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**TESTIMONY OF
THE
MARYLAND INSURANCE ADMINISTRATION
BEFORE THE
SENATE FINANCE COMMITTEE**

FEBRUARY 10, 2021

SENATE BILL 458 - INSURANCE - IMPAIRED ENTITIES - DELINQUENCY PROCEEDINGS

POSITION: LETTER OF INFORMATION

Thank you for the opportunity to provide written comments regarding Senate Bill 458. As drafted, Senate Bill 458 amends Maryland’s “Liquidation, Rehabilitation, Reorganization, and Conservation” statute in Title 9, Subtitle 2 of the Insurance Article. The bill gives a Federal Home Loan Bank (“FHLB”) preferential treatment in insurance company delinquency proceedings, primarily by providing the FHLB with quick access to secured collateral and limiting the circumstances in which a receiver could seek to void transactions made in connection with the FHLB secured loan or security agreement.

The Maryland Insurance Administration (MIA) recognizes the role of FHLB lending as both an important source of liquidity and as a method to promote the continued viability of insurance companies. Currently, nineteen states provide some form of preferential treatment to the FHLB.

Because the FHLB would be considered a secured creditor, under § 9-227(f) of the Insurance Article, assets validly pledged as security for the FHLB secured loan are not available for distribution by the Receiver in delinquency proceeding and will be distributed to the FHLB. Under current law, the FHLB is barred from exercising its contractual rights with respect to collateral and must await action by the Receiver or the Receivership Court to take the assets that serve as collateral for the secured loan. As drafted, Senate Bill 458 would permit FHLB to exercise those rights and access collateral 14 days after the date of the receivership filing.

In 2012, the National Association of Insurance Commissioners (NAIC) created the Federal Home Loan Bank Legislation (E) Subgroup (“Subgroup”) of the Receivership and

Insolvency Task Force to study and consider receivership legislation proposed by the FHLB. The Subgroup did not reach consensus on the proposed legislation, but did encourage states to consider certain recommendations.

With respect to the exemption from a stay of action for the FHLB, the Subgroup had several discussions about the period of time that a receiver should have to evaluate the FHLB loan and collateral before the stay is lifted. The Subgroup suggested a limited stay of no more than 30-days was reasonable, after which time the stay would be lifted for the FHLB. The MIA agrees with that timing and believes that a 30-day period after the appointment of a receiver in conjunction with language allowing for exemptions in the ordinary course of business, is a more reasonable time frame for the Receiver to conduct a review, absent a compelling reason for more immediate access to the collateral.

Senate Bill 458 also limits the receiver's ability to void certain transactions or claw back certain payments made by the company to the FHLB prior to the date of the receivership. Currently, a receiver has authority to seek to void transactions and claw back transfers of assets that the receiver does not consider to have been within the normal course of business or that provided an unfair advantage to one creditor at the expense of others (often referred to as voidable preferences) regardless of intent. Senate Bill 458 would authorize the receiver to void FHLB secured loan related transactions only if the transfer was made with the intent to hinder, delay or defraud the insurer, the receiver, or other creditors.

The changes described above would put FHLB loans on par with certain other financial arrangements made by insurance companies, such as netting arrangements, commodities contracts, forward contracts, repurchase agreements, and swaps, as to which the automatic stay does not currently apply and as to which the receiver's voidance rights are limited pursuant to § 9-229.1(b) and (f) of the Insurance Article.

The MIA recognizes that while Senate Bill 458 would provide the FHLB with additional protections, a benefit of these changes is to create more liquidity and better credit options for insurers by enabling an FHLB to extend credit to an insurer based on lower-quality collateral than it otherwise would, thereby preserving higher quality assets for other purposes.