

October 14, 2013

**JOINT SUBMISSION OF NOLHGA AND NCIGF REGARDING
APPLICATION OF FSB KEY ATTRIBUTES TO INSURERS**

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 Application of the Key Attributes of Effective Resolution Regimes to Non-Bank Financial Institutions. Our comments are limited to Appendix II, which contains implementation guidance for the resolution of insurers.

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 implementation guidance 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 implementation guidance might be strengthened and clarified.

Question 25: Is the scope of application to insurers appropriately defined (section 2), having regard to the recognition set out in the preamble to the draft guidance that procedures under ordinary insolvency law may be suitable in many insurance failures and resolution tools are likely to be required less frequently for insurers than for other kinds of financial institution (such as banks)?

We agree that most (if not all) insurance insolvencies should be handled under ordinary insolvency law, which, in the U.S., involves the state-based insurance receivership and guaranty systems. We also agree that the resolution tools required by the Key Attributes are less likely to be needed for insurers than for other kinds of financial institutions.

That said, we are concerned that the draft implementation guidance might suggest a broader application of the Key Attributes than the FSB intends. Rather than applying the Key Attributes to "any insurer that *could be* systemically significant or critical if it fails" (emphasis supplied), we recommend limiting application of the Key Attributes to insurers that *are determined to be* systemically significant. We also recommend clarifying that such determination is to be made for a particular insurance entity either in advance of any failure or at the point when intervention is being considered, in keeping with the FSB's

Question 26: Does the draft guidance (section 4) adequately address the specific considerations in the application to insurers of the resolution powers set out in KA 3.2? What additional considerations regarding the application of other powers set out in KA 3.2 should be addressed in this guidance?

We support the FSB’s view that resolution authorities should have the power to carry on some or all of the insurance business of a failed insurer. As we read Section 4.3, a resolution regime would satisfy this requirement if the resolution authority has the power to carry on the insurance business in either of two ways: by using the existing entity *or* by using a bridge institution. Provided that a resolution authority has the power to continue insurance business through an existing entity, we do not read Section 4.3 as requiring that the resolution authority also have the power to use a bridge institution. We recommend that Section 4.3 be clarified consistent with this interpretation.

Question 27: Does the draft guidance deal appropriately with the application of powers to write down and restructure liabilities of insurers (paragraphs 4.4 to 4.6)? What additional considerations regarding the application of ‘bail-in’ to insurers (if any) should be addressed in the draft guidance?

We agree that the restructuring powers should be subject to the safeguards set out in Section 5, but believe that the safeguards require clarification. We read Section 5.2 as permitting – but not requiring – resolution authorities to have the power to create subclasses of policyholders. We recommend that Section 5.2 be clarified consistent with that interpretation.

In addition, given the FSB’s appropriate emphasis on policyholder protection, we believe that insurance liabilities should be written down only when necessary to avoid a disruption of services critical for the functioning of the financial system. We note that restructuring powers may be less important in jurisdictions that have a robust policyholder protection scheme.

Question 32: Are the proposed classes of information that insurers should be capable of producing (section 10) feasible? What additional classes of information (if any) should insurers be capable of producing for the purposes of planning, preparing for or carrying out resolution?

Under the U.S. system, a definitive determination of coverage by the guaranty system is rendered at the time the guaranty system’s obligations are triggered. Prior to that point, an insurer should be able to predict with reasonable accuracy which policyholders will be eligible for protection, based on the type of insurance product purchased, the policyholder’s state of residence and the guaranty system’s governing statutes.

¹ See Explanatory Note 1.1(b) of the Assessment Methodology.

Question 33: Does this draft Annex meet the overall objective of providing sector-specific details for the implementation of the Key Attributes in relation to resolution regimes for insurers? Are there any other issues in relation to the resolution of insurers that it would be helpful for the FSB to clarify in this guidance?

We support the FSB's recognition that multiple authorities may be responsible for exercising resolution powers under a resolution regime. (In the United States, insurers are subject to the state-based receivership and guaranty systems, but the Federal Deposit Insurance Corporation could play an important role with respect to an insurer deemed to be systemically significant.²)

We also support the FSB's emphasis on coordination between resolution authorities and policyholder protection schemes. Policyholder protection schemes should be full participants in the resolution planning process. In addition to taking part in resolvability assessments, a policyholder protection scheme should be notified as soon as it appears possible that an insurer will enter into resolution. We recommend that the implementation guidance be modified to ensure that result.

In addition, we note that the Key Attributes appear to assume, incorrectly, that all protection schemes are operated by a public authority.³ To ensure the coordination that the FSB seeks to promote, the implementation guidance 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.

Subject to the comments contained herein, we believe that the implementation guidance meets the FSB's objective of providing insurance-specific details for implementing the Key Attributes.

² For details, see the FDIC's [Title II Resolution Strategy Overview](#) (August 2012).

³ See, for example, Key Attributes 8.1 and 12.1