

NORTH CAROLINA LIFE AND HEALTH  
INSURANCE GUARANTY ASSOCIATION

And

NORTH CAROLINA LIFE AND ACCIDENT AND HEALTH  
INSURANCE GUARANTY ASSOCIATION

PLAN OF OPERATION

As Adopted on September 17, 2018

**Article I. Plan of Operation**

- A. This Plan of Operation (the "Plan") shall become effective upon written approval of the Commissioner of Insurance of North Carolina (the "Commissioner") as provided in Section 58-62-45 of the North Carolina Life and Accident and Health Insurance Guaranty Association Act (the "Old Act") and Section 58-62-46 of the North Carolina Life and Health Insurance Guaranty Association Act (the "New Act"), Article 62 of the Insurance Law.
- B. Amendments to this Plan of Operation, as necessary or suitable to assure the fair, reasonable and equitable administration of the Association, shall be adopted by the Board of Directors and submitted to the Commissioner for approval. Any such amendments so submitted shall be effective upon written approval of the Commissioner or 30 days after submission if the Commissioner does not disapprove them.
- C. A copy of this Plan of Operation shall be available for inspection by any member insurer at the office of the Association during normal business hours, and a copy shall be provided to any member insurer upon request.
- D. Unless otherwise specified in this Plan, actions and communications including notices, approvals, consents and signatures will be deemed to be written and acceptable if they are written and provided by United States Postal Service mail, courier service, or by e-mail, facsimile, or other electronic means. Contemporaneous documentation of such actions and communication will be maintained in the Association's records in a hard copy or an electronic file for future reference.

## Article II. Board

- A. There shall be a Board of Directors (the "Board") in accordance with the provisions of Section 58-62-30 of the Old Act and Section 58-62-31 of the New Act.
1. The Board shall consist of from seven to eleven member insurers to be elected for staggered terms so that the terms of all Directors shall not expire in the same year. In addition, there shall be two public representatives appointed by the Commissioner to the Board.
    - a. Member insurers shall be elected to the Board as provided below. Member insurers shall be fairly represented between member insurers that write primarily life insurance and annuity contracts and member insurers that write primarily health benefit plans.
    - b. Each elected member of the Board shall designate its representative and an alternate.
    - c. The elected Board members shall serve until their successors have been duly elected and qualified to serve.
    - d. The Board members appointed by the Commissioner shall serve until their successors have been appointed.
  2. The elected members of the Board to be elected at annual meetings, if there are more nominees than vacancies, shall be elected by member insurers based on the number of votes cast. Each member insurer shall have one vote in person or by proxy for each member of the Board to be elected. In the event that there is not more than one nominee for each position to be filled, the secretary shall cast one vote for each nominee.
  3. Upon the election of the elected members of the Board, the Association shall notify the Commissioner and request written approval of the members of the Board as elected. In the event the Commissioner shall determine that all member insurers are not fairly represented as provided in Section 58-62-31(b), the Commissioner shall disapprove the election of the Board members and order another election. In the interim between such disapproval

and the subsequent election, the Commissioner may appoint temporary members of the Board.

4. The Board shall:

- a. Elect a Chairman, Vice Chairman, Secretary and Treasurer from among its members, and such other officers as it deems necessary. The posts of Secretary and Treasurer may be held by the same member. Each officer shall serve a term of one year or until a successor is elected.
- b. Appoint, from among its members, a Nominating Committee. Such committee shall select a nominee to succeed each board member whose term expires at the annual meeting. Such nominees shall be made known to the member insurers at least 60 days prior to such annual meeting. Other nominees may be submitted to the Board, but not less than 45 days prior to such annual meeting, upon the petition of ten member insurers. In the event there is more than one nominee for each position to be filled, the Board shall make the names of said nominees known to the member insurers at least 30 days prior to such annual meeting.
- c. Appoint an Executive Committee from among its members. Such Committee shall have as its members the Chairman, the Vice Chairman, Secretary and Treasurer, and such other Directors, if any, as appointed by the Board. The Chairman shall be the ex-officio Chairman of the Executive Committee. The Executive Committee shall have such powers as may be delegated by the Board, provided it shall not have the authority to act on matters requiring a super majority of the full Board as provided in 6 below.
- d. Appoint an Audit Committee consisting of three member insurers. The Audit Committee shall conduct the bid process or otherwise recommend selection of the independent outside auditor and facilitate the annual audit of the Association. It shall also review and provide recommendations regarding any financial or operational review of the Association by

independent outside auditors or by the North Carolina Department of Insurance.

