

MISSISSIPPI LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

PLAN OF OPERATION

(As revised and adopted by the Board of Directors of the Association on May 18, 2006; Effective upon the written approval of the Mississippi Commissioner of Insurance on May 24, 2006; Amended by Board on November 23, 2010 and approved by Commissioner on March 3, 2011.)

Article 1. Name

This Association shall be known as the Mississippi Life and Health Insurance Guaranty Association (the "Association"). The Association is a nonprofit legal entity created pursuant to the Mississippi Life and Health Insurance Guaranty Association Act, being Sections 83-23-201 through 235, Mississippi Code of 1972, as amended (the "Act").

Article 2. Plan of Operation

- A. This Plan of Operation shall become effective upon written approval of the Commissioner of Insurance of the State of Mississippi (the "Commissioner"), as provided in Section 83-23-219(1)(a) of the Act.
- 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 become effective upon written approval of the Commissioner or thirty (30) days after submission if the Commissioner has not disapproved 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.

Article 3. Annual Meetings of the Member Insurers

- A. An annual meeting of the member insurers of the Association shall be held for the election of directors at the office of the Association immediately preceding the annual meeting of the Board of Directors, unless the Chairman of the Board of Directors, upon proper notice, shall designate some other time, day or place.
- B. Member insurers shall be notified of the time, day and place of the annual meeting of the member insurers at least ninety (90) days prior to such annual meeting.
- C. At annual meetings of the member insurers, if there are more nominees than vacancies, directors shall be elected by member insurers by votes cast on a weighted basis using the net Mississippi direct premiums received as provided by the Commissioner for the last available year on covered policies as defined in Section 83-23-209(h) of the Act. Each

member insurer shall have at least one vote in person or by proxy for each member of the Board of Directors to be elected.

D. At the annual meetings of the member insurers:

1. Proxy voting shall be permitted, except that the presence in person or by proxy of not fewer than five (5) member insurers shall be required to constitute a quorum.
2. The member insurers receiving the greatest number of votes, on a non-cumulative basis, shall be elected.
3. 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.

Article 4. **Board of Directors**

A. There shall be a Board of Directors in accordance with the provisions of Section 83-23-213 of the Act.

1. a. The Board of Directors shall consist of not less than five (5) nor more than nine (9) member insurers as established from time to time by resolution of the Board of Directors prior to the election of directors. The Board shall devise a system of staggered terms, so that all director terms do not expire simultaneously. The standard term for a directorship shall be three (3) years, recognizing that terms shorter than this may be necessary for some directors in order to achieve the staggering of terms.
- b. The Board of Directors shall be elected by the member insurers as provided in Article 3 hereof, and shall fairly represent member insurers. No two members of the Board shall be from the same affiliated insurers.
- c. Each member of the Board shall designate its representative and any alternate.
- d. The previously elected Board members shall serve until their successors have been duly elected and qualified to serve.
2. Upon the election of the Board of Directors, the Association shall notify the Commissioner and request written approval of the members of the Board as elected.
3. The Board of Directors 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, or authorize the Chairman to appoint, from among its members, a Nominating Committee. The Nominating Committee shall designate one of the members of the Nominating Committee as its Chairman. The Nominating Committee shall meet at the call of its Chairman and shall keep a written record of its proceedings. The Nominating Committee shall select a nominee to succeed each Board member whose term expires at the annual meeting of the member insurers. Such nominees shall be made known to the member insurers at least ninety (90) days prior to such annual meeting. Other nominees may be submitted to the Board, but not less than sixty (60) days prior to such annual meeting, upon the petition of ten (10) member insurers.
 - c. 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 member insurers at least thirty (30) days prior to the annual meeting of the member insurers.
4. Vacancies occurring on the Board of Directors between annual meetings of the member insurers shall be filled by a majority vote of the remaining members of the Board with the approval of the Commissioner. Vacancies occurring in elective offices between annual meetings shall be filled by majority vote of the Board. Such interim directors and officers shall serve for the unexpired terms.

