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Testimony
for the House Economic Matters Committee
In **SUPPORT** of
House Bill 504 – Insurance – Impaired Entities – Delinquency Proceedings

January 26, 2021

Banner Life Insurance Company supports House Bill 504 and urges the Committee to give the bill a favorable report.

In undertaking our due diligence with regard to the Federal Home Loan Bank legislation, we researched other states' laws in terms of the stay and voidable preference provisions. We also analyzed the proposed Maryland legislation against the recommendations of the National Association of Insurance Commissioners (NAIC). Our analysis and conclusions with regard to these topics are in the following charts. The summary of that information is as follows.

Comparison with laws of the nineteen states that have enacted this legislation:

- Stay provision
 - 12 states have no stay provision at all (like Maryland's § 9-229.1)
 - Four states have a seven-day stay
 - Two states have a ten-day stay
 - One state has a fourteen-day stay [as does the proposed Maryland legislation]
- Voidable transfer provision
 - 16 states use the NAIC recommended language [as does the proposed Maryland legislation]
 - Three states have no voidable transfer language

The second document lists the recommendations from the NAIC's FHLB Legislation (E) Subgroup to the Receivership and Insolvency (E) Task Force and the place in the proposed Maryland legislation that contains the recommended language.

Other States' Laws on FHLB Stay and Voidable Transfer

State	Stay on FHLB's Ability to Exercise its Right to Pledged Collateral	Voidable Transfers	Cites
AL	<p>14-Day Stay</p> <p>FHLB shall not be prohibited from exercising right to pledged collateral after 14th day following filing of delinquency proceeding.</p>	<p>Receiver may not void transfer made in the ordinary course of business and in compliance with FHLB agreement, but transfer may be voided if made with intent to hinder, delay, or defraud the insurer-member, the receiver for the insurer-member, or creditors.</p>	<p>Ala. Code 1975 § 27-32-27.1</p>
CO	<p>Immediate Right – No Stay</p> <p>FHLB shall not be prohibited from exercising right to pledged collateral</p>	<p>Receiver shall not void any preference in connection with a FHLB agreement.</p>	<p>C.R.S.A. §§ 10-3-514, 10-3-505, & 10-3-527</p>
DE	<p>Immediate Right – No Stay</p> <p>FHLB shall not be prohibited from exercising right to pledged collateral.</p>	<p>Receiver shall not void transfer made in the ordinary course of business and in compliance with FHLB agreement, but transfer may be voided if made with intent to hinder, delay, or defraud the insurer-member, the receiver for the insurer-member, or creditors.</p>	<p>18 Del.C. §§ 5904 and 5925</p>
GA	<p>7-Day Stay</p> <p>FHLB shall not be prohibited from exercising right to pledged collateral after 7th day following filing of delinquency proceeding.</p>	<p>Receiver shall not void transfer made in the ordinary course of business and in compliance with FHLB agreement, but transfer may be voided if made with intent to hinder, delay, or defraud the insurer-member, the receiver for the insurer-member, or creditors.</p>	<p>Ga. Code Ann., §§ 33-37-5 and 33-37-26.1</p>
IA	<p>7-Day Stay</p> <p>FHLB shall not be prohibited from exercising right to pledged collateral after 7th day following filing of delinquency proceeding.</p>	<p>Receiver shall not void transfer made in the ordinary course of business and in compliance with FHLB agreement, but transfer may be voided if made with intent to hinder, delay, or defraud the insurer-member, the receiver for the insurer-member, or creditors.</p>	<p>I.C.A. §§ 507C.5 and 507C.23</p>
IN	<p>Immediate Right – No Stay</p> <p>Notwithstanding any other provision of the insurance law to the contrary, a person may exercise a right under a pledge, security, collateral, reimbursement, guarantee agreement, or similar security agreement (not FHLB-specific).</p>	<p>A receiver may not void a transfer in connection with a pledge, security, collateral, reimbursement, guarantee agreement, or similar security agreement (not FHLB-specific)</p>	<p>IC 27-9-3.1-12 and 27-9-3.1-17</p>
IL	<p>Immediate Right – No Stay</p>	<p>Receiver may not void FHLB transfers</p>	<p>215 ILCS 5/204 and</p>

