

**JOINT SUBMISSION OF NOLHGA AND NCIGF TO NCOIL'S JOINT STATE-
FEDERAL RELATIONS AND INTERNATIONAL INSURANCE ISSUES COMMITTEE
REGARDING INSURANCE BUSINESS TRANSFER MODEL ACT**

**Comments on proposed Insurance Business Transfer Model Act to be discussed and
considered at March 6, 2020 meeting**

February 24, 2020

Throughout the discussions of the Insurance Business Transfer ("IBT") Model Act to date, legislators, insurance regulators, and interested parties have emphasized the importance of ensuring that the guaranty association protection a policyholder would have prior to an IBT is preserved when an IBT transaction is consummated. Representatives of the National Organization of Life & Health Insurance Guaranty Associations ("NOLHGA") and the National Conference of Insurance Guaranty Funds ("NCIGF") reiterated that imperative at the NCOIL 2019 Summer Meeting in Newport Beach. With the proposed IBT Model Act under consideration at the Spring NCOIL meeting, we offer the following comments as a resource to Committee members and to help ensure that the IBT Model Act preserves an important consumer protection, as well as the state-based guaranty system's ability to deliver that protection.

We appreciate the proposed inclusion of Section 6A(1)(m), which would require an IBT Plan to include a description of how the transferring and assuming insurers will be licensed for guaranty association coverage purposes. Under the IBT Model Act as currently drafted, in order for a proposed IBT to be approved, both the Insurance Commissioner and a court must determine that the IBT Plan would not materially adversely affect the interests of policyholders or claimants that are part of the subject business. See Sections 6A(4) and 6C(3) of the proposed IBT Model Act. Loss or modification of guaranty association coverage would materially adversely affect the interests of policyholders; therefore, a critical part of an application for approval – and regulator and court review – would involve affirmatively establishing that a proposed IBT transaction does not, in any way, impair, reduce, alter, or eliminate guaranty coverage.

In reviewing the proposed IBT Model Act, NOLHGA and NCIGF have a particular interest in the regulatory framework that would assure preservation of guaranty coverage after an IBT. As currently drafted, the IBT Model Act contains a drafting note contemplating the promulgation of regulations addressing several issues, including guaranty association coverage. See Drafting Note to Section 6A(1)(m) of the proposed IBT Model Act. Regulations that implement an IBT Act may be an effective means to ensure a process that confirms that applications for approval, and the resulting review, assure preservation of coverage. However, the substantive legal question of whether coverage exists depends on satisfaction of statutory conditions, and any coverage mandates related to an IBT transaction (e.g., issues related to insurer licensure and

guaranty association coverage provided) will be determined by the statute of the jurisdiction in which a particular guaranty association may provide coverage, rather than regulations promulgated in another jurisdiction (e.g., the jurisdiction of a transferring or assuming insurer). That is true because guaranty association coverage is governed by the laws in each state where a policyholder resides (and not a company's domiciliary state), and a statute or regulation enacted in one state cannot address guaranty association coverage concerns in other states.

NOLHGA and NCIGF have identified issues specific to their members that require further consideration by policymakers.

On the life and health side, there is a concern that the IBT Model Act could result in policyholders losing guaranty association coverage as it existed prior to an IBT transaction. This concern arises from the IBT Model Act not clearly requiring an assuming insurer to be licensed in all states where the policyholders being transferred reside. If the assuming insurer is not licensed in states where policyholders reside, then it will not be a "member insurer" of the guaranty associations in those states. As a result, policyholders in those states will be considered "orphans" and will not be eligible for guaranty association coverage from their state of residence. Instead, they will be eligible for guaranty association coverage only in the assuming insurer's domiciliary state. This will result in guaranty association coverage being concentrated in a single state (i.e., the state of domicile). If there is a large enough concentration of coverage, it could strain assessment capacity in the domiciliary state and potentially risk the availability of guaranty association coverage. It also could result in policyholders receiving less or different guaranty association coverage than they would have received from their state of residence and create distortions and fairness issues with respect to member insurer assessments. To address these concerns, the IBT Model Act should clearly provide that assuming insurers will be licensed so that policyholders maintain guaranty association coverage in the same state where they had it immediately prior to an IBT transaction. We understand that the American Council of Life Insurers ("ACLI") has proposed changes to the IBT Model Act to accomplish this result. NOLHGA would support changes to preserve guaranty association coverage to the effect of those that we understand are being proposed by ACLI.

On the property and casualty side, possible technical gaps may be created if a state has adopted the NAIC P&C Guaranty Association Model Law. These gaps could include the definitions of Covered Claim, Member Insurer, Insolvent Insurer, and the Assumed Claims Transaction found in Section 5 of the P&C Guaranty Association Model Law and in the various state laws. The NCIGF has determined that an amendment to the guaranty fund act, or other related law, may be necessary in many states to address this issue. NCIGF stands ready as a resource regarding model property casualty guaranty fund acts. NCIGF believes that state law amendments, along with careful review of guaranty fund issues by applicants for IBT transactions before the transaction is approved, is the best way to protect the claimants the guaranty fund system is intended to protect.

Both organizations are prepared to continue this dialogue and to work closely with Committee members and sponsors to help address these issues.

Thank you for the opportunity to share our perspective on the proposed IBT Model Act, and we look forward to working with you as this important work stream moves forward.

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