

February 22, 2021

Mr. Marvin Kelly
Executive Director
Texas Property and Casualty Insurance Guaranty Association
9120 Burnet Rd.
Austin, Texas 78758-5204

RE: Revised Plan of Operation (Amended Plan)

Dear Mr. Kelly:

On November 20, 2020, the Texas Property and Casualty Insurance Guaranty Association submitted an amended plan of operation to the Texas Department of Insurance for review and approval. The plan of operation is designed to ensure the fair, reasonable, and equitable administration of the association. In accordance with Section 462.103(b) of the Texas Insurance Code, I approve the attached amended plan of operation.

Please let me know if you have any questions or need more information. James Kennedy serves as the lead staff member on this matter. He can be reached by telephone at (512) 676-6557 or by email at james.kennedy@tdi.texas.gov.

Very truly yours,

DocuSigned by:
Doug Slape
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Doug Slape
Chief Deputy Commissioner of Insurance
Tex. Gov't Code § 601.002
Commissioner's Order No. 2018-5528



Revised Plan of Operation
Texas Property and Casualty Insurance Guaranty Association

Sec. 1. General.

- (a) The Texas Property and Casualty Insurance Guaranty Association is a non-profit, unincorporated legal entity created by Chapter 462, Texas Insurance Code, as amended.
- (b) This plan of operation of the association is adopted pursuant to the requirements of the Act, and supersedes any prior plan of operation. This plan and any amendments to this plan shall be adopted and become effective as provided in the Act, and shall govern the association and its operations.
- (c) Provisions of the Act that are not expressly stated in this plan are incorporated in this plan by reference.
- (d) To the extent any provision in this plan conflicts with the Act or the open meetings act, the Act and the open meetings act control.

Sec. 2. Definitions.

- (a) In this plan:
 - (1) "Act" means the Texas Property and Casualty Insurance Guaranty Act (Chapter 462, Texas Insurance Code).
 - (2) "Association" means the Texas Property and Casualty Insurance Guaranty Association.
 - (3) "Board" means the board of directors of the Texas Property and Casualty Insurance Guaranty Association.
 - (4) "Commissioner of Insurance" means the Commissioner of Insurance of the Texas Department of Insurance.
 - (5) "Covered claim" has the meaning assigned by Subchapter E of the Act.
 - (6) "Designated official" means and includes any member of the board and any employee of the association.
 - (7) "Executive director" means the executive director of the association.
 - (8) "General management policy" means a general statement of principles by which the association is guided in the management of its mission and business. The term does not include written operational practices and procedures drafted by the executive director and other association staff to implement the general management policies adopted by the board.
 - (9) "Impaired insurer" has the meaning assigned by Section 462.004(5) of the Act.
 - (10) "Member insurer" has the meaning assigned by Section 462.004(6) of the Act.
 - (11) "Open meetings act" means Chapter 551, Texas Government Code.
 - (12) "Plan" means this plan of operation.
 - (13) "Public information act" means Chapter 552, Texas Government Code.
 - (14) "Receiver" means:
 - (A) the Commissioner of Insurance in his capacity as receiver pursuant to Chapter 443, Texas Insurance Code;
 - (B) a special deputy receiver appointed by the receiver; or
 - (C) the individual in a jurisdiction other than Texas who is duly appointed as the receiver of an insolvent member insurer pursuant to the laws of such other jurisdiction.
 - (15) "Receivership court" means a court with jurisdiction over an insolvent member insurer.
 - (16) "Special master" means a special master appointed by a receivership court.
- (b) Any additional definitions provided in the Act apply to this plan.

Sec. 3. Association.

- (a) Membership.
 - (1) The association is a nonprofit, unincorporated legal entity composed of all member insurers, who must be members of the association as a condition of their authority to transact insurance in this state.
 - (2) Member insurers shall comply with this plan and the Act and failure to comply with this plan or the Act or to pay an assessment when due shall subject the member insurer to sanctions as provided in the Act.
- (b) General Powers and Duties.

