

**NEW HAMPSHIRE INSURANCE GUARANTY ASSOCIATION  
AMENDED AND RESTATED  
PLAN OF OPERATION**

***Article 1. Plan of Operation.***

This plan of operation, hereinafter referred to as the Plan, shall become effective upon written approval of the Commissioner, and after approval by member insurers transacting at least 60 percent of the total net direct premiums written for the kinds of insurance covered by the New Hampshire Insurance Guaranty Association Act as specified under Section 3 of Chapter 404-B RSA.

***Article 2. Board of Directors.***

A. There shall be a Board of Directors in accordance with the provisions of Section 7 of Chapter 404-B RSA.

1. The initial Board of Directors shall consist of seven member insurers who shall serve for a term of one year. Thereafter, the Board of Directors shall consist of nine member insurers to be elected for staggered terms of three years each except that in the first election following the term of the initial board, three members shall be elected for a three year term, three members for a two year term and three members for a one year term.

The Board of Directors shall be elected by the member insurers and shall fairly represent member insurers. In the event the Commissioner shall determine that all member insurers are not fairly represented, he shall disapprove the membership of the Board and order another election. In the interim between such disapproval and the subsequent election, the Commissioner may appoint a temporary Board of Directors which fairly represents the member insurers.

Any member of the Board may designate an alternate representative from the same company to serve from time to time in the place or stead of the actual elected representative.

2. Upon the election of the Board of Directors, the Association shall notify the Commissioner of Insurance and request his written approval of the Board.

3. The members elected to the Board of Directors shall elect a Chairman from among its members and such other officers as it deems necessary.

B. A majority of the Board shall constitute a quorum for the transaction of business and the acts of a majority of the Board members present at a meeting at which a quorum is present shall be the acts of the Board; except that an affirmative vote of five Board members is required to:

1. Approve a contract with a servicing facility:
2. Levy an assessment or provide for a refund: or

3. Borrow money.

C. The Board shall hold an annual meeting at the office of the Insurance Commissioner in the month of June, unless the Board, upon proper notice, shall designate some other date or place. At each annual meeting the Board shall:

1. Review the plan and submit proposed amendments if any, to the membership for approval or rejection. A majority vote of those voting shall be necessary for approval of amendments.

2. Review each outstanding contract with servicing facilities and, to the extent possible, make any necessary corrections, improvements or additions.

3. Review operating expenses and covered claims costs and determine if an assessment, or a refund of a prior assessment, and the amount of either is necessary for the proper administration of the Association. If such assessment or refund is determined to be necessary, the Board shall levy such assessment or make such refund in accordance with Section 8(I)(c) and 8(II)(f) of Chapter 404-B RSA. The Board may waive the collection from a member insurer when the amount produces an assessment of less than \$10.00.

4. Review, consider and act on any other matters deemed by it to be necessary and proper for the administration of the Association,

D. The Board shall hold a meeting promptly after receiving notice from the Commissioner of the insolvency of any member insurer, At such meeting or a subsequent meeting the Board shall:

1. Consider and decide what method or methods, as permitted under Section 8(I)(f) of Chapter 404-B RSA shall be adopted to pay and discharge covered claims of the insolvent insurer for each of the three categories of kinds of insurance as identified in Section 6 of Chapter 404-B RSA, but in no event shall an insolvent insurer be appointed as a servicing facility. If the Board decides to appoint a servicing facility, every effort should be made to secure the receiver's, liquidator's or statutory successor's participation in such contract to assist the Association in the performance of its legally imposed duties:

2. Consider and decide what immediate action, if any, should be taken to assure the proper retention of the records of the insolvent insurer necessary to the prompt and economical handling by the Association of covered claims. In this effort, the Board or a designated servicing facility, shall work closely with the receiver, liquidator or statutory successor and seek the liquidator's, receiver's, or statutory successor's approval of having the Board, or a designated servicing facility, take direct physical control of that portion of the insolvent insurer's records deemed by the Board to be necessary for the discharge of its duties imposed by law;