5. Vacancies of elected members occurring on the Board between annual meetings shall be filled by a majority vote of the remaining members of the Board with the approval of the Commissioner. Vacancies of appointed members shall be filled by appointment by the Commissioner. Vacancies occurring in the elective offices between the annual meetings shall be filled by majority vote of the Board. Such appointees shall serve for the unexpired terms.
6. At any meeting of the Board, each member of the Board shall have one vote.

A majority of the Board shall constitute a quorum for the transaction of business and the acts of the majority of the Board members present at a meeting at which a quorum is present shall be the acts of the Board, except as provided below.

An affirmative vote of a majority of the Board members is required to:

- a. approve a contract with a servicing facility for overall administration of the Association, except that administrations of specific functions with regard to specific insolvencies shall not require an affirmative vote of a majority of the full Board;
- b. levy an assessment or provide for a refund;
- c. borrow money or establish or change a line of credit;
- d. approve reinsurance contracts, assumption agreements or guarantee plans; or
- e. adopt amendments to the Plan of Operation.

- B. An annual meeting of the Board shall be held at the office of the Association on the last Friday of the month of April, unless the Chairman of the Board, upon proper notice, shall designate some other time, day or place. At each annual meeting the Board shall:

1. Review the Plan and submit proposed amendments, if any, to the Commissioner for approval.
  2. Review each outstanding contract or agreement, if any, and make necessary or desirable corrections, improvements or additions.
  3. Review operating expenses and outstanding contractual obligations and determine whether an assessment, or a refund of a prior assessment, is necessary for the proper administration of the Association and, if so, the amount of either.
  4. Review, consider and act on any other matters deemed by it to be necessary and proper for the administration of the Association.
  5. In the event the only business to come before the Board at an annual meeting is the election of Directors or officers, the Board may, subject to the approval of the Commissioner, conduct the election by mail in lieu of an annual meeting.
- C. The Board may hold other regular or special meetings at such times and with such frequency as it deems appropriate to conduct the business of the Association. Such meetings may be held telephonically. Any Board member not present may consent in writing to any specific action taken by the Board, but this shall not permit Board members to act through other Board members by proxy. Any action approved by the required number of Board members at such meeting, including those consenting in writing, shall be as valid a Board action as though authorized at an annual or regular meeting of the Board or at the meeting held in person.

The Board may also approve an action upon receipt from a majority of Board members of Written Consent to Action Without Meeting. Any Board member may call for a special meeting of the Board to consider the action with respect to which such consent was solicited, provided the request for a meeting is made within five (5) days after mailing, facsimile transmission, or email of the solicitation for Written Consent to Action Without Meeting by the Chairman, the Executive Director or their designee.

- D. During the intervals between the meetings of the Board, the Executive Committee shall have and exercise the power of the Board in the management of the business and affairs of the Association. The Executive Committee, however,

shall not have the power to take the action enumerated in subsections A 6 a through e of Article II above. All actions of the Executive Committee shall be reported to the Board at its next meeting.

- E. Special meetings of the Board may be called by the Chairman and shall be called upon the request of any two Board members. At such special meeting the Board may consider and decide any matter deemed necessary for the proper administration of the Association. Reasonable notice under the circumstances shall be given to each Board member of the time, place and purpose of any such special meeting. Attendance or participation at any meeting shall constitute a waiver of the notification requirement.
  
- F. At meetings at which the impairment or insolvency of a member insurer is considered, the Board shall:
  - 1. Consider and determine the legal obligations of the Association with regard to any reported impairment or insolvency.
  - 2. Consider and decide what methods or facilities, as permitted under Section 58-62-35 of the Old Act or Section 58-62-36 of the New Act, shall be adopted or utilized to assure fulfillment of the covered obligations of the impaired or insolvent member insurer for each of the categories of covered policies. If the Board decides to contract with a servicing facility, every effort shall be made to secure the participation of liquidators, rehabilitators, conservators or ancillary receivers, if any, in such contract to assist the Association in the performance of its legally imposed duties.
  - 3. Assure that timely action is taken to gain access to and effect proper retention of records of the impaired or insolvent member insurer which are deemed necessary to the prompt and economical handling of its legally imposed duties.
  - 4. Consider and decide to what extent and in what manner the Board shall exercise the powers authorized in Section 58-62-35 of the Old Act or Section 58-62-36 of the New Act to bring legal actions or provide for the defense thereof in order to avoid payment of improper claims.