The powers and duties of the association are as set forth in this plan and more fully set forth in the Act.
- (c) Right of Appeal.
 - (1) A member insurer aggrieved by any final action or decision of the association may appeal to the board.
 - (2) After a final decision by the board, a member insurer may appeal that action or decision to the Commissioner of Insurance not later than the 30th day after the date of the action or decision.

Sec. 4. Participation in the Insolvency Process.

The board recognizes that the association is a participant in the insolvency process created by the legislature in Chapters 443 and 462, Texas Insurance Code, and, as such, the board, the executive director, and association staff shall endeavor to work with the Commissioner of Insurance, receivers, receivership courts, special masters, and the National Conference of Insurance Guaranty Funds to facilitate the effective and efficient administration of member insurer receivership estates and to carry out their respective powers and duties consistent with Chapters 443 and 462, Texas Insurance Code.

Sec. 5. Board of Directors.

- (a) Composition.
 - (1) The association is governed by a board of directors composed of nine persons.
 - (2) The composition of the board shall always be five industry members and four public members.
 - (3) If a board member ceases to be eligible to serve on the board pursuant to Section 462.053 or 462.054 of the Act, that member shall immediately vacate his or her position on the board.
- (b) Selection.
 - (1) Industry Members
 - (A) The five industry board members shall be elected by the member insurers and approved by the Commissioner of Insurance in accordance with the Act, this plan, and the board's nominating committee charter.
 - (B) To be eligible to serve as an industry board member, a person must be a full-time employee of a member insurer.
 - (C) Industry board members shall be elected using a ballot process.
 - (D) Each industry board member may select one nominee for each position to be filled by election.
 - (E) Ballots for the election of an industry board member must include:
 - (i) nominees selected by an industry board member;
 - (ii) nominees recommended by the board's nominating committee and approved by the board;
 - (iii) a blank for member insurers to vote for a candidate whose name does not appear on the ballot; and
 - (iv) the date by which the ballot must be returned to the association in order to be considered.

- (F) The association shall:
 - (i) mail ballots to the member insurers;
 - (ii) count the eligible ballots; and
 - (iii) forward the name of the person elected by the member insurers to the Commissioner of Insurance by letter for approval.
- (G) If the Commissioner of Insurance does not approve a person elected by the member insurers to serve on the board, the member insurers shall elect and the board shall submit in writing to the Commissioner of Insurance the name of another person elected by the member insurers to serve on the board as provided above.
- (2) Industry Member Vacancy
 - (A) If a vacancy occurs on the board for an industry member whose term has not expired, the members of the board shall elect, by majority vote, a person to fill the vacancy for the unexpired term and shall submit to the Commissioner of Insurance for approval the name of the person elected.
 - (B) Nominations to fill an industry member vacancy will be made by the remaining industry members, in accordance with the board's nominating committee charter, and submitted to the board for its approval.
 - (C) If the Commissioner of Insurance fails to approve a person elected by the board to fill an industry vacancy, the board shall elect and submit to the Commissioner of Insurance another person to serve as an industry board member.
- (3) Public Members

The Commissioner of Insurance shall appoint the four public members of the board and shall fill any vacancy on the board for the unexpired term of a public member.
- (c) Terms of Office.
 - (1) The term of office for each board member shall run from the beginning of the calendar year to the end of the sixth calendar year after the beginning of the member's term.
 - (2) The terms of three board members shall expire at the end of each odd-numbered calendar year.
 - (3) Board members may succeed themselves in office.
 - (4) If a board member's term expires pursuant to (c)(1), the board member shall serve until the Commissioner of Insurance appoints or approves a successor board member, provided that the board member whose term has expired remains qualified and is willing to serve.
- (d) Officers.
 - (1) The board shall elect from its membership a chair, vice chair, secretary-treasurer, and such other board officers as the board deems necessary, including, without limitation, a parliamentarian. At least one officer must be a public member.
 - (2) The chair shall preside at all meetings of the board and perform such other duties as may be prescribed by the board. When the chair is absent from a meeting, is unable to act, or refuses to act, the vice chair shall perform the duties of the chair.
 - (3) The term of office for each officer of the board shall be one year, coinciding with the fiscal year of the association. An officer shall continue in office until his or her successor is elected or until such officer is no longer a member of the board.
- (e) General Duties and Authority.
 - (1) The board shall carry out the duties required by the Act.
 - (2) Except as limited by the Act, the board may exercise its powers and carry out its duties through its executive director or other persons designated by the board.
 - (3) The board may take such actions as are incidental and necessary to exercise the powers and carry out the duties provided in the Act and in this plan.