3. Consider and decide what persons, if any, should be hired by the Association to implement and carry out broad directives of the Board made pursuant to its statutorily imposed duties. Such persons may include a managing secretary who would have such authority as is properly delegated to such person by the Board. Such persons should be knowledgeable about insurance matters, conversant with the law as it relates to covered claims, and administratively capable of

implementing the Board's directives. Such persons may include attorneys at law, insurance actuaries, or other specialists whose advice is deemed by the Board to be necessary to the discharge of its duties imposed by law. Such persons may include accountants, claims persons, or any others deemed by the Board to be necessary to the discharge of its duties imposed by law. The Board may agree to compensate such persons as to best serve the interest of the Association and the public;

4. Consider and decide to what extent and in what manner the Board shall review and contest settlements and releases or judgments, orders, decisions, verdicts and findings to which the insolvent insurer or its insureds were parties in accordance with Sections 8(1)(d) and 18 of Chapter 404-B RSA:

5. Consider and decide what assessment, if any, should be levied or whether any refund should be made to member insurers. If such assessment or refund is determined to be necessary, the Board shall levy such assessment or make such refund in accordance with Section 8(1)(c) and 8(1)(f) of Chapter 404-B RSA. The Board may waive the collection from or refund to a member insurer when the amount thereof is less than \$ 10.00;

6. Take all steps permitted by law, and deemed necessary to protect the Association's rights against the estate of the insolvent insurer; and

7. Consider and decide any other matter deemed by it to be necessary to protect the Association's rights against the estate of the insolvent insurer.

E. The Board may determine a schedule of such other regular meetings as it may deem appropriate. Special meetings of the Board may be called by the Chairman and shall be called at the request of any two Board members and not less than five days written notice shall be given to each Board member of the time and place and purpose or purposes of any special meeting. Any Board member not present may consent in writing to any specific action taken by the Board, Any action approved by the required number of Board members at such special meeting, including those consenting in writing, shall be as valid a Board action as though authorized at a regular meeting of the Board. At such meeting the Board may consider and decide any matter deemed by it to be necessary for the proper administration of the Association.

F. Members of the Board may participate in a meeting of the Board through the use of a conference telephone or similar communications equipment, by means of which all persons participating in the meeting are able to hear each other, and the participation by such means shall constitute presence in person at such meeting.

Members of the Board shall serve without compensation; but they may be reimbursed for necessary travel expenses incurred in attendance at Board meetings. Such expenses shall be submitted to the Board for approval and subsequent payment.

### **Article 3. Operations.**

A. The official address of the Association shall be the address of the Chairman of the Board unless otherwise designated by the Board.

B. The Board may employ such persons, firms or corporations to perform such administrative functions as are necessary for the Board's performance of the duties imposed on the Association. The Board may use the mailing address of such a person, firm or corporation as the official office address of the Association. Such persons, firms or corporations shall keep such records of its activities as may be required by the Board.

C. The Board may open one or more bank accounts for use in Association business. Reasonable delegation of deposit and withdrawal authority to such accounts for Association business may be made consistent with prudent fiscal policy. The Board may borrow money from any person or organization, including a member insurer, or from an appointed servicing facility as the Board in its judgment deems advantageous for the Association and the public.

D. The Board may levy an initial assessment of \$10.00 per member and such subsequent assessments of not less than \$10.00 as may from time to time become necessary to cover the reasonable costs of administering the Association.

E. The Board may contract with one or more persons, firms, or corporations to serve as servicing facilities, should the Board receive notice from the Commissioner of an insolvency of a member insurer. Such contract terms shall comply with the New Hampshire Insurance Guaranty Association Act and be subject to the approval of the Commissioner. Such contract terms may include:

1. Terms of payment to the servicing facility;
2. Extent of authority delegated to the servicing facility;
3. Procedures for giving the receiver timely notice, sufficient to protect the Association's right of subrogation against the receiver, liquidator, or statutory successor, of each and every covered claim not otherwise reported to the receiver, liquidator or statutory successor;
4. Procedures contemplated for the handling of covered claims as defined in the New Hampshire Insurance Guaranty Association Act., These procedures may include the right to request from or offer to any person arbitration of his covered claim;
5. Procedures for the printing or preparation of forms necessary for the proper handling of covered claims;
6. Requirement of a bond for faithful performance; and
7. Any other provisions deemed necessary and desirable by the Board of Directors.

***Article 4. Records and Reports.***

A. A written record of the proceedings of each Board meeting shall be made. The original of this record shall be retained by the Chairman with copies being furnished to each Board member and the Commissioner.

