

GUIDELINE FOR PAYMENT OF INTEREST TO RECEIVER ON OVERDUE REINSURANCE RECOVERABLES

Drafting Note: The Receivership and Insolvency (E) Task Force examined concerns for the timing and collection of reinsurance recoverables held by insurers in receivership. In 2009, a survey was conducted with receivers regarding the status of reinsurance recoverables held by insurers in receivership. The Receivership Reinsurance Recoverables (E) Working Group was given the charge to review the survey responses and recommend possible solutions that potentially address those concerns. On March 27, 2011, the Receivership and Insolvency (E) Task Force adopted the memorandum - *Draft of Solutions Identified to Address Concerns for the Timing and Collection of Reinsurance Recoverables Held by Insurers in Receivership*. The memorandum suggested a solution with respect to Interest on Overdue Payments, which is intended to bring leverage against reinsurers by requiring them to pay interest applicable to delayed payments. The Guideline is intended for use by receivers in instances where a reinsurer unjustifiably denies payment after such time as a claim under its reinsurance agreements has been shown to be properly due and owed. The following statutory language is not an amendment to the NAIC receivership models and is not intended to affect other rights and responsibilities under receivership law, but is intended as a Guideline for use by those states seeking to permit a receiver to collect the payment of interest on overdue reinsurance recoverables:

Payment of Interest on Overdue Reinsurance Recoverables

If a reinsurer does not pay the amount billed by the receiver for a valid claim within 90 days after the billing date, interest on the billed amount will begin to accrue at the statutory legal rate provided in Subsection [fill in state reference], except that all or a portion of the interest may be waived as part of an arbitration proceeding or by the receivership court.

- (1) For purposes of this section, the term “valid claim” shall mean a claim that has been allowed by the liquidator, rehabilitator, receiver or conservator.
- (2) If requested by the reinsurer, a hearing shall be held to determine whether a claim is a valid claim. If a court determines that the claim is a valid claim, then the reinsurer shall be liable for interest, court costs and costs of recovery for the receiver from the date that the request for payment was first made by the receiver.
- (3) Interest will be payable by the reinsurer to the receiver under this section regardless of whether the reinsurance contract expressly permits payment of interest.

Chronological Summary of Action (all references are to the Proceedings of the NAIC).

2014 Proc. 3rd Quarter, Vol. 1 121, 135, 140, 253-255 (adopted).