	FHLB shall not be prohibited from exercising right to pledged collateral.		215 ILCS 5/204
KS	Immediate Right – No Stay FHLB shall not be prohibited from exercising right to pledged collateral.	Receiver shall not void transfer with respect to a FHLB agreement, but transfer may be voided if made with intent to hinder, delay, or defraud creditors.	K.S.A. 40-3619 and K.S.A. 40-3629
MI	Immediate Right – No Stay A person may not be prohibited from exercising and agreement with a bank established under the authority of the FHLB Act	Receiver shall not void a transfer in connection with a FHLB agreement made before the commencement of a delinquency proceeding, but transfer may be voided if made with intent to hinder, delay, or defraud the receiver, insurer or creditors.	M.C.L.A. 500.8115a
MO	Immediate Right – No Stay FHLB shall not be prohibited from exercising right to pledged collateral.	Receiver shall not void transfer made in the ordinary course of business and in compliance with FHLB agreement, but transfer may be voided if made with intent to hinder, delay, or defraud the insurer-member, the receiver for the insurer-member, or creditors.	V.A.M.S. 375.971
NC	7-Day Stay FHLB shall not be prohibited from exercising right to pledged collateral after 7 th day following filing of delinquency proceeding.	Receiver shall not void transfer made in the ordinary course of business and in compliance with FHLB agreement, but transfer may be voided if made with intent to hinder, delay, or defraud the insurer-member, the receiver for the insurer-member, or creditors.	N.C.G.S.A. §§ 58-30-20 and 58-30-147
NE	Immediate Right – No Stay FHLB shall not be prohibited from exercising right to pledged collateral.	Receiver may not void a transfer in connection with a FHLB arrangement, but a transfer may be voided if it was made with actual intent to hinder, delay, or defraud creditors.	Neb.Rev.St. §§ 44-4805, 44-4815, 44-4826
OH	10-Day Stay FHLB shall not be prohibited from exercising its rights regarding pledged collateral for more than 10 days following the date a temporary restraining order, preliminary injunction, or permanent injunction is issued.	Receiver shall not void transfer made in the ordinary course of business and in compliance with FHLB agreement, but transfer may be voided if made with intent to hinder, delay, or defraud the insurer-member, the receiver for the insurer-member, or creditors.	R.C. §§ 3903.05 and 3903.26
OK	Immediate Right – No Stay FHLB shall not be prohibited from exercising right to pledged collateral.	Receiver shall not void transfer with respect to a FHLB agreement, but transfer may be voided if made with intent to hinder, delay, or defraud creditors.	36 Okl. St. Ann. §§ 1904 and 1926

PA	<p>Immediate Right – No Stay</p> <p>FHLB shall not be prohibited from exercising right to pledged collateral.</p>	Receiver shall not void a transfer under or in connection with an FHLB security agreement that is made before the commencement of a formal delinquency proceeding in the ordinary course of business and in compliance with the security agreement unless such transfer was made with actual intent to hinder, delay or defraud the insurer-member, receiver or creditors.	40 P.S. §§ 221.5, 221.28 and 221.30
SC	<p>7-Day Stay</p> <p>FHLB shall not be prohibited from exercising right to pledged collateral after 7th day following commencement of delinquency proceeding.</p>	Receiver shall not void a transfer under a FHLB agreement that is made in the ordinary course of business and in compliance with the agreement unless such transfer was made with actual intent to hinder, delay or defraud the insurer-member or creditors.	SC Code §§ 38-27-70 and 38-27-75
TN	<p>Immediate Right – No Stay</p> <p>FHLB shall not be prohibited from exercising right to pledged collateral.</p>	Receiver shall not void transfer with respect to a FHLB agreement, but transfer may be voided if made with intent to hinder, delay, or defraud creditors.	T. C. A. §§ 56-9-105, 56-9-304 and 56-9-315
WI	<p>10-Day Stay</p> <p>FHLB shall not be prohibited from exercising right to pledged collateral for more than 10 days following appointment of receiver but such stay may be extended until the FHLB complies with provisions to deliver information to the receiver and repurchase outstanding capital stock.</p>	Receiver shall not void transfer with respect to a FHLB agreement, but transfer may be voided if made with intent to hinder, delay, or defraud creditors.	W.S.A. 645.05 and 645.54
WV	<p>Immediate Right – No Stay</p> <p>The commencement of a delinquency proceeding does not operate as a prohibition of the exercise by FHLB of its rights regarding pledged collateral.</p>	Receiver shall not void a transfer under a FHLB agreement that is made in the ordinary course of business within 4 months of the commencement of the delinquency proceedings and in compliance with the agreement unless such transfer was made with actual intent to hinder, delay or defraud the insurer-member, receiver or creditors.	W. Va. Code, §§ 33-10-4 and 33-10-26