B. The Board shall make an annual report to the Commissioner and to the member insurers. Such report shall include a review of the Association's activities and an accounting of its income and disbursements for the past year.

C. After the appointment of a receiver, liquidator or statutory successor and the levy of an assessment by the Association, the Board shall, once every year, appoint certain of the member insurers to serve as an audit committee. Such committee shall see to the proper auditing of all the books and records of the Association and shall report its findings to the Board.

### ***Article 5. Membership.***

A. Insurers which were admitted, as of May 4, 1970, to transact the kinds of insurance covered by the New Hampshire Insurance Guaranty Association Act in the State of New Hampshire shall be members of this Association. Each insurer admitted after May 4, 1970, to transact the kinds of insurance covered by the New Hampshire Insurance Guaranty Association Act shall automatically become, effective on the date of its admission, a member of this Association. An insurer which ceases to be admitted after May 4, 1970, shall automatically cease to be a member effective on the day following the termination or expiration of its license to transact the kinds of insurance covered by the New Hampshire Insurance Guaranty Association Act; provided such insurer shall remain liable for any assessments based on insolvency's occurring prior to the termination of its license.

B. Any member insurer aggrieved by an action of the Association shall appeal to the Board before appealing to the Commissioner. If such member insurer is aggrieved by the final action or decision of the Board, or if the Board does not act on such complaint within thirty days, the member insurer may appeal to the Commissioner within thirty days after the action or decision of the Board or the expiration of the thirty days.

C. There shall be an annual meeting of the members at the office of Insurance Commissioner in June, unless the Board shall designate some other date or place. The Board shall give at least ten (10) days written notice to the member insurers of such meeting. At such meeting the members shall:

1. Elect Directors in accordance with paragraph A2 of Article 2 of the Plan of Operation;
2. Receive the report of the Chairman of the Board covering the activities of the Association during the preceding year;
3. Consider and act on any amendment to the Plan of Operation that may be submitted to them; and
4. Transact any other business as may properly come before the meeting.

The members may attend the annual meeting either in person or proxy.

**Article 6. Indemnification.**

A. Definitions. For purposes of this Article 6:

1. "Director/officer" means each member of the Board of Directors of the Association, each individual serving as a representative of a member insurer on the Board of Directors of the Association, each employee, officer or agent of the Association, each employee, officer or agent of any association or other entity which performs services, including without limitation claims handling services, on behalf of the Association (in their capacity of performing such services on behalf of the Association only) and each person who is serving or has served at the request of the Association or such other entity as a director, officer, trustee, fiduciary, principal, partner, member of a committee, employee, consultant or agent of any other entity (sometimes referred to in this Article 6 as an 'Association Related Entity').

2. "Proceeding" means any action, suit or proceeding, whether civil, criminal, administrative or investigative, and any appeal therefrom, brought in or before, or threatened to be brought in or before, any court, tribunal, administrative or legislative body or agency, and any claim which could be the subject of a Proceeding.

B. Indemnification. The Association shall indemnify and hold harmless any Director/officer that is a party or is threatened to be made a party to any threatened, pending or completed Proceeding (any such Director/officer being referred to hereinafter as Indemnatee") by reason of the fact that Indemnatee is or was a Director/officer or by reason of any action alleged to have been taken or omitted in any such capacity, whether such service, action or omission takes place before or after the effective date of this Article 6, from and against any and all expenses, including attorneys' fees, judgments, fines, interest and amounts paid in settlement actually and reasonably incurred by Indemnatee in connection with the Proceeding if (i) Indemnatee acted in good faith and in a manner Indemnatee reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal Proceeding, had no reasonable cause to believe Indemnatee's conduct was unlawful, and (ii) such Proceeding is not an action by or in the right of the Association. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnatee did not act in good faith and in a manner which Indemnatee reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal Proceedings, had reasonable cause to believe that indemnity's conduct was unlawful.