5. Consider and decide what assessment, if any, should be levied, and consider and decide whether any assessment shall be deferred or abated. If such assessment, deferral or abatement shall be determined to be appropriate, such action or actions shall be in accordance with the requirements specified in the appropriate item or items of Section 58-62-40 of the Old Act or sections 58-62-41 of the New Act. Notices of assessments to member insurers shall be in sufficient detail as to form a basis for the payment of such assessment by the member insurer. The Board shall promptly inform the Commissioner of the failure of any member to pay an assessment made pursuant to this paragraph when due.
  6. Take all steps permitted by law, and deemed necessary, to protect the Association's rights as pertaining to the impaired or insolvent member insurer and its policyholders.
  7. Issue to each member insurer a certificate of contribution for each Class of assessment paid for which certificates are to be provided under section 58-62-40 of the Old Act or Section 58-62-41 of the New Act. The certificate shall show the amount paid by each such insurer, the date of the assessment, the name of the particular insolvent or impaired insurer for which the assessment was made, the value if any, of such certificate as determined by the Commissioner, and such other information as the Board shall find relevant.
  8. In addition to the foregoing powers, the Board shall have and exercise such other powers as may be reasonably necessary to implement the provisions of the Act.
- G. Members of the Board may be reimbursed from the assets of the Association for reasonable expenses incurred by them as members of the Board upon approval of such expenses by the Board, but members of the Board shall not be compensated by the Association for their services as members of the Board.
  - H. The Board shall establish procedures whereby a Board Member may be removed for cause, including in the case where a Board Member becomes an impaired or insolvent insurer.
  - I. The Board shall establish and maintain a policy and procedure for addressing conflicts of interest

### Article III. Operations

- A. The official address of the Association shall be the address of the office of the Commissioner unless otherwise designated by the Board.
- B. The Board may employ or retain such persons, firms or corporations to perform such administrative functions as are necessary for the Board's performance of the duties imposed upon the Association. The Board may use the mailing address of such person, firm or corporation as the official address of the Association. Such persons may include an Executive Director or a managing secretary with such authority as may be delegated by the Board to implement and carry out broad directives of the Board made pursuant to its statutory authority and duties. Such person shall be knowledgeable about insurance matters, conversant with the law as it relates to covered policies of insurance and administratively capable of implementing the Board's directives. Such persons may also include attorneys at law, actuaries, accountants, claims personnel and such other specialists or persons whose advice or assistance is deemed by the Board to be necessary to the discharge of its duties imposed by law. The Board may agree to compensate such persons so as best to serve the interests of the Association and the public. Such persons, firms or corporations shall keep and maintain such records of their activities as may be required by the Board and the Act.
- C. The Board may open such bank accounts as it deems necessary for the proper administration of association business. Reasonable delegation and withdrawal authority to such accounts for Association business will be made consistent with prudent fiscal policy. Check signature limits and wire authority limits and procedures shall be determined by the Treasurer and approved by the Board. Investment policy shall be recommended by the Treasurer and approved by the Board and shall be reviewed at the Annual Meeting.
- D. The Board shall from time to time cause to be prepared and submitted to the Commissioner for approval amendments to the summary document required by Section 58-62-86 of the New Act describing the general purposes and current limitations of the New Act.



- E. In the event in the judgment of the Board the maximum assessment under Section 58-62-40 of the Old Act or Section 58-62-41 of the New Act, in combination with the Association's borrowing authority, will be insufficient over any two years to cover the outstanding and anticipated covered claims against the Association relating to one or more impaired or insolvent member insurers under any account or accounts, the Board may provide that the Association shall make partial and periodic payments on such claims in accordance with the schedule to be adopted by the Board. Such schedule may give preference to health claims, periodic annuity benefit payments, death benefits, supplemental benefits and cash withdrawals under emergency or hardship standards proposed by the Board and approved by the Commissioner under Section 58-62-35 of the Old Act or Section 58-62-36 of the New Act. Such schedule may be adjusted from time to time as changes in the volume and type of such covered claims may warrant, and may be structured so as not to give preference to claims in the order in which they were incurred or made or in the order of which member insurers first became impaired or insolvent, or to require retroactive adjustments.
- F. The purpose of this paragraph is to provide the framework for allocating Class B assessments attributable to the Association's obligations for any covered long-term care policies between the "Health Account" and the "Life and Annuity Account" defined below. The allocation method outlined below is intended to implement the requirements of Section 58-62-41(c1) of the New Act. The instructions are intended to result in a net allocation of any Class B assessments for the Association's long-term care policy obligations in equal 50% shares to "Accident and Health Member Insurers" and "Life and Annuity Member Insurers" as those two categories of member insurers are defined below.

