

October 30, 2013

**JOINT SUBMISSION OF NOLHGA AND NCIGF REGARDING
FSB ASSESSMENT METHODOLOGY FOR THE KEY ATTRIBUTES OF EFFECTIVE
RESOLUTION REGIMES FOR FINANCIAL INSTITUTIONS**

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 Assessment Methodology for the Key Attributes of Effective Resolution Regimes for Financial Institutions. Our comments are limited to the application of the Assessment Methodology to insurers or insurance holding companies.

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 thoughtful application and assessment 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 1: Do the Essential Criteria (EC) proposed in the draft methodology focus on relevant and assessable features of resolution regimes that need to be in place to comply with the Key Attributes? What, if any, additional features of resolution regimes, in particular in relation to their sector-specific aspects, should be covered in EC?

As set forth in Section V (Sector-Specific Considerations), 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 Assessment Methodology might suggest a broader application of the Key Attributes than the FSB intends. Rather than applying the Key Attributes to any insurers or groups "that *could be* systemically significant or critical if they fail" (emphasis supplied), we recommend limiting application of the Key Attributes to insurers or groups that *are determined to be* systemically significant.

Question 7: Are there any additional elements that should be covered or elaborated in more detail in the methodology?

KA 3.2 and 3.4

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.¹)

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 KA 3.2 and 3.4, 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 KA 3.2 and 3.4 as requiring that the resolution authority also have the power to use a bridge institution. We recommend that the relevant ECs and ENs be clarified consistent with this interpretation.

KA 5.1

We agree that the restructuring powers should be subject to the safeguards set out in KA 5, but believe that the safeguards require clarification. We read KA 5.1 as permitting – but not requiring – resolution authorities to have the power to create subclasses of policyholders. We recommend that the relevant ECs and ENs 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.

KA 8 and 12

With respect to any insurer or insurance group that may be subject to resolution in accordance with the Key Attributes, we 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.

¹ For details, see the FDIC's [Title II Resolution Strategy Overview](#) (August 2012).

In addition, we note that the Key Attributes appear to assume, incorrectly, that all protection schemes are operated by a public authority. 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.