

Receiver's Handbook for Insurance Company Insolvencies
Chapter 6 – Guaranty Funds/Associations

IV. RECEIVERS' EXPECTATIONS FOR GUARANTY FUND/ASSOCIATION DUES AND EXPENSES

A. Introduction

The Receivership Financial Analysis Working Group (R-FAWG) has proposed the following principles regarding expenses claimed in insurance receiverships by Guaranty Funds¹. These principles are intended to assist insurance commissioners as receivers (“Receivers”), and Guaranty Fund Administrators, in fulfilling their duties dealing with troubled companies. They are intended to further the objective of Receivers and Guaranty Funds working more closely together in addition to the pre-liquidation planning and other areas of cooperation and coordination presently being done.

A Receiver has a fiduciary responsibility to all of the receivership estate’s creditors and is charged with protecting the interests of insureds, creditors and the public generally. Receivers need to ensure that the overall administrative expenses charged to the receivership estate are reasonable. The Receiver may approve payment of expenses or reject expenses, pursuant to state law. Typically a court will approve the expenses that have been approved by the Receiver. The purpose of the following principles is to provide guidance to Receivers and courts in order to increase consistence in receivership administration.

The guaranty fund system is a statutorily designed “safety net” to cover insolvent insurers’ policy obligations, within statutory limits, to policy owners, beneficiaries and third-party claimants. Guaranty Funds are financed by assessments based on member insurers’ premiums written on covered lines of business in a state. Because of this design, the guaranty fund safety net exists without regard to an individual receivership estate.

The members of R-FAWG acknowledge that differences exist between the states with regard to guaranty fund and receivership statutes that may impact the handling of certain guaranty fund expenses. Regardless of the variances between state laws, the members of R-FAWG believe that the following principles will promote coordination between Receivers and Guaranty Funds, reduce the cost of receiverships, and promote uniformity of practices which will preserve assets for payment of claims.

B. Principles and Expectations

The following represent Receivers’ statement of principles and expectations regarding guaranty fund dues and expense.

1. Principle: Some fixed costs of operating a guaranty fund will be incurred regardless of the existence of pending receiverships including all or a portion of membership dues for the Guaranty Fund’s applicable national organization. These baseline costs that are not attributable to a specific receivership should not be charged to receiverships, and should be paid from assessed funds. This will ensure that the allocation of guaranty fund expenses to receiverships remains reasonable, even when the number of receiverships is reduced.

¹Note that references to “guaranty funds” in this document refer to both property/casualty guaranty funds and life/health guaranty associations.

Expectations:

- a) The allocation of guaranty fund expenses must be reasonable, regardless of the number of receiverships to which expenses are charged. A receivership should not be unduly burdened by allocating fixed costs to a dwindling number of receiverships.
- b) A Guaranty Fund's fixed operational costs that are not related to receiverships should not be imposed on receiverships. For example, NCIGF and NOLHGA dues expenses should not be included with a Guaranty Fund's claim for administrative and claim handling expenses filed in a receivership estate. If membership dues to a national organization include costs that the Guaranty Fund would incur for a receivership except for the work of the national organization, those portions of the dues could be allocated to the receivership.

2. Principle: Receivers are required to routinely submit financial reports to the receivership court to assist it in monitoring the progress and status of the receivership. The receivership court and the receivership estate's creditors require transparent and consistent financial reporting regarding the overall administration of the receivership estate.

Expectations: With regard to guaranty fund expense classification, detail, methodologies, formulas, and guidelines, to minimize the need for audit, Receivers expect:

- a) Guaranty fund expenses charged to an estate should be properly classified, directly relevant to the specific estate being charged, and reasonable in amount, subject to state law.

Moreover, expenses incurred to represent the guaranty funds interests as a creditor should not be included if the actions are similar to actions that might be taken by other creditors which would not be reimbursable. This may include for example, legal fees to dispute the Receiver's determination of a guaranty fund's claim against the receivership or legal fees to object to an application filed by the Receiver. This would not include expense necessary for the guaranty fund to fulfill its statutory obligations to process or pay covered claims.

- b) Guaranty fund expenses should be itemized and detail provided with or without a request from the receiver (e.g. expenses should not be grouped into "Other" or "General" expense categories). This will also avoid an inadvertent inclusion of particular expenses that are excluded by statute. (For example, some statutes exclude guaranty fund expenses incurred in detecting and preventing insolvencies.)
- c) Guaranty Funds should further refine their established expense allocation guidelines to develop more detailed expense reporting directives and then consistently utilize the guidelines when reporting to Receivers. Where not impacted by state statutes, Guaranty Funds should refine the formulas, methodologies and guidelines for expenses that are charged to individual receiverships. (i.e. classifications, types of expenses, levels of expenses, reasonableness standards/analysis, coordination standards) in order to minimize grouping of unrelated expenses.

- d) Guaranty Funds, in coordination with NCIGF and NOLHGA, should continue to consider solutions to minimize and eliminate administrative expenses to keep expenses reasonable. Examples of such actions that many Guaranty Funds have already taken include, utilizing part-time staff, housing Guaranty Fund offices in other entities (e.g., law firms) and by relying on the national organizations to perform various services (e.g. website and system services). Working with the NAIC in developing Uniform Data Standards is another example.

- 3. Principle: To ensure that travel expenses billed to a receivership estate are fair, reasonable and consistent, Guaranty Funds should be aware of the Receiver's reimbursement guidelines when submitting travel expenses for reimbursement.

Expectation: Guaranty Funds should limit their claim against the estate for travel expenses to travel expense limits, guidelines and per diems consistent with those used by the applicable state Receiver's office for travel expenses billed to receivership estates in that state. Any travel expenses incurred in excess of such limits should be borne by the Guaranty Funds, and not the receivership estate.