In accordance with Section 58-62-41(c1) of the New Act, if a Class B assessment is authorized due to covered long-term care policies, a portion of the Association's Class B assessment authorized to meet its obligations for the covered long-term care policies (the "LTC Assessment") shall be allocated to the Life and Annuity Account, without dividing it between the subaccounts thereof, with the remaining portion of the LTC Assessment allocated to the Health Account.

The following definitions shall apply only for the purposes of allocating any such Class B assessment for covered long-term care policies to the Life and Annuity Account and the Health Account in accordance with the below formula:

"Accident and Health Member Insurer" means any member insurer that does not qualify as a Life and Annuity Member Insurer.

"Health Account" shall mean the health insurance account established under Section 58-62-26 of the New Act.

"LAMIHA" shall mean the quotient of (a) the Life and Annuity Member Insurers' aggregate assessable premium in the Health Account divided by (b) the total assessable premium in the Health Account;

"LAMILAA" shall mean the quotient of (a) the Life and Annuity Member Insurers' aggregate assessable premium in the Life and Annuity Account divided by (b) the total assessable premium in the Life and Annuity Account.

"Life and Annuity Account" shall mean the aggregate life insurance and annuity account established under Section 58-62-26 of the New Act, without dividing such account into subaccounts.

"Life and Annuity Member Insurers" shall mean each and every member insurer having (i) total assessable premium in the Life and Annuity Account greater than or equal to (ii) its total assessable premium in the Health Account, where assessable premium in the Health Account includes, but is not limited to, the member insurer's assessable health maintenance organization premiums but shall exclude the member insurer's assessable premiums for disability income and long-term care insurance.

The amount of the LTC Assessment allocated to the Life and Annuity Account shall be determined in accordance with the following formula:

Life and Annuity Account LTC Assessment Share	=	LTC Assessment	(.50 - LAMIHA) <hr style="border: 0.5px solid black;"/> (LAMILAA - LAMIHA)
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The amount of the LTC Assessment not allocated to the Life and Annuity Account as provided above shall be allocated to the Health Account.

The amount of any LTC Assessment allocated to the Life and Annuity Account or to the Health Account shall be allocated among member insurers in accordance with Section 58-62-41(d) of the New Act, except that the total assessable premium in the entire Life and Annuity Account shall be used in the aggregate without dividing it between the subaccounts.

G.

The Board shall determine at least annually if an excess of funds in any account exists such that the funds are not reasonably needed to fund future obligations of current or future insolvencies for the payment of the obligations of the Association. The Board's review for this purpose shall include, but not be limited to, a review of the assets accruing from assignment, subrogation, net realized gains on distributions and income from investments. If the Board determines an excess exists, it can in its sole discretion, and in proportion to the contribution of each insurer to that account:

- (1) refund in cash; or
- (2) refund in the form of a credit against future assessments with respect to that account; to the extent a credit is granted to the insurer, it shall be reflected in the next subsequent assessment of the insurer for that account; or
- (3) reallocate excess funds to any other impairment or insolvency within the same account, or place the excess funds in a composite account to be held for that purpose.

In order to avoid disproportionate clerical expense, the Board may establish an amount below which refunds shall not be made.

- H. The Board may establish a general policy whereby the Board or the Board's designee may accept amended assessable premium reports filed with the National Association of Insurance Commissioners which correct

reports filed for prior years which contain inadvertent errors made by a member insurer. Under such a policy, correction of the error would be prospective only. The corrected assessable premium would be used for future assessments but could not be used to re-calculate prior assessments.

