Act is a ground for receivership of the entity that was the subject of the determination. This legislative provision was the subject of Question 3 of the Working Group's survey, to which seven states responded that they had enacted the legislation. The guaranty system shares this interest in states' Dodd-Frank readiness.

The Dodd-Frank implementation legislation is the survey topic that most directly relates to the goal of readiness to resolve systemically important financial institutions. Title II authority by definition is only used to resolve entities deemed systemically important. And the FSAP Review specifically points to the NAIC's legislative guideline as a "possible framework for state implementation of the receivership" under Dodd-Frank.³

The Dodd-Frank implementation legislation is also important because it responds to the FSB's position that insurance receivership authority under Title II should be moved to the federal government under the FDIC's orderly liquidation authority.⁴ With a legislative mechanism in place for readiness, states are in a stronger position to respond to that suggestion.

In addition, Dodd-Frank implementation authority strengthens the utility of resolution at the legal entity level, rather than causing decision-makers to default to a "single point of entry" approach. In the U.S., any resolution strategy should include a resolution at the operating company level, unless the operating company is solvent and able to pay claims as they come due. Absent a resolution of the operating company, guaranty association benefits would not be available to help protect its policyholders. Dodd-Frank implementation legislation allows states to respond quickly to a resolution that may affect the United States economy and supports the states' retaining operating company resolution as a strategy.

Advance the Role of the Guaranty System in Preplanning and Preparedness

The guaranty system's expertise can and should be used in connection with the resolution planning called for in the FSB's Key Attributes, including in connection with crisis management groups and other coordination efforts. FSB guidance emphasized the need for coordination between resolution authorities and policyholder protection schemes.⁵ Policyholder protection schemes (in the U.S., our well-established and experienced guaranty system) can and should play an important role in developing or assessing resolution strategies, and they should be part of crisis management groups and other coordination efforts. The NAIC recently supported this view in its comments on FSB's Consultative Document "Developing Effective Resolution Strategies and Plans for Systemically Important Insurers."

³ FSAP Review Technical Note at 34

⁴ FSAP Review Technical Note at 136

⁵ See Key Attributes 8.1 and 12.1; II-Annex 2, 3.2

Receivership and resolution planning practices should reflect that principle. We therefore suggest that the Working Group, the NAIC, and individual regulators advance the preplanning role of the guaranty system, both by continuing to advocate for that view before international standard setting bodies and policy makers and by working to implement that role for the guaranty system on crisis management groups and other opportunities for guaranty system input to preplanning.

Commit to Early Consultation and Early Intervention in Troubled Companies

Pre-resolution planning brings substantial benefits to the policy goals of a receivership. The NAIC and guaranty system agreement on this was embodied in the NAIC's 2005 seminal white paper, *Communication and Coordination Among Regulators, Receivers, and Guaranty Associations*. In a systemic crisis, the importance of early consultation and the benefits of that consultation are amplified:

- Such a receivership would by definition be large and multi-state. A coordinated response would be helped by advanced planning and consultation that would provide the groundwork for a national response.
- In a theoretical systemic crisis, time would be of the essence.
- If the resolution involved multiple jurisdictions, data and information sharing would be important to success of the resolution strategies.

Contact Information

National Organization of Life and Health Insurance Guaranty Associations

13873 Park Center Road, Suite 329
Herndon, VA 20171
Phone: 703.481.5206
Fax: 703.481.5209

Peter G. Gallanis
President
E-Mail: pgallanis@nolhga.com

National Conference of Insurance Guaranty Funds

300 North Meridian, Suite 1020
Indianapolis, IN 46204
Phone: 317.464.8176
Fax: 317.464.8180

Roger H. Schmelzer
President
E-Mail: rschmelzer@ncigf.org