

**JOINT SUBMISSION OF NOLHGA AND NCIGF  
TO NAIC'S RESTRUCTURING MECHANISMS WORKING GROUP  
REGARDING THE RESTRUCTURING MECHANISMS WHITE PAPER AND BEST PRACTICES  
EXPOSURE DRAFTS**

**June 7, 2024**

The National Organization of Life & Health Insurance Guaranty Associations ("NOLHGA") and the National Conference of Insurance Guaranty Funds ("NCIGF") are writing to comment on the Restructuring Mechanisms Working Group's (the "Working Group") May 2024 drafts of its Restructuring Mechanisms White Paper (the "White Paper") and Best Practices Procedures for IBT/Corporate Divisions (the "Best Practices"). First and foremost, NOLHGA and NCIGF appreciate the Working Group and NAIC staff's extensive efforts to incorporate changes related to guaranty association/fund coverage.

NOLHGA would like to offer a few suggested revisions to new language in the latest version of the White Paper regarding the continuation of guaranty association coverage with respect to IBTs or Corporate Divisions involving life and health insurance.

NOLHGA first addresses the new language in Section 4.A, at the end of the section titled "Transactions Involving Life or Health Insurance." The new language makes the point that a non-reviewing commissioner could be seen as having an "absolute veto power" over any IBT or CD (at least with respect to business in that commissioner's state) by not issuing a license to a successor entity.<sup>1</sup> NOLHGA does not take a position on the substance of the new language but encourages the Working Group to relocate it to Section 6.D (*Impact of Licensing Statutes*) of the White Paper. Section 6.D is focused on licensure issues and already addresses the possibility that a regulator may be hesitant to license the new entity. NOLHGA believes this placement is preferable to placing this new language immediately after the standards to maintain guaranty association coverage (as it is in the exposure draft). Accordingly, we propose moving the language to the first paragraph of Section 6.D as follows<sup>2</sup>:

Insurers formed for the purpose of effectuating restructuring mechanisms may, in the right transactions, provide value to consumers in the efficient management of runoff liabilities. However, these newly formed companies may have difficulty getting licensed in the various states either because of "seasoning" issues or because a state may be hesitant to grant a license to a company that is not writing ongoing business. ~~It is not clear if the state approving reviewing the transaction does not have the power to require other states to license the resulting insurer(s), and in~~ Making it a mandatory condition of approval would may have the unintended consequences of giving other states (perhaps every other state) and absolute veto power over any IBT or CD transaction (at least with respect to business in that state). In a CD, the state regulator would have the authority to require the merger of the divided line(s) of business, whether into an affiliated company of the dividing insurer or unaffiliated company, be made into an entity that is so adequately licensed. This can either be done under an adopted specific standard of approval (see Colorado and Illinois) or the general standard of policyholder protection.

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<sup>1</sup> This of course would be an issue only when the successor entity is not already licensed in those states where the transferring or dividing insurer is licensed.

<sup>2</sup> We have proposed a few small changes to the proposed language. Removed language is marked with a strikethrough and new language is underlined twice.

NOLHGA also proposes the following change to first sentence of the paragraph described above:

To address these concerns with respect to IBT and CD transactions involving life or health insurance, NOLHGA recommends restructuring statutes (or regulators reviewing proposed restructuring transactions) should clearly provide that assuming or resulting insurers must be licensed so that policyholders maintain eligibility for guaranty association coverage from the same guaranty association that would have provided coverage immediately prior to a restructuring transaction.

NOLHGA has provided an analysis of what standards must be met to maintain guaranty association coverage but has not recommended statutory language. As such, NOLHGA respectfully requests replacing the underlined language with "as NOLHGA advises,".

Thank you for the opportunity to share our perspective on the White Paper, and we look forward to ongoing engagement with you as this project moves forward.

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