#### **Article IV. Records and Reports**

- A. Minutes of the proceedings of each Board Meeting shall be written. The original of these minutes shall be retained by the Secretary of the Board or by such other person as the Board may designate. Records shall be kept of all negotiations and meetings in which the Association or its representatives are involved to discuss the activities of the Association in carrying out its powers and duties under Section 58-62-35 of the old Act or Section 58-62-36 of the New Act. Records of such negotiations or meetings shall be made public only upon the termination of a liquidation, rehabilitation or conservation proceeding involving the impaired or insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the Association to render a report of its activities under Section C. The Board may, upon majority vote, make reports and recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.
- B. Copies of minutes, reports, recommendations, records and documents may be furnished to each Board member, to the Commissioner and to any member insurer upon request; provided, however, that such minutes, reports, recommendations or other records and documents relating to the portions of such proceeding which were closed, because of confidential nature of the matters addressed, shall also be confidential, and distribution of such minutes, reports, recommendations, records and documents shall be limited to the members of the Board and the Association's attorneys, employees or agents, considered by the Board to be necessary or pertinent to the discussions of the matters addressed or performance of the actions taken during such confidential proceedings.

- C. The Board shall make an annual report as required by Section 58-62-70 of the Old Act and Section 58-62-66 of the New Act not later than April 30 of each year to the Commissioner. Such report shall include a financial report for the preceding year in a form approved by the Commissioner and a review of the activities of the Association during the preceding calendar year.
- D. The Board shall engage a certified public accountant to review or audit the financial affairs of the Association.

#### **Article V. Membership**

- A. Those insurers described in Section 58-62-20(7) of the Old Act and Section 58-62-16 of the New Act shall be members of this Association. Each insurer admitted after the effective date of the New Act to transact the kinds of insurance covered by said Act shall automatically become, effective on the date of its admission, a member insurer of this Association.
- B. An insurer which ceases to be admitted shall remain liable for any assessments based on impairments occurring prior to the termination of its license. Such insurer also shall be entitled to a refund of all or part of any assessments which were made prior to termination of its license which later prove to be excessive.
- C. A member insurer which becomes an impaired or insolvent insurer after its license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn shall remain a member insurer for purposes of the liability of the Association with respect to the covered policies or contracts of such member insurer.

#### **Article VI. Appeals**

Any member insurer aggrieved by an act of the Board of this Association shall appeal to the Board before appealing to the Commissioner. Such appeal shall be taken within 60 days of the date on which such member insurer knew or should have known of such act. If such member insurer is aggrieved by the final action or decision of the Board on the appeal, or if the Board declines or fails to act on such appeal within 60 days, the member insurer may appeal to the Commissioner within 60 days

after the action or decision of the Board or the expiration of the 60-day period within which the Board failed to act on such appeal. Any member insurer which makes an appeal to the Commissioner pursuant to the Article must provide the Association with notice of the appeal by mailing a copy of the appeal to the Association by certified mail on the same day on which the appeal is submitted to the commissioner. Failure to take an appeal within the time and in the manner set forth in this plan shall bar any claim that a member might otherwise have with respect to any act taken by the Association or its Board. If the appeal pertains to a protest of part or all of an assessment, the member shall pay when due the full amount of the assessment as set forth in the notice provided by the Association. The payment shall be available to meet Association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds of the protest.

#### **Article VII. Indemnification**

- A. All persons, except the Commissioner and his representatives, described in Section 59-62-80 of the Old Act and Section 58-62-76 of the New Act, including but not limited to the individual representatives of the member insurers serving on the Board and the public representatives of the Board, shall be indemnified by the Association for all reasonable expenses incurred on account of any action taken or not taken by them in the performance of their powers and duties under the Old Act and the New Act, unless such persons shall be finally adjudged to have committed a breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance or reckless disregard of the responsibilities of their office or position. Such expenses shall include, but not be limited to, attorneys' fees, judgments, decrees, fines, penalties and amounts paid in settlement actually and necessarily incurred in the defense of any action, suit or proceeding, whether civil, criminal, administrative or investigative, including all appeals, brought against such persons, their testators or intestates. In the event of settlement before final adjudication, with or without court approval, such indemnity shall be provided only if the Association is advised by independent legal counsel that such persons did not, in counsel's opinion, commit such a breach of duty.
- B. This Article is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity

granted by Section 58-62-80 of the Old Act and Section 58-62-76 of the New Act.

**Article VIII. Conformity to Statute**

The Old Act and the New Act, as written, and as may be hereafter amended, are incorporated as a part of this Plan.