

**STATE POST-ASSESSMENT PROPERTY AND LIABILITY
INSURANCE GUARANTY ASSOCIATION MODEL PLAN OF OPERATION**

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Introduction

The following is the Model Plan of Operation for state insurance guaranty associations to supplement the NCIGF Post-Assessment Property and Liability Insurance Guaranty Association Model Act.

Section 1. Plan of Operation

- A. This plan of operation, hereinafter referred to as the Plan, shall become effective upon written approval of the Commissioner, and after approval by member insurers transacting at least sixty percent (60%) of the total net direct premiums written for the kinds of insurance covered by the [State] Insurance Guaranty Association Act as specified under Section [insert applicable section].
- B. Amendments to this plan of operation shall become effective after written approval of the Commissioner and after approval by member insurers in the manner as provided in Paragraph A of this Section.

Comment: Reference should be made to the section of the Insurance Code which corresponds to Section 2 of the NCIGF Post-Assessment Property and Liability Guaranty Association Model Act.

Section 2. Board of Directors

- A. There shall be a Board of Directors in accordance with the provision of Section [insert applicable section] of the Insurance Code.

Comment: Reference should be made to the section of the Insurance Code which

corresponds to Section 5 of the NCIGF Post-Assessment Property and Liability Guaranty Association Model Act.

- (1) The Board of Directors shall consist of [_____] member insurers who shall serve year terms. The Board of Directors shall be elected by the member insurers and shall fairly represent member insurers. In the event the Commissioner shall determine that all member insurers are not fairly represented, he shall disapprove the membership of the Board and order another election. In the interim between such disapproval and the subsequent election, the Commissioner may appoint a temporary Board of Directors which fairly represents the member insurers.

Note: The number of directors should be fixed at [] to [] as provided in Section 5(1) of the NCIGF Post-Assessment Property and Liability Guaranty Association Model Act. This subsection contemplates that in proposing the initial slate of Directors, and in subsequent elections, there would be appropriate representation of various groups and classes of member insurers, including domestic and foreign, stock and nonstock, association and independent, and writers of various lines of insurance subject to the Act.

- (2) Each Director shall serve for a period of [_____] years.
- (3) Upon the election of the Board of Directors, the Association shall notify the Commissioner of Insurance and request his written approval of the Board.
- (4) The members elected to the Board of Directors shall elect a chairman from among its members.
- (5) In the event of a vacancy for any reason in the office of any director, the remaining board members shall select a person to fill the unexpired term of the vacancy subject to approval by the Commissioner.

B. At any meeting of the Board of Directors, each member of the Board shall have one vote. A majority of the Board shall constitute a quorum for the transaction of business and the acts of a majority of the Board members present at a meeting at which a quorum is present shall be the acts of the Board; except that an affirmative vote of a majority of the full Board is required to:

- (1) Approve a contract with a servicing facility;
- (2) Levy an assessment or provide for a refund;

(3) Borrow money.

C. An annual meeting of the Board shall be held at the office of the Insurance Commissioner on [insert date], unless the Board upon proper notice shall designate some other date or place. At each such meeting the Board shall:

Comment: It would appear that there would only be a real need for an annual meeting of the Board and not truly a need for an annual meeting of all member insurers. Member insurers would not be interested in reviewing outstanding contracts with servicing facilities or determined assessments. The member insurers would be interested in proposed amendments to the Plan, but this would be submitted to the member insurers for a vote subsequent to adoption of the proposed amendments by the Board.

(1) Review the plan and submit proposed amendments, if any, to the membership for approval or rejection. A majority of those voting shall be necessary for approval of amendments.

(2) Review each outstanding contract with servicing facilities and, to the extent possible, make any necessary corrections, improvements or additions.

(3) Review operating expenses and covered claims costs and determine if an assessment, or refund of a prior assessment, and the amount of either is necessary for the proper administration of the Association. If such assessment or refund is determined to be necessary, the Board shall levy such assessment or make such refund in accordance with Sections [insert applicable section] and [insert applicable section] of the Insurance Code. The Board may waive the collection from a member insurer when the amount produces an assessment of less than \$10.00.

Note: Reference should be made to the Sections of the Insurance Code which correspond to Section 6(1)(d) and 6(2)(f) of the NCIGF Post-Assessment Property and Liability Insurance Guaranty Association Model Act.

