

Request for Comment

To Receivership Model Law (E) Working Group Members, Interested Regulators and Interested Parties:

At the Receivership Model Law Working Group's Nov. 19, 2015 meeting, the Working Group reviewed the results of a survey from the states regarding receivership laws and practices. The survey requested information relevant to the International Monetary Fund's Financial Sector Assessment Program, which evaluated the conformity of the U.S. resolution regime for financial institutions with the Financial Stability Board's *Key Attributes of Effective Resolution Regimes for Financial Institutions*.

The Working Group requests comments on the results of the survey. Comments should address:

- 1) recommendations for specific areas of existing state receivership laws and practices that should be improved; and,
- 2) any related recommendations for improvement that the Working Group should consider, including recommendations for enhancing consistency between states' receivership laws.

Both the detail and summary of survey results are posted to the NAIC website at http://www.naic.org/committees_e_rtf_mlwg.htm.

Comments should be submitted electronically to jkoenigsman@naic.org by Monday, February 1, 2016.

Jane M. Koenigsman, FLMI
Sr. Manager I – Life/Health Financial Analysis
National Association of Insurance Commissioners
Ph. 816.783.8145
Fax 816.460.7599
jkoenigsman@naic.org

**Receivership Model Law (E) Working Group
Summary - Oct. 14, 2015 Survey of States' Receivership Laws**

1. States Responding to Survey

37 = AK, AR, AZ, CO, CT, DC, DE, FL, HI, IL, IN, KY, LA, MA, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NM, OH, OK, PA, SC, SD, TN, TX, UT, VT, WI, WV, WY

Grounds for Receivership

2. Can a receivership be commenced prior to insolvency or impairment?

Yes = 37 100%	Three states responded No. However, they noted that their laws include grounds for receivership other than insolvency or impairment, so these are counted as Yes.
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a. If yes, explain other grounds for receivership.

Generally states had similar grounds for receivership. Examples include:

- Insurer is in hazardous financial condition; insolvent or about to be insolvent; or impaired
- The insurer has failed to comply with an order to make good an impairment of capital or surplus.
- Authorized control level event or mandatory control level event has occurred.
- Refusing to submit records for examination or refusing to be examined under oath.
- Concealing or removing records or assets.
- Officer, director or manager refuses to be examined under oath concerning insurer.
- Failing to remove dishonest or untrustworthy person with executive authority.
- Ceasing transacting business for one year.
- Transferring entire property or business or merging with another insurer without approval.
- Transacting business fraudulently.
- Exceeding insurer's powers or violating its charter, articles of incorporation, or any law.
- Illegal conduct endangering assets in an amount threatening the insurer's solvency.
- Failing to pay a final judgment based upon insurance contract, or obligation to a political subdivision
- Failing to timely file annual report.
- Attempting to compromise with creditors on ground that it is unable to pay claims in full
- Consent by majority of directors, stockholders, members or subscribers;
- Application for a receiver, trustee, custodian or sequestrator of insurer or its property
- Findings under Dodd-Frank by the US Treasury
- Commissioner determines that it would not be in the best interest of the policyholders, creditors, or the public to proceed with the conduct of the business of the insurer.
- Certificate of authority was revoked or never issued, and there are residents with claims or policies.
- Specific additional grounds for HMOs, mutual insurance holding companies.

3. Does the state law contain a provision substantially similar to the *NAIC Guideline for Implementation of State Orderly Liquidation Authority*, or any other provision specifying that a determination under Title II of the Dodd Frank Act is a ground for receivership?

Yes = 7	IL, LA, NH, TX, UT, VT, WI
No = 29	CT - expects to pass legislation in 2016. ME - law does not specifically refer to Dodd-Frank but would consider a federal determination action as grounds for receivership.
Blank = 1	

Jurisdictional Issues

4. Are non-regulated entities that are operationally related to insurers subject to receivership under insurance laws in your state?

Yes = 12	Some qualifications for non-regulated entity to be eligible for receivership include: <ul style="list-style-type: none"> • Existence of obligation under agency, brokerage, or reinsurer arrangement. • Transacting insurance business in the state. • Ownership or affiliate relationship.
No = 25	Some states explained that the answer could be Yes in certain circumstances: <ul style="list-style-type: none"> • An unauthorized insurer comes within the definition of an insurer • Court has jurisdiction over agent, broker, etc. of insurer in receivership. • Non-regulated entity may be enjoined from interfering with receiver or conducting business on behalf of the insurer. • If entity is owned or managed by the insurer.