C. Proceedings by or in the Right of the Association. The Association shall indemnify and hold harmless Indemnatee in the event Indemnatee was or is a party or is threatened to be made a party to any Proceeding by or in the right of the Association to procure a judgment in its favor by reason of the fact that Indemnatee is or was a Director/officer, officer, employee or agent or by reason of any action alleged to have been taken or omitted in any such capacity, whether such service, action or omission takes place before or after the effective date of this Article 6, from and against any and all expenses, including attorneys' fees, actually and reasonably incurred by Indemnatee in connection with the defense or settlement of the Proceeding if Indemnatee acted in

good faith and in a manner Indemnatee reasonably believed to be in or not opposed to the best interests of the Association, except that no such indemnification shall be made in respect of any Proceeding as to which Indemnatee shall have been adjudged to be liable for negligence or misconduct in the performance of Indemnatee's duty to the Association unless and only to the extent that the Court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, Indemnatee is fairly and reasonably entitled to indemnification for expenses which the court shall deem proper.

D. Successful Defense of Proceedings. To the extent that Indemnatee is successful on the merits or otherwise in defense of any Proceeding, Indemnatee shall be indemnified against any and all expenses, including attorneys' fees, actually and reasonably incurred by Indemnatee in connection therewith.

E. Determination that Indemnification is Available. Any indemnification under Sections B or C of this Article 6, unless ordered by a court, shall be made by the Association only as authorized in the specific case upon a determination that indemnification of Indemnatee is proper in the circumstances because Indemnatee has met the applicable standard of conduct set forth in Sections B and C of this Article 6. This determination shall be made (i) by the Board of Directors of the Association by a majority vote of a quorum consisting of directors who are not parties to the Proceeding and whose representatives on the Board of Directors are not parties to the Proceeding, (ii) by independent legal counsel in a written opinion if such a quorum is not obtainable or, even if obtainable, if such a quorum so directs, or (iii) in the absence of a determination pursuant to clauses (i) or (ii), by the Board of Directors of the Association by a majority vote of a quorum, including directors who are parties to such Proceeding, after providing each member insurer of the Association notice of its intention to make such determination and asking such member insurers to provide the Association with notice of any objections thereto; provided that the determination provided in clause (iii) shall not be effective until sixty (60) days following such Board notice and shall not be effective at all in the event a majority of the member insurers provide notice to the Association within such sixty (60) day period of their objection to such determination.

F. Advances. The Association shall pay sums on account of indemnification, including, without limitation, attorneys fees and related disbursements, in advance of a final disposition of a Proceeding upon receipt of a written undertaking by Indemnatee to repay such sums if it is subsequently determined that Indemnatee is not entitled to indemnification pursuant to this Article 6, which undertaking may be accepted without reference to the financial ability of the Indemnatee to make repayment.

G. Partial Indemnification. If Indemnatee is entitled under any provision of this Article 6 to indemnification by the Association for a portion of the liability or expense of any Proceeding but not, however, for the total amount thereof, the Association shall nevertheless indemnify Indemnatee for the portion of such expense to which Indemnatee is entitled.

H. Allocation of Indemnification Expense. The expense of indemnification provided hereunder shall be assessed against and paid by the member insurers in the proportion that the net direct written premiums of each member insurer for the calendar year preceding such assessment, bears

to the net direct written premiums of all member insurers for the calendar year preceding such assessment, except in the case of insurers who shall cease to be a member of the Association, as to which assessments shall be as follows: any insurer which ceases to be a member of the Association shall remain liable for assessments on account of the expense of indemnification with respect to any and all acts and omissions occurring prior to the time such insurer ceases to be a member of the Association, and in the case of such insurers the assessment for indemnification expense shall be in the proportion that the net direct written premiums of the insurer for the calendar year preceding the year in which the act or omission with respect to which indemnification is claimed, bears to the net direct written premiums of all member insurers for the calendar year preceding the year in which the act or omission with respect to which indemnification is claimed.

I. Non-Exclusive. Nothing in this Article 6 shall limit any lawful rights to indemnification existing independently of this Article 6. This Article is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity granted by Section 404-B: 17 of the New Hampshire Revised Statutes.

J. Amendment. The provisions of this Article may be amended or repealed by the member insurers, provided however that no amendment or repeal of such provisions shall adversely affect the rights of a person or entity entitled to indemnification under this Article with respect to acts or omissions occurring prior to such amendment or repeal.

***Article 7. Conformity to Statute.***

Chapter 404-B RSA of the Insurance Laws as written, and as may be amended, is incorporated as part of this plan and as such is attached hereto.

(0340P)

[Legal Disclaimer](#)

Copyright©1999 Guaranty Fund Management Services

Please direct all questions and comments concerning this website to [webmaster@gfms.org](mailto:webmaster@gfms.org)