(4) Review, consider and act on any other matters deemed by it to be necessary and proper for the administration of the Association.

D. Promptly after receiving notice of an insolvency, the Board shall:

Note: In some jurisdictions it may be the practice for the Board to conduct a meeting upon notice of an insolvency, at which time appropriate action will be taken with respect to D(1) through D(8) below. Other funds may handle these matters by means of unanimous consent of its Directors. The language in this model is intended to allow for either procedure to be undertaken. A fund may opt to set out its practice with more

specificity in its plan of operation.

- (1) Consider and determine the legal obligations of the Board with regard to any reported insolvency.
- (2) Consider and decide what method or methods, as permitted under Section [insert applicable section] of the Insurance Code shall be adopted to pay and discharge covered claims of the insolvent insurer for each of the three categories of kinds of insurance as identified in Section [insert applicable section] of the Insurance Code but in no event shall an insolvent insurer be appointed as a servicing facility. If the Board decides to appoint a servicing facility, every effort should be made to secure the receiver, liquidator or statutory successor's participation in such contract to assist the Association in the performance of its legally imposed duties.

Note: Reference should be made to those sections of the insurance code which correspond to Sections 6(1)(f) and secondly to Section 4 of the NCIGF Post-Assessment Property and Liability Guaranty Association Model Act.

- (3) Consider and decide what immediate action, if any, should be taken to assure the proper retention of the records of the insolvent insurer necessary to the prompt, economical handling by the Association of covered claims. In this effort, the Board or a designated servicing facility, shall work closely with the receiver, liquidator or statutory successor and seek the liquidator's, receiver's or statutory successor's cooperation in providing such access to the insolvent insurers' records as is necessary for the fund to discharge its statutory duties.
- (4) Consider and decide what persons, if any, should be hired by the Association to implement and carry out broad directives of the Board made pursuant to its statutorily imposed duties. Such persons may include a managing secretary who should be knowledgeable about insurance matters, conversant with the law as it relates to covered claims, and administratively capable of implementing the Board's directives, and who would have such authority as is properly delegated to him by the Board. Such persons may also include attorneys at law, insurance actuaries, accountants, claimsmen and others whose advice or services are deemed by the Board to be necessary to the discharge of its duties. The Board may agree to compensate such persons as to best serve the interest of the Association.
- (5) Consider and decide to what extent and in what manner the Board

shall review and contest settlements and releases or judgments, orders, decisions, verdicts and findings to which the insolvent insurer or its insureds were parties in accordance with Sections [insert applicable section] and [insert applicable section] of the Insurance Code.

Note: Reference should be made to those sections of the insurance code which correspond to Section 6(1)(e) and Section 16 of the NCIGF Post Assessment Property and Liability Guaranty Association Model Act.

- (6) Consider and decide what assessment, if any, should be levied or whether any refund should be made to member insurers. If such assessment or refund is determined to be necessary, the Board shall levy such assessment or make such refund in accordance with Sections [insert applicable section] and [insert applicable section] of the Insurance Code. Notices of assessments to member insurers shall be in sufficient detail as to form a basis for the payment of such assessment by member insurers. The Board may waive the collection from a member insurer when the amount produces an assessment of less than \$10.00.

Note: Reference should be made to those sections of the insurance code which correspond to Sections 6(1)(d) and 6(2)(f) of the NCIGF Post-Assessment Property and Liability Guaranty Association Model Act.

- (7) The Association shall take all steps permitted by law, and deemed necessary to protect the Association's rights against the estate of the insolvent insurer.
 - (8) Consider and decide any other matter deemed by it to be necessary for the proper administration of the Association.
- E. The Board may determine a schedule of such other regular meetings as it may deem appropriate and special meetings of the Board may be called by the chairman and shall be called at the request of any two (2) Board members and not less than five (5) days' written notice shall be given to each Board member of the time and place and purpose or purposes of any such special meeting, except that an emergency meeting may be held upon at least forty-eight (48) hours oral or written notice provided each member of the Board has reasonable opportunity to attend. Directors may attend any meeting of the Board by means of teleconference. Any Board member not present may consent in writing to any specific action taken by the Board. Any action approved by the required number of Board members at such emergency or special meeting, including those consenting in writing, shall be as valid a Board action as though authorized at a regular meeting

of the Board. At such emergency meeting, the Board may consider and decide any matter deemed by it to be necessary for the proper administration of the Association.