- (4) The executive director or any designee of the board, to the extent authorized by the board, may take such actions as are necessary to exercise the powers and carry out the duties provided in the Act and this plan.
 - (5) All general management policies of the association related to fulfilling the association's mission, performing the association's statutory duties, or exercising the association's statutory rights must be approved by the board.
- (f) Meetings.
- (1) General Provisions.
All meetings of the board shall be conducted in compliance with the Act and the open meetings act. Notice of all meetings shall also be provided to the Commissioner of Insurance. When conducted in person, meetings shall be held at the Association's main office in Travis County, Texas. At each meeting, the board may take any action permitted by law. A quorum shall be required for official action by the board.
 - (2) Regular Meetings.
The board shall hold regular meetings once each calendar quarter or on such other schedule as agreed to by the board.
 - (3) Special Meetings.
Special meetings of the board may be called by the chair and shall be called upon request of the Commissioner of Insurance or any two board members.
 - (4) Meetings by Telephone Conference Call and Videoconference Call.
The board may hold a meeting by telephone conference call or videoconference call as permitted by the Act, the open meetings act, or an executive order or proclamation issued by the governor.
 - (5) Emergency Meetings.
The board may convene an emergency meeting in accordance with the open meetings act. An emergency board meeting may be called by the chair and shall be called upon request of the Commissioner of Insurance or any two board members with not less than two hours' oral notice to each board member and the Commissioner of Insurance of the place, day and time of the meeting and the reason for the emergency meeting.
- (g) Expenses.
- (1) A board member may not receive compensation for serving as a member but may be reimbursed from the assets of the association for reasonable expenses incurred in performing duties as a member of the board.
 - (2) The board shall adopt a form for and procedures to be followed for reimbursing a board member for expenses.
 - (3) Before a board member may be reimbursed for expenses, the board member must submit to the executive director a statement of expenses on a form approved by the board.
- (h) Financial Oversight and Audit.
The board shall oversee and manage the finances of the association and adopt an annual audit plan.
- (i) Delegation of Authority.
- (1) The chair may create advisory committees or task forces and assign research tasks, information gathering and other administrative responsibilities to the committee or task force.
 - (2) The advisory committee or task force:
 - (A) may meet outside of a regular meeting of the board to consider the matters assigned to it;
 - (B) shall operate pursuant to a charter or charge approved by the board; and
 - (C) shall report its activities and recommendations to the board at a regular board meeting.

- (3) An advisory committee's or task force's recommendations to the board are advisory only and shall not be automatically adopted by the board. The board shall duly consider any report or recommendation of an advisory committee or task force on a matter prior to the board taking action, but the board shall be obligated to consider all relevant information and exercise its independent judgment before taking any action on such matters.
 - (4) An advisory committee or task force may not bind the full board unless, in accordance with the open meetings act, the board adopts a resolution specifically authorizing the advisory committee or task force, or one or more of its members, to take certain actions described in the resolution.
- (j) Training.
- (1) The executive director or the executive director's designee shall provide training to each board member, including but not limited to, overviews of:
 - (A) board members' statutory and fiduciary responsibilities;
 - (B) the association's investment policy; and
 - (C) the Act and the guaranty fund system generally.
 - (2) Each board member:
 - (A) must complete video training provided by the office of the attorney general on the open meetings and public information acts; and
 - (B) is encouraged to view the video prepared by the National Conference of Insurance Guaranty Funds titled "NCIGF Guaranty Fund System Training Program" or its successor program.