NAIC Recommendations

From page 2 of the FHLB Legislation (E) Supgroup memo to the Receivership and Insolvency (E) Task Force:

If states are considering adoption of the FHLBanks' original proposed legislation in their state law, the Subgroup recommends states consider the following additional requirements either in legislative language or via a memorandum of understanding (MOU) with the FHLBank, as deemed appropriate by the state department of insurance. The following language is intended to address the concerns of fraudulent transfers and communication between the FHLBank and the state regulator in the event of a receivership action.

To address communication, states may consider including the following in the states' receivership provision for Secured Creditor (equivalent of IRMA, Section 710-Secured Creditors) or address via an MOU:

- (1) The FHLBank shall, upon the request of the [receiver, conservator, rehabilitator or liquidator] within [number of days] of the request, provide a process and establish timing [within no more than __ days following the receivership order] for:
 - (a) The release of collateral that exceeds (the required lending value (as determined in accordance with the advance agreement with the FHLBank)] credit obligations remaining after any repayment of advances;
 - (b) The release of any excess collateral following repayment of all outstanding credit obligations in full;
 - (c) The payment of fees and the operation of deposits and other accounts with the FHLBank; and
 - (d) The possible redemption or repurchase of FHLBank stock or excess stock of any class that an insurer member is required to own.

See § 9-215(i)(2)(i) – (v). Page 6 lines 6-25.

- (2) The FHLBank subject to this subsection shall, upon the request of the [receiver, conservator, rehabilitator or liquidator] and to the extent that (i) market conditions, (ii) the terms of the advances outstanding to the insurer member, and (iii) the applicable policies of the FHLBank and in compliance with the FHLBank Act and corresponding regulations provide any available options for an insurer member subject to a delinquency proceeding to renew or restructure an advance to defer associated prepayment fees.

See § 9-215(i)(3)(i) – (iv). Pages 6 line 26 through page 7 line 3.

Additionally, the Subgroup had several discussions about a cap on the stay period that would provide for a shortened time period for receivers to assess the company in receivership before the stay was lifted. The Subgroup suggests that states could consider discussing with their respective FHLBanks the impact of a limited stay of no more than 30-days after which time the stay would be lifted for FHLBanks, based on an understanding of what actions would be restricted by the stay in that state. A 30-day stay should be considered in conjunction with language allowing for exemptions in the ordinary course of business.

See § 9-215(i)(1)(i). Page 5 lines 19-22.

To address fraudulent transfers, states may consider adding the underlined sentences below to the FHLB's proposed revision to the states' receivership provision equivalent to IRMA Section 604 - Voidable Preferences and Liens. The addition of the last sentence (but not the underlined language preceding it) was included in the Nebraska receivership law, which allows for an exemption from fraudulent transfers. NEB. REV. STAT. § 44-4826 (2013)

[FHLB proposed language] A receiver may not avoid any transfer of, or any obligation to transfer, money or any other property arising under or in connection with any Federal Home Loan Bank

security agreement, or any pledge, security, collateral or guarantee agreement or any other similar arrangement or credit enhancement relating to such Federal Home Loan Bank security agreement made in the ordinary course of business and in compliance with the applicable FHLBank agreement. However, a transfer may be avoided under this subsection if it was made with actual intent to hinder, delay, or defraud either existing or future creditors.

See § 9-221(d)(1) – (2). Page 7 line 26 – page 8 line 10.