

February 27, 2018

**JOINT SUBMISSION OF NOLHGA AND NCIGF REGARDING
FSB KEY ATTRIBUTES ASSESSMENT METHODOLOGY
FOR THE INSURANCE SECTOR**

The National Organization of Life and Health Insurance Guaranty Associations and the National Conference of Insurance Guaranty Funds respectfully submit their joint comments to the Financial Stability Board's Key Attributes Assessment Methodology for the Insurance Sector.

NOLHGA and NCIGF are an integral part of the policyholder protection scheme in the United States, coordinating the provision of guaranty association benefits to U.S. insurance consumers whose insurance carriers become insolvent. NOLHGA's members are principally concerned with protecting consumers of failed life, annuity, and health insurers, and NCIGF's members are principally concerned with protecting consumers of failed property and casualty insurers.

NOLHGA and NCIGF believe that the Assessment Methodology reflects a thoughtful application of the FSB's Key Attributes to insurance resolutions. We support the FSB's focus on policyholder protection and its recognition of the important role played by policyholder protection schemes. We offer these comments regarding how the Assessment Methodology might be strengthened and clarified.

Question 4: Do the preconditions set out in Section V cover the relevant elements that are necessary for resolution regimes for insurers to operate effectively?

Precondition C (effective mechanisms for the protection of policyholders) should state that early PPS involvement in insurance company resolutions is a critical part of policyholder protection. Please see the Appendix for suggested language.

Question 5: Do the ECs and ENs proposed in Section VI focus on relevant features of resolution regimes for insurers that need to be in place to comply with the Key Attributes, taking due account of the differences between the resolution of insurers and the resolution of other types of financial institutions? Are any elements inappropriate? What, if any, additional features should be covered in ECs and ENs?

EN 2(b) for KA 2 (involvement of PPS administrators in exercise of resolution powers)

EN 2(b) appears to envision only two scenarios with respect to a PPS's authority: either (i) a PPS has authority to exercise resolution power directly over an insurer without the prior consent of another authority, or (ii) the PPS may exercise resolution power over an insurer only on the direction of the designated resolution authority. The U.S. does not fit neatly within either scenario. In the U.S., each state's PPS has the authority to fulfil its statutory obligations without the prior consent of the authority having resolution power

over the insurer, but in discharging its obligations, the PPS does not exercise any power *directly over the failed insurer*. Furthermore, the PPS typically will discharge its statutory obligations working in close cooperation with the resolution authority. Please see the Appendix for suggested clarifying language.

ENs 3(s) and 3(t) for KA 3 (power to restructure insurance liabilities; powers to impose a payment moratorium and suspend withdrawals from insurance contracts)

We note that these powers may be less important in jurisdictions that have a robust policyholder protection scheme. Insurance liabilities should be written down only when necessary to maintain financial stability. In no event should insurance liabilities be restructured, limited or written down in a way that deprives policyholders of the protection afforded by a PPS. Similarly, insurance contracts should not be terminated if doing so would deprive policyholders of the protection afforded by a PPS. The duration of any restriction or suspension of policyholder withdrawal rights should take into account whether there is a PPS. Please see the Appendix for a new proposed explanatory note.

EN 5(a) for KA 5 (departure from the pari passu principle)

Resolution authorities should depart from the principle of pari passu only when necessary to maintain financial stability. Even in instances where financial stability may be an issue, policyholders should not be treated differently from each other so that payments can be made to lower priority claimants. Furthermore, in jurisdictions where a PPS is subrogated to the rights of covered policyholders, uncovered policyholders should not be allocated a higher percentage of estate assets than covered policyholders are allocated. Allocating a disproportionate share of estate assets to uncovered policyholders could undermine the policyholder protections scheme's subrogation rights, violate the NCWOL principle and impair the policyholder protection scheme's ability to fulfill its mission. Please see the Appendix for proposed additional language for EN 5.

KA 8 (Crisis Management Groups)

We support the FSB's determination that crisis management groups should include public authorities who are responsible for guaranty schemes. To ensure the coordination that the FSB seeks to promote, the assessment methodology should clarify that statutorily-established, nongovernmental policyholder protection schemes should play the same role as their public counterparts in insurance resolutions governed by the Key Attributes.

The U.S. guaranty system is a statutorily-established, nongovernmental policyholder protection scheme. It has continually planned for the contingency of large and complex receiverships, both on its own and in conjunction with regulators and receivers. Some of that work (involving realistic, albeit hypothetical scenarios) has been done for training and preparedness reasons. More importantly, a great deal of preparatory work has been done for specific, real-world situations where regulators were preparing for the possible liquidation of large and complex multi-insurer groups experiencing financial challenges.