Sec. 6. Operations.

- (a) General.
- (1) The official address of the association is the address of the main office of the association in Travis County, Texas.
 - (2) The fiscal year of the association is the calendar year.
 - (3) The association shall operate in accordance with general management policies adopted by the board in accordance with Section (5)(e)(5) of this plan. The executive director is responsible for monitoring and enforcing all such policies.
 - (4) The association's agent for service of process is its executive director, who may be served at the main office of the association in Travis County, Texas.
- (b) Procedures Relating to Claims.
- (1) The association shall establish a claim filing procedure that includes, but is not limited to, notice by the association to claimants of the deadline for filing claims, procedures for filing claims seeking recovery from the association, and a procedure for appealing the denial of claims by the association.
 - (2) Upon the Commissioner of Insurance's request, the association shall provide initial notice of impairment to insureds and other interested parties in a format that has been presented to the Commissioner of Insurance for review and comment. The association shall maintain a list of persons notified pursuant to this section.
 - (3) Acceptable claim forms shall include claims submitted on an accepted form of the impaired insurer prior to impairment or a proof of claim acceptable to the receiver subsequent to the impairment.
 - (4) Covered claims are considered filed with the association if:
 - (A) the claim existed in the company's records at the time of impairment;
 - (B) the claim is filed or received prior to the claim filing deadline applicable to the association, including claims referred by a receiver; or

- (C) (i) the claim is for recovery of statutory workers' compensation benefits under the Texas Workers' Compensation Act, Texas Labor Code Chapter 401, *et seq.* and its predecessor statute, V.T.C.S. art. 8306, *et seq.*, or the United States Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. §901, *et seq.*; and
 - (ii) the claim arises under "Coverage A" or "Part 1" of the Uniform Workers' Compensation Policy, or the Longshoremen's and Harbor Workers' Endorsement; and
 - (iii) proper notice of the claim was given in accordance with the Texas Workers' Compensation Act, Texas Labor Code Chapter 401, *et seq.* and its predecessor statute, V.T.C.S. art. 8306, *et seq.*, or the United States Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C.A. §901, *et seq.*; or
 - (D) the claim is timely filed and the claimant follows written procedures established by the association.
- (5) In response to the receipt of a claim, the association shall provide the claimant with a statement of the claimant's rights and obligations under the Act including an explanation of the claimant's statutory obligation to exhaust other insurance accompanied by an "affidavit of other insurance" and the association's procedure for appealing the denial of a claim.
 - (6) Any denial of a claim, whether in whole or in part, by the association shall be made in writing. The claimant shall be informed of the reason for denial and notified that the denial does not preclude the claimant from exercising any rights or seeking any remedies that may be available to the claimant.
 - (7) The association shall establish an internal procedure for claimants to appeal the denial of a claim. The appeal shall include review by association management.
- (c) Reporting.
The association shall provide all information reasonably requested by a receiver or special deputy receiver regarding claims processed by the association.
 - (d) Assets and Deposits.
 - (1) The association may open and maintain accounts for funds of the association in one or more banks, savings and loan associations, and other financial institutions and also, may deposit funds into the Texas Treasury Safekeeping Trust Company. Except for the Texas Treasury Safekeeping Trust Company, funds maintained in these financial institutions must be insured by a federal agency that provides for deposit insurance or must be fully secured with bonds, notes, securities, or other evidences of indebtedness supported by the full faith and credit of the United States or guaranteed as to principal and interest by the United States. If the balance in an association account insured by a federal agency exceeds the amount of the federal insurance, the board must enter into an agreement with the financial institution requiring security as described in this subdivision that is equivalent to the amount that exceeds the maximum amount insured.
 - (2) Funds of the association may be invested and reinvested by the board or its authorized representative in any manner approved by the board in its investment policy.
 - (3) The board shall, in accordance with its investment policy, endeavor to meet the following investment objectives listed in order of priority:
 - (A) assure maximum safety of funds invested and preservation of capital;
 - (B) maintain sufficient liquidity to meet the association's anticipated cash flow needs; and
 - (C) achieve a total return that meets or exceeds the aspirational total return benchmark adopted by the board.
 - (4) The association may delegate deposit and withdrawal authority relating to its accounts to specified officers and employees and shall require those officers and employees to be covered by appropriate insurance. Money may be withdrawn from any of the association accounts, provided that signatures of at least two persons authorized by the board shall be required for any withdrawals and transfers to accounts other than those of the association.