B. At any meeting of the Board of Directors:

- 1. Each member of the Board shall have one vote.
- 2. 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 in paragraph 3 below.
- 3. An affirmative vote of a majority of the full Board is required to:
 - a. Approve a contract with a servicing facility for overall administration of the Association, except that administration 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 guaranty plans;
or
 - e. Adopt amendments to the Plan of Operation.

By an affirmative vote of a majority of the full Board, authority to take these actions may be delegated to the Executive Committee.

- C. An annual meeting of the Board of Directors shall be held at the office of the Association in 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 of Operation 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 (including allocation of indirect 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. In order to avoid disproportionate clerical expense, the Board may establish an amount below which refunds shall not be made.
 4. Review and determine 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 insolencies for the payment of the obligations of the Association.
 5. Review investment policy and determine whether any changes in policy may be necessary for the proper administration of the Association, and review investments as of the most recent date practicable as well as investment transactions during the prior year.
 6. Review, consider and act on any other matters deemed by it to be necessary and proper for the administration of the Association.

By an affirmative vote of a majority of the full Board, authority to take these actions may be delegated to the Executive Committee.

- D. 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 a meeting held in person.
- E. Special meetings of the Board of Directors may be called by the Chairman and shall be called upon request of any two (2) Board members. At such special meeting the Board may consider and decide any matter deemed necessary for the proper administration of

the Association. Not less than five (5) days notice shall be given to each Board member of the time, place and purpose or purposes of any such special meeting.

- 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 83-23-215 of the 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.
 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 by Section 83-23-215 of the Act to bring legal actions or provide for the defense thereof in order to avoid payment of improper claims.
 5. Consider and decide or defer the decision as to 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 83-23-217 of the Act. Notice of assessments to member insurers shall be in sufficient detail 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 83-23-217 of the Act. The certificate shall show the amount paid by each such insurer, the date of the assessment, 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.

By an affirmative vote of a majority of the full Board, authority to take these actions may be delegated to the Executive Committee.

- G. There shall be an Executive Committee comprised of not more than five (5) members of the Board of Directors.
1. The Executive Committee shall act in the intervals between meetings of the Board and shall have and exercise all powers of the Board of Directors in the management and direction of the affairs of the Association in the intervals between Board meetings.
 2. The Executive Committee shall include the officers of the Association and other members elected by a majority of the Board. The members of the Executive Committee shall serve for a one year term expiring on the date of the next annual meeting of the Board.
 3. The Executive Committee shall meet at the call of the Chairman, or in his absence at the call of the Vice Chairman. Not less than one day's notice shall be given to each Executive Committee member of the time and manner of such meeting and may be given orally, in writing, or by telephone to the office, residence, or normal place of work of each Executive Committee member.
 4. At all meetings of the Executive Committee, a quorum shall be the majority of the Executive Committee members present in person. Such meetings may be held telephonically. Any Executive Committee member not present may consent in writing to any specific action taken by the Executive Committee, but this shall not permit Executive Committee members to act through other Executive Committee members by proxy. Any action approved by the required number of Executive Committee members at such meeting, including those consenting in writing, shall be as valid an Executive Committee action as though authorized at a meeting held in person.
- H. There shall be an Audit Committee comprised of three (3) independent members of the Board of Directors. The members of the Audit Committee shall serve for a one year term expiring on the date of the next following annual meeting of the Board. The Audit Committee shall designate one of the members of the Audit Committee as its Chairman. The Audit Committee shall meet at the call of its Chairman and shall keep a written record of its proceedings. The Audit Committee shall see to the proper auditing of all books and records of the Association and shall report its findings to the Board of Directors. The Audit Committee shall recommend selection of the independent outside audits and facilitate the annual audit of the Association by an independent outside auditor; it shall also review and provide recommendations regarding any financial or operational review of the Association by independent outside auditors or the Mississippi Insurance Department.
- I. By affirmative action of the majority of the Board of Directors, additional committees comprised of members of the Board may be created. The Board shall designate one of

the members of any such committee as its chairman and shall also specify the number of committee members needed to constitute a quorum. A committee shall meet at the call of its chairman and shall keep a written record of its proceedings. Any such committee shall have and exercise the specific authority and responsibility as determined by the unanimous affirmative action of the entire Board. Any such committee shall at all times be subject to the control and direction of the Board.