(In most instances, that preparatory work was performed pursuant to confidentiality agreements that allowed regulators and receivers to share non-public, insurer-specific information with their guaranty system counterparts.)

Because the U.S. guaranty system has been involved in almost all of the significant U.S. insurer insolvencies over the past 4 decades, it has a collective level of practical experience that can and should be used in connection with resolution planning, including in connection with crisis management groups and other coordination efforts. That is precisely why the National Association of Insurance Commissioners recently invited NOLHGA and NCIGF to attend meetings of the NAIC's Receivership Financial Analysis Working Group, which is charged with assisting and advising supervisors on appropriate regulatory strategies, methods, and actions with regard to insurance receiverships. Please see the Appendix for a proposed explanatory note that would permit statutorily-established, nongovernmental policyholder protection schemes to play the same role as their public counterparts in insurance resolutions governed by the Key Attributes.

KA 12 (Access to Information and Information Sharing)

We support the FSB's determination that public authorities responsible for guaranty schemes should have access to non-public (including insurer-specific) information so that they may plan, prepare, and implement resolution measures in a timely manner. To ensure the coordination that the FSB seeks to promote, the assessment methodology should clarify that statutorily-established, nongovernmental policyholder protection schemes should have access to the same information as their public counterparts, provided they execute an information sharing agreement that includes appropriate confidentiality protections.

Appendix

Reference	Suggested Language
Precondition C (second paragraph)	Jurisdictions that have in place a PPS should promote a high level of coordination and cooperation between a PPS administrator and other agencies that constitute the ‘safety net’ to support clear allocation of responsibilities and accountability and effective crisis management. <u>Early involvement of a PPS in insurance company resolutions is a critical part of policyholder protection.</u>
EN 2(b) for KA 2 (proposed clarifying language)	Where a PPS administrator is involved in the exercise of resolution powers (e.g. the portfolio transfer power or the power to establish a bridge institution), the role of the administrator should be clearly defined. If a resolution regime enables a PPS administrator to exercise a resolution power directly over an insurer without the prior consent of another authority, the administrator is effectively the authority responsible for the exercise of that resolution power and, as such, needs to be an administrative authority that complies with the KA 2 requirements for resolution authorities for the purposes of the exercise of that power. If a resolution regime enables a PPS administrator to exercise a resolution power <u>directly over an insurer</u> but only on the direction of a designated authority, the administrator is not the authority responsible for the exercise of that resolution power and so does not need to be an administrative authority that complies with the KA 2 requirements for resolution authorities. <u>A PPS administrator that discharges its obligations without exercising power directly over an insurer does not need to comply with the KA 2 requirements.</u>
New proposed EN for KA 3	Impact of PPS on certain resolution powers -- Certain resolution powers may be less important in jurisdictions that have a robust policyholder protection scheme. For example, insurance liabilities should not be restructured, limited or written down in a way that deprives policyholders of the protection afforded by a PPS. Similarly, insurance contracts should not be terminated if doing so would deprive policyholders of the protection afforded by a PPS. The duration of any restriction or suspension of policyholder withdrawal rights also should take into account whether there is a PPS.
EN 5(a) for KA 5 (proposed additional paragraph)	Policyholders should not be treated differently from each other so that payments can be made to lower priority claimants. In jurisdictions where a PPS is subrogated to the rights of covered policyholders, uncovered policyholders should not be allocated a higher percentage of estate assets than are allocated to covered policyholders. Allocating a disproportionate share of estate assets to uncovered policyholders could undermine the policyholder protections scheme’s subrogation rights, violate the NCWOL principle and impair the policyholder protection scheme’s ability to fulfill its mission.
New proposed EN for KA 8	PPS participation in CMG – Some jurisdictions have a PPS that is not operated by a public authority. Subject to execution of an information sharing

	<p>agreement that includes appropriate confidentiality protections, a statutorily-established, nongovernmental policyholder protection scheme should be permitted to play the same role with CMGs as a PPS that is operated by a public authority.</p>
<p>New proposed EN for KA 12</p>	<p>Information sharing with PPS – Some jurisdictions have a PPS that is not operated by a public authority. Subject to execution of an information sharing agreement that includes appropriate confidentiality protections, a statutorily-established, nongovernmental policyholder protection scheme should be permitted access to the same information as a PPS that is operated by a public authority.</p>