- F. Members of the Board shall serve without compensation, but they may be reimbursed for necessary travel expenses incurred in attendance at Board meetings. Such expenses shall be submitted to the Board for approval and subsequent payment.

Section 3. Operations

- A. The official address of the Association shall be the address of the Chairman of the Board unless otherwise designated by the Board.
- B. The Board may employ such persons, firms or corporations to perform such administrative functions as are necessary for the Board's performance of the duties imposed on the Association. The Board may use the mailing address of such a person, firm or corporation as the official office address of the Association. Such persons, firms or corporations shall keep such records of its activities as may be required by the Board.
- C. The Board may open one or more bank accounts for use in Association business. Reasonable delegation of deposit and withdrawal authority to such accounts for Association business may be made consistent with prudent fiscal policy. The Board may borrow money from any person or organization including a member insurer, or from an appointed servicing facility as the Board in its judgment deems advantageous for the Association and the public. Further, the Board may by resolution request the _____ Agency to issue bonds pursuant to _____.

NOTE: The language regarding bond issues should only be added in states having a provision comparable to Section 6(4) of the NCIGF Model.

- D. The Board may levy a non-prorata assessment to cover the reasonable costs of administering the Association, such assessment to be credited against any subsequent prorata assessments.
- E. The Board may contract with one or more persons, firms or corporations to serve as servicing facilities, should the Board receive notice from the Commissioner of an insolvency of a member insurer. Such contract terms shall comply with the state Insurance Guaranty Association Act and be subject to the approval of the Commissioner. Such contract terms may include:

- (1) Terms of payment to the servicing facility;

- (2) Extent of authority delegated to the servicing facility;
- (3) Procedures for giving the receiver timely notice, sufficient to protect the Association's right of subrogation against the receiver, liquidator or statutory successor of each and every covered claim not otherwise reported to the receiver, liquidator or statutory successor;
- (4) Procedures contemplated for the handling of covered claims as defined in the [State] Insurance Guaranty Association Act. These procedures shall include the right to request from or offer to any person arbitration of his covered claim;
- (5) Procedures for the printing or preparation of forms necessary for the proper handling of covered claims;
- (6) Requirement of bond for faithful performance;
- (7) Any other provisions deemed necessary and desirable by the Board of Directors.

The Board of Directors, at its annual meeting, or at any other meeting called for this purpose, may review the insurance code and regulations with a view toward making recommendations to the Commissioner for the detection and prevention of insurer insolvencies.

- G. The Association may develop forms for reporting and may report the history and cause of each insolvency processed and may maintain a continuing file of such reports.
- H. Procedures shall be established to address disposition of liquidation dividends, establishing amount and method of reimbursing members of the board of directors, filing claims with the association and notice, and record keeping for financial transactions.

Section 4. Records and Reports

- A. A written record of the proceedings of each Board meeting shall be made. The original of this record shall be retained by the chairman with copies being furnished to each Board member and the Commissioner. Copies of such written record shall be provided to each member insurer upon request.
- B. The Board shall make an annual report to the Commissioner and to the member insurers. Such report shall include a review of the Association's activities and an accounting of its income and disbursements for the past

year.

- C. After the appointment of a receiver, liquidator or statutory successor and the levy of an assessment by the Association, the Board shall, once every year, appoint an audit committee composed of three companies willing to serve, not already represented on the Board, receiving the largest assessment within the last calendar year. Such committee shall see to the proper auditing of all the books and records of the Association and shall report the findings to the Board. Such report shall be available to all member insurers upon request.

Section 5. Membership

- A. Insurers which were admitted as of [insert date] to transact the kinds of insurance covered by the [State] Insurance Guaranty Association Act in the state of [insert state] shall be members of this Association. Each insurer admitted after [insert date] to transact the kinds of insurance covered by the [State] Insurance Guaranty Association Act shall automatically become, effective on the date of its admission, members of this Association. An insurer shall cease to be a member insurer effective on the day following the termination or expiration of its license to transact the kinds of insurance to which this Act applies, however the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the insurer's license and assessments levied after the termination or expiration, which relate to any insurer which became an insolvent insurer prior to the termination or expiration of such insurer's license.

Note: The two references to dates above should refer to the effective date of the state Insurance Guaranty Association Act.

- B. Any member insurer aggrieved by an action or decision of the Association shall appeal to the Board before appealing to the Commissioner. If such member insurer is aggrieved by the final action or decision of the Board, or if the Board does not act on such complaint within thirty (30) days, the member insurer may appeal within thirty (30) days after the action or decision of the Board or the expiration of the thirty (30) days.

Section 6. Indemnification

- A. For purposes of this Section, the term "Fund Representative" shall mean any director, officer, or employee of the Fund (*other than the Director/Commissioner of Insurance and his or her representatives*)* acting or failing to act in the performance of his or her duties under the [Guaranty Fund Act].

** Italicized language is optional. Fund managers should decide whether or not the Director/Commissioner of Insurance and his or her representatives should be excluded from indemnification in their states. Fund managers may also wish to consider adding language to the above that would specifically address the situation in which a guaranty fund desires the ability to defend or indemnify a servicing carrier or independent contractor. In this instance, language could be added to the above paragraph that would permit the board of directors, by resolution, to add servicing carriers or independent contractors to the definition of Fund Representative. This might be desirable so that such entities that are retained to handle guaranty fund responsibilities are also protected.*

- B. The Fund shall indemnify any Fund Representative who was or is a party or witness or is threatened to be made a party or witness to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Fund) by reason of the fact that he or she is or was a Fund Representative, against expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if his or her conduct meets the following standard: that he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Fund, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Determination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person's conduct did not meet the applicable standard set out immediately above.
- C. The Fund may indemnify any Fund Representative who was or is a party or witness or is threatened to be made a party or witness to any threatened, pending or completed action or suit by or in the right of the Fund to procure a judgment in its favor by reason of the fact that he or she is or was a Fund Representative against expenses (including attorneys fees) and amounts paid in settlement actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Fund, and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Fund unless and only to the extent that the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to

be indemnified for such expenses which such court shall deem proper.

- D. Any indemnification under paragraphs (B) or (C) of this Article (unless otherwise ordered by a court) shall be made by the Fund only upon a determination that indemnification is proper in the circumstances because the person to be indemnified has met the applicable standard of conduct set forth in paragraphs (B) and (C) above. Such determination shall be made (a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding or (b) if such a quorum is not obtainable, or even if obtainable if a quorum of disinterested directors so directs, by independent legal counsel in a written opinion.
- E. Expenses (including attorneys fees) incurred by a Fund Representative in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Fund in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Fund Representative to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Fund as provided in this Section.
- F. The indemnification and advancement of expenses provided by or granted pursuant to the other paragraphs of this Section shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any statute, bylaw, agreement, vote of members or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.
- G. The Fund shall have power to purchase and maintain insurance on behalf of any person who is or was a Fund Representative against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Fund would have the power to indemnify him or her against such liability under the provisions of the Section.
- H. The indemnification and advancement of expenses provided by, or granted pursuant to this Section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a Fund Representative and shall inure to the benefits of the heirs, executors, and administrators of such a person. Any repeal or modification of this Article shall not adversely affect any right to indemnification or advancement of expenses of any present or former Fund Representative existing at the time of such repeal or modification.

- I. If this Section or any portion hereof is invalidated by any court of competent jurisdiction, then the Fund shall nevertheless provide such indemnification and advancement of expenses as would otherwise be permitted under any portion of this Section that shall not have been invalidated.

NOTE: It is recommended that fund managers consult with counsel to ensure that any state specific issues are properly considered.

Section 7. Conformity to Statute

Chapter [insert applicable chapter] of the Insurance Code as written, and as may be amended, is incorporated as part of this plan and as such is attached hereto.

Note: Reference should be made to the chapter of the insurance code which contains the state Insurance Guaranty Association Act.

Appendix:

Return the Acceptance below to the attention of the Chairman and Board of Directors of the Plan.

STATE GUARANTY ASSOCIATION INSURANCE ASSOCIATION
ACCEPTANCE OF THE PLAN OF OPERATION

The undersigned member insurer hereby accepts the Plan by causing its corporate name to be hereunto subscribed by its president or by an authorized officer. Each member so accepting does hereby declare its authorization of the Board to levy such assessments, and to take such other actions as are deemed by the Board to be necessary to assure the fair, reasonable and equitable administration of the Association, as required by law.

Date Accepted

Name of Member Insurer

Address

By

Title