- J. Members of the Board may be reimbursed from the assets of the Association for expenses incurred by them as members of the Board of Directors or any committee upon approval of such expenses by the Board, but members of the Board or any committee shall not be compensated by the Association for their services as members of the Board of Directors or any committee.

Article 5. Operations

- A. The official address of the Association shall be Post Office Box 4562, Jackson, Mississippi 39296-4562.
- B. The Board of Directors 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 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 persons 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 to best 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.
- D. In order to effectuate the purposes set forth in Section 83-23-223 of the Act concerning the prevention of insolvencies or impairments, the Board of Directors may develop procedures for discovering and reporting any member insurer that may be insolvent or in an impaired financial condition which is hazardous to the interest of the policyholders of such insurer or to the public interest. No such reports shall be considered public documents. The Board of Directors may review the insurance statutes and appropriate regulations with a view toward making recommendations to the Commissioner for the

improved and more certain detection and prevention of member insurer insolvencies or impairments.

- E. Pursuant to the Association's authority under Section 83-23-215 of the Act, the Board of Directors may adopt for future issuance without regard to any particular impairment or insolvency, and submit to the Commissioner for approval, policy forms of various types, containing at least the minimum statutory provisions required in this state, and associated tables of premium rates. Policy forms and rates so adopted and approved may be used to provide substitute benefits or alternative continued coverages with respect to the covered policies or contracts of an impaired or insolvent member insurer.
- F. Most administrative expenses of the Association are directly or indirectly allocable to one or more impaired or insolvent member insurers. Expenses that are indirectly related to work performed for the Association on impairments or insolvencies may require a subsequent allocation in order to charge a portion of the expense to specific individual insolvencies. Such subsequent allocation of indirect expenses shall be based upon the proportionate time spent directly by the Executive Director during the relevant time period on specific individual insolvencies.
- G. In the event in the judgment of the Board of Directors the maximum assessment under Section 83-23-217 of the 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 of Directors may provide that the Association shall make partial and periodic payments on such claims in accordance with a schedule to be adopted by the Board of Directors. 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 of Directors and approved by the Commissioner under Section 83-23-215 of the 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 become impaired or insolvent, or to require retroactive adjustments.
- H. The Board of Directors 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 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 any future assessments with respect to that account; to the extent a credit is granted to an 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 this purpose.

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

- I. The Board of Directors believes that the Act in effect on the date that a member insurer becomes an insolvent insurer should determine the rights of policyholders of the insolvent insurer against the Association and the powers and duties of the Association with respect to any contractual obligation of the insolvent insurer. However, in order to assure the fair, reasonable and equitable administration of the Association in light of the Mississippi Supreme Court's decision in *Bank of Mississippi, Trustee of MFC Services Liquidating Trust v. Mississippi Life and Health Insurance Guaranty Association*, 730 So.2d 49 (Miss. 1998), the rights of policyholders of an insolvent member insurer against the Association and the powers and duties of the Association, if any, with respect to any contractual obligation of the insolvent member insurer, if any, shall be determined as follows:
 1. Any policy or contract issued by a member insurer prior to April 9, 1985 shall be a covered policy and the rights of such policy or contract holder against the Association and the powers and duties of the Association with respect to such policy or contract holder shall be determined by the Act in effect on the date that a member insurer becomes an insolvent insurer.¹
 2. Any policy or contract issued by a member insurer on or after April 9, 1985 shall be a covered policy and the rights of such policy or contract holder against the Association and the powers and duties of the Association with respect to such policy or contract holder shall be determined by the Act in effect on the date that a member insurer becomes an insolvent insurer, unless the Act in effect on the date such policy or contract was purchased provides greater benefit coverage with respect to such policy or contract as determined by the Association in which case the powers and duties of the Association shall be determined by the Act in effect on the date the policy or contract was purchased.
 3. The Association shall provide coverage to persons who are residents of Mississippi and in special circumstances, to nonresidents. In order to avoid duplicate coverage, if a person who would otherwise receive coverage from the Association is provided coverage under the laws of any other state, the person shall not be provided coverage by the Association.

¹ The Act became effective on April 9, 1985. Prior to April 9, 1985 there was no Mississippi statute to protect policy or contract owners or certificate holders and their beneficiaries, assignees or payees against failure in the performance of contractual obligations under life and health insurance policies and annuity contracts because of the impairment or insolvency of the insurer that issued the policies or contracts. As a result, the purpose of this subparagraph is to clarify the law that applies to policies and contracts issued prior to April 9, 1985 by insurers that became or shall become impaired or insolvent on or after April 9, 1985.

In determining the application of the provisions of this Article 5 Paragraph I, in situations where a person could be covered by the guaranty association of more than one (1) state, whether as an owner, payee, beneficiary or assignee, the Act shall be construed in conjunction with other state laws to result in coverage by only one (1) guaranty association.

This Article 5 Paragraph I shall remain in effect until such time as the decision of the Mississippi Supreme Court in *Bank of Mississippi, Trustee of MFC Services Liquidating Trust v. Mississippi Life and Health Insurance Guaranty Association* is overruled or the Mississippi Legislature passes legislation expressly providing that the law in effect on the date that a member insurer becomes an insolvent insurer shall determine the rights of policyholders of the insolvent insurer against the Association and the powers and duties of the Association with respect to any contractual obligation of the insolvent insurer and without regard to date of purchase of any policy or contract.

Article 6. Records and Reports

- A. Minutes of the proceedings of each Board meeting, annual meeting of the members and committee meeting shall be written. The original of these minutes shall be retained by the Secretary of the Board of Directors or by such other person as the Board may designate. Reasonable records shall be kept of 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 the 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 of Directors may 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 shall 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 the 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 of Directors and the Association's attorneys, employees or agents, considered by the Board of Directors to be necessary or pertinent to the discussion of the matters addressed or performance of the actions taken during such confidential proceedings.
- C. The Board of Directors shall make an annual report as required by Section 83-23-227 of the Act not later than May 1 of each year to the Commissioner. Such report shall include a financial report for the preceding calendar 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, once each calendar year, engage an independent certified public accountant to review or audit the financial affairs of the Association.

Article 7. Membership

- A. Pursuant to Section 83-23-209(1) of the Act, insurers which were licensed as of April 9, 1985 to transact the kinds of insurance covered by the Act in the State of Mississippi shall be member insurers of the Association. Each insurer admitted after said date 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 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 Act. However, such insurer shall remain liable for any assessments based on impairments occurring prior to the termination of its license.
- 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 8. Appeals

Any member insurer aggrieved by an act of the Board of Directors or Association shall appeal to the Board of Directors 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 this 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 of Operation 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 all or part 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 for the protest.

Article 9. Indemnification

- A. All persons, except the Commissioner and his representatives, described in Section 83-23-231 of the Act, including but not limited to the individual representatives of the member insurers serving on the Board of Directors, 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 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 his office or position. Such expenses shall include, but not 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 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 83-23-231 of the Act.
- C. The Board may authorize the purchase and maintenance of such form or forms of insurance as they may deem necessary or prudent to indemnify the Association and/or those persons 83-23-231 of the Act against liability incurred by the Association and/or such persons.

Article 10. Conformity to Statute

Chapter 482, Session Laws of 1985, Sections 83-23-201 to 83-23-235, Mississippi Code of 1972 as amended, and as may be hereafter amended, is incorporated as a part of this Plan of Operation and as such is attached hereto.