- (5) All assets of the association deposited in accounts under Subdivision (1) of this subsection shall be deposited in the name of the association and all other assets of the association must be owned or held in the name of the association.
 - (6) An up-to-date, current inventory of the assets of the association, describing the type and location of assets, shall be kept as a part of the financial records of the association, properly accounting for the cost or value of the assets and their depreciation, if any.
 - (7) The board may establish any additional procedures consistent with the Act for the handling of any assets of the association.
 - (8) A record shall be maintained at the main office of the association of all assets and deposits of the association and all financial transactions of the association, its agents, and the board relating to the association. Documentation relating to all such assets, deposits, and transactions shall be made and maintained by the association in accordance with generally accepted accounting standards.
- (e) Assessments.
- (1) Purpose of Assessments.
 - (A) The association shall assess member insurers for amounts necessary to pay:
 - (i) the obligations of the association under Section 462.302 of the Act;
 - (ii) the expenses of handling covered claims;
 - (iii) administrative expenses as authorized by the Act; and
 - (iv) other expenses as authorized by the Act.
 - (B) Assessments shall be determined pursuant to an assessment policy adopted by the board. A copy of the association's assessment policy shall be provided to association members at their request.
 - (2) Calculation and Collection of Assessments.

On a quarterly basis, association staff shall prepare and provide to the board cash flow projections of the association's future revenues and operating costs estimated for at least five years in the future. The board shall use such data and any other relevant information reasonably available at the relevant time to determine whether an assessment or some other alternative to fund the association's statutory mission and duties is necessary. The association shall, pursuant to the Act, calculate the amount of any assessment owed by each member insurer and collect such assessments from its member insurers. The association shall report to the Commissioner of Insurance any delinquencies in the payment of assessments by any member insurers.
 - (3) Special authority to assess.

In the event of a natural disaster or other catastrophic event which creates extraordinary substantial covered claim liability for the association, the chair may contact the Commissioner of Insurance to review the association's ability to meet its liability obligations under the Act.

If the chair and the Commissioner of Insurance determine by this review that the association is in need of funds beyond its ability to assess member insurers, the chair and the Commissioner of Insurance shall make application to the governor in accordance with the Act for the authority to assess an additional two percent of each member insurer's net direct written premiums for the preceding calendar year in the Other Lines line of business.

This special authority to assess is limited to the year in which it is granted. If additional funds are required to discharge the association's statutory obligations resulting from the natural disaster or catastrophic event in the following year, the chair and the Commissioner of Insurance must seek additional authority from the governor in the above described manner.
- (f) Borrowing Funds.
- (1) On a majority vote of the members of the board, the board may authorize the chair or another designated member of the board to borrow funds necessary to carry out the powers and duties of the association.

- (2) At the time the board authorizes the chair or other member of the board to borrow funds on behalf of the association, the board shall establish the terms and conditions under which the chair or the other designated member of the board will borrow the funds.
- (3) The chair or other person designated by the board to borrow funds on behalf of the association shall report to the board regarding borrowed funds at its next regular meeting following completion of the loan transaction, unless required to report at an earlier time. The association shall maintain detailed written records relating to all borrowed funds.

Sec. 7. Indemnification Against Liability.

The association shall indemnify designated officials pursuant to an indemnification policy adopted by the board.