Office of Commissioner of Insurance and Safety Fire
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JOHN F. KING
Commissioner of Insurance and Safety Fire

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January 29, 2021

Frank Knighton, Jr.
Executive Director
Georgia Life and Health Insurance Guaranty Association
3700 Crestwood Pkwy., NW
Suite 400
Duluth, GA 30096

Re: Approval of HB 1050 Changes to the GLHIGA Act

Dear Mr. Knighton,

Thank you for your January 11th letter outlining the changes your Board has recommended to its Plan of Operation in response to the passage of HB 1050, which updated the Georgia Life and Health Insurance Guaranty Association Act.

After review from our General Counsel and Director of Insurance and Financial Oversight, this letter is meant to confirm that the Office of Commissioner of Insurance and Safety Fire agrees with both the Letter Advice of Counsel and the updated GLHIGA Plan of Operation you provided.

Additionally, our office is working on compiling recommendations for the two new member insurer seats on the Board and will be sharing those with you soon.

Thank you for all of your help with both ensuring the passage of this legislation and implementing the changes on your end. This work is essential to ensuring Georgia consumers are protected in the event of future life and health insurer insolvencies.

John F. King
Insurance and Safety Fire Commissioner
State of Georgia

GEORGIA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION

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ARTICLE I. PLAN OF OPERATION

This Plan of Operation (hereinafter referred to as the "Plan") shall become effective upon written approval of the Commissioner, as provided in O.C.G.A. § 33-38-8 of the Georgia Life and Health Insurance Guaranty Association Act, O.C.G.A. § 33-38-1 *et seq*. of the Georgia Insurance Code. Amendments to this Plan as necessary or suitable to assure the fair, reasonable and equitable administration of the Association, shall be adopted by the Board of Directors ("the Board").

ARTICLE II. BOARD OF DIRECTORS

A. There shall be a Board of Directors consisting of seven but not more than eleven representatives of member insurers who shall be nominated and appointed by the Commissioner as provided in O.C.G.A. § 33-38-6 of the Code. Each member of the Board so appointed shall serve for a term of three years from date of appointment and until his successor has been appointed and qualified to serve. Vacancies occurring on the Board of Directors shall be filled as provided in O.C.G.A. § 33-38-6(a) of the Code.

B. Officers of the Association

Officers of the Association shall be:

1. A Chairman of the Board, who shall be appointed by the Commissioner. The Chairman of the Board shall also be the Chief Executive Officer of the Association.

2. A Secretary-Treasurer, who shall be elected by the Board from among its members. The Board may also elect from among its members such other officers as it deems necessary.

C. Quorum and Voting

At any meeting of the Board of Directors, each member of the Board shall have one vote. 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 that an affirmative vote of the majority of the Board shall be required to:

1. Approve a contract with a servicing facility;
2. Levy an assessment or provide for a refund;
3. Borrow money; or
4. Approve reinsurance contracts, assumption agreements or guaranty plans.

D. Annual Meeting of the Board

An annual meeting of the Board of Directors shall be held at the office of the Association on the first Wednesday in the month of April, unless the Chairman of the Board, upon proper notice, shall designate some other date 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 and outstanding contractual obligations, and

determine if 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. If such assessment or refund is deemed to be necessary, the Board shall levy such assessment or make such refund in accordance with O.C.G.A. § 33- 38-15 of the Code. The board may abate or defer, in whole or in part, the collection of any assessment from a member insurer in accordance with O.C.G.A. § 33-38-15(d) of the Code. In order to avoid disproportionate clerical expense, the Board may establish an amount below which refunds shall not be made.

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

E. Special Meetings of the Board

Special meetings of the Board of Directors may be called by the Chairman and shall be called upon request of any two Board members and not less than five days' notice shall be given to each Board member of the time, place and purpose or purposes of any such special meeting. 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 special meeting, including those consenting in writing, shall be as valid a Board action as though authorized at an annual meeting of the Board. At such special meeting the Board may consider and decide any matter deemed by it to be necessary for the proper administration of the Association.

F. Other Meetings of the Board

The Board shall hold other meetings at such times and with such frequency as it

deems appropriate to conduct the business of the Association. At meetings called for the purpose of considering the impairment or insolvency of a member insurer 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 method, methods or facilities, as permitted under O.C.G.A. § 33-38-7 of the Code, shall be adopted or utilized to assure fulfillment of obligations of the impaired or insolvent member insurer for each of the categories of covered policies. If the Board decides to contract with a servicing facility, every effort shall be made to secure the participation of liquidators, rehabilitators, conservators or ancillary receivers, if any, in such contract to assist the Association in the performance of its legally imposed duties.
3. Consider and decide what immediate action, if any, should be taken to assure the proper retention of the records of the impaired or insolvent member insurer which are deemed necessary to the prompt and economical handling by the Association of its legally imposed duties.
4. 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 him by the Board. Such person 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 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 interest of the Association and the public.

5. Consider and decide to what extent and in what manner the Board shall exercise the powers authorized by O.C.G.A. § 33-38-7 of the Code to bring legal actions or provide for the defense thereof in order to avoid the payment of improper claims.
6. Consider and decide what assessment, if any, should be levied, whether any refund should be made to a member insurer, and consider and decide whether any assessment shall be deferred or abated. If such assessment, refund, 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 O.C.G.A. § 33-38-15 of the Code. Notices of assessments to member insurers shall be in sufficient detail as 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 after thirty days written notice to such member that payment is due. In order to avoid disproportionate clerical expense, the Board may establish an amount below which refunds will

not be made.

7. Take all steps permitted by law, and deemed necessary, to protect the Association's rights as pertains to the impaired or insolvent member insurer and its policyholders.
8. Issue to each member insurer paying an assessment under this Chapter, other than a Class A assessment, a certificate of contribution, in a form approved by the Commissioner, showing the amount paid by each such member insurer, the date of the assessment, the name of the insolvent or impaired insurer for which the assessment was made, the value of such certificate as determined by the Commissioner, if any, and such other information as the Board shall deem to be relevant.
9. 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.

G. Expenses of Board Members

Members of the Board of Directors may be reimbursed from the assets of the Association for reasonable expenses incurred by them in their capacity as members of the Board, upon approval of such expenses by the Board, but members of the Board shall not be compensated otherwise by the Association for their services.

ARTICLE III. OPERATIONS

A. The official address of