5. Is a receivership action by a non-US regulator on an entity in the group recognized or supported in your state?

Yes = 13	Many states reported that recognition was conditional. Some conditions include: <ul style="list-style-type: none"> • Non-US receivership action may be supported only with an ancillary receivership. • Must be an "Alien Insurer" as defined in receivership act. • Recognition is at discretion of Commissioner.
No = 16	Two states which answered "No" indicated that the foreign action could be recognized in an ancillary receivership.
N/A or blank = 8	Two states indicated that a foreign action could be given full faith and credit under comity principles.

6. Are stays and orders of receiverships in other states given full faith and credit in your state?

Yes = 30
No = 3
N/A or blank = 3

7. What conditions, if any, are placed on giving effect to stays and orders of other states? (e.g., are “reciprocal” and “nonreciprocal” states treated differently?)

Most states reported that only stays and orders of a reciprocal state were recognized. A small minority of states gave full faith and credit unconditionally.

8. Under what circumstances are ancillary receiverships allowed or required?

A number of states provide for ancillary receiverships of an insurer that has assets, business, or claims in the state if there are sufficient assets to justify appointment of ancillary receiver, it is necessary for the protection of creditors or policyholders, or if 10 or more residents with claims against insurer petition for appointment of ancillary receiver. Ancillary receiverships are generally not required.

9. How are assets located in the state handled if there is an ancillary receivership?

A variety of answers were provided. In some cases, ancillary receiver uses assets in the state to pay certain claims. In other cases, assets are transferred to domiciliary receiver or guaranty association.

Authority

10. Are judicial actions prior to rehabilitation or liquidation available (e.g., seizure or conservation orders)?

Yes = 34	<ul style="list-style-type: none"> • 8 - Supervision and Summary Orders • 21 - Seizure • 2 - Injunctions • 13 - Conservation • 1 - Court order for a delinquency proceeding
No, N/A, Blank = 3	No narrative explanation

a. If yes, can these orders be obtained on an ex parte basis

Yes = 31
No, N/A, Blank = 4

11. Does the Commissioner have statutory immunity as Receiver?

Yes = 24	Immunity may not be absolute, and may be limited to actions take in good faith.
No = 12	Some statutes do not provide explicit immunity, but judicial immunity may apply.
N/A or blank = 1	

12. Does immunity extend to contractors or employees of the insurer acting at the Receiver's direction?

Yes = 24
No = 8
N/A or blank = 5

13. Can the Receiver depart from the priority scheme in a rehabilitation proceeding?

Note that a number of states responded that priority schemes only apply in liquidation, not rehabilitation. Those responses occur in each answer category, Yes/No/NA. Many responses included consideration of liquidation in the response as seen below, so responses should not be viewed as exclusive to rehabilitation unless stated as such.

Yes = 13
No = 12
N/A, Blank, other answer = 12

14. Under what circumstances is a plan of rehabilitation required? (i.e. Some state's laws require a rehabilitation plan only in certain circumstances, for example if the Rehabilitator proposes to reorganize the insurer (e.g., "old" IRLMA Section 18))

- Seven states reported that there are no circumstances specified in law.
- Sixteen states reported by that a plan is required in some circumstances, e.g., if a reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is proposed.
- Two states reported that a plan is required in all cases.

15. What are the requirements of a rehabilitation plan? (i.e. Some laws may have specific requirements for a plan, such as requiring that the plan contain certain information (e.g., "new" IRMA Section 403)).

- Fifteen states responded that the plan must be fair and equitable to all parties concerned, in the judgment of the court,
- Nine states responded with various requirements. Some are specific (plan must be consistent with distribution scheme), and some are general (plan may have provisions as Commissioner deems necessary or advisable).
- Five states responded with no requirements.
- Two states had the requirements contained in IRMA. Plan must: be fair and equitable to all parties concerned; provide no less favorable treatment of a claim or class of claims than would occur in liquidation with limited exceptions; (2) provide adequate means for implementation; contain information concerning the financial condition of insurer, and operation and effect of plan; and provide for the disposition of records. Plan may include any other provision consistent with the act.

16. Are there statutory requirements specifying that a creditor should be no worse off in rehabilitation than in liquidation?

Yes = 3	
No = 31	While statutes may not contain this requirement, receivers apply the <i>Carpenter</i> test
N/A or blank = 3	

17. Does the Receiver have authority to sell or dissolve the corporate entity or charter of an insurer separate from the claims of its creditors?

Yes = 27	Note that most responses regardless of Yes/No/NA referred to the ability to sell or dissolve "with approval from the court".
No = 6	
N/A or blank = 4	

18. Does the transfer of assets and liabilities require the consent of any creditor?

Yes = 1
No = 32
N/A or blank = 4

19. Is there a provision that specifies that a transfer does not constitute a default?

Yes = 6
#No = 25
N/A or blank = 6

Qualified Financial Contracts

20. Does the receivership law address early termination rights in qualified financial contracts (QFCs)?

Yes = 16
No = 19
N/A or blank = 2

a. If 20 is yes, are rights under a QFC exempted from the stay?

#Yes = 16	Same states as “yes” to #20
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i. If not exempted, is there a limit on the duration of the stay?

All #20a responses are “exempted” so this question is not applicable.

b. If 20 is yes, does the law incorporate the NAIC Guideline for Stay on Termination of Netting Agreements and Qualified Financial Contracts that imposes a 24-hour stay?

#Yes = 2	One state has exception of the Federal Home Loan Bank 500.8115a (b) (i)
#No = 15	CT - legislation is anticipated in 2016.

Stays

21. Is there an automatic stay upon *filing of a receivership*?

Yes = 10
No = 27

22. Is there an automatic stay upon entry of a receivership order?

Yes = 27	(includes 10 states which answered yes to 21)
No = 9	
N/A or blank = 1	

23. Does the stay apply to actions against the insurer?

Yes = 33	
No = 1	Court may order such a stay.
N/A or blank = 3	Many statutes do not provide a blanket stay of all actions against insurer. Some provide for a stay against actions for attachment, garnishment or levy of execution against the insurer or its assets.

24. Does the stay apply to Actions against insureds?

Yes = 17	
No = 16	
N/A or blank = 4	

25. Are stays imposed in both rehabilitation and liquidation proceedings?

Yes = 25	
No = 7	
N/A, Blank = 5	

26. Are stays imposed only in liquidation proceedings?

Yes = 2	
No, N/A, or blank = 35	

27. Is there a limitation on the duration of the stay?

Yes = 19	Some states reported limits on stay in rehabilitation (e.g., 90 days) but no limit on duration in liquidation.
No = 15	Length of stay may be set by the Court in some states.
N/A or blank = 3	

Operations

28. How is the receivership function organized in your state?

States reported varying organizational structures.

29. What requirements and qualification exist for those acting on behalf of the Receiver?

Most responses specifically state there are no specific requirements and qualifications in state statute.

However general expectations appeared similar and included one or more such as the following:

- Lawyers must be on an "approved" list on file with the Attorney General's Office (which deals with procurement issues and conflict checks). Non legal services may need to be provided by an entity that has completed the state's procurement process.
- Outside counsel are required at a minimum to have prior experience working on other insurance company receiverships.
- High-quality, professional services in accord with applicable professional standards.
- Relevant professional certification and licensing.
- Experience and qualifications necessary to the meet the responsibilities and relevant to the administration of insurance receiverships.
- Experience in either insurance law and regulation, public and statutory accounting, reinsurance, insurance taxation and all lines of insurance claims, have administered receivership estates.
- Persons considered experts in the receivership field that have sufficient previous experience to provide appropriate guidance and make decisions on behalf of the Rehabilitator/Liquidator.
- Experienced and qualified deputy receivers who have a proven track record, depending on the size and complexity of the pending liquidation proceedings.
- Demonstration of competence, good moral character, and absence of conflicts.
- A deputy receiver shall be an active or retired senior executive from a successful insurer.
- Must appear in the NAIC Directory to Assist Receivers.

30. Is there an internal governance process for the Receiver's office?

Yes = 9	
No or N/A= 28	<i>[Most No and N/A responses reference not having a separate receivership office.]</i>

31. What reports of the Receiver's activities and expenditures are required?

All of the responses indicated reporting is required. Nearly all indicated reporting to an applicable court of the receivership's status and/or financial reporting at intervals that varied from monthly, quarterly, semi-annually, annually, and/or routinely "at the discretion of the court". Responses varied in terms of

the content of the reporting, such as:

- status of rehabilitation plan
- balance of assets and liabilities
- changes in assets and liabilities
- income and expenses; funds received and disbursed
- evaluation of claims; distribution plans/recommendations; names and addresses of claimant
- audits required by the court
- balance of funds allocable to the insurer
- amount of assessments for companies with assessable policies
- distributions and closures of estates

Many responses also indicated internal reporting to the Commissioner or other authority (e.g. Governor) of the receivership's status, expenditures & other financial reporting. Intervals of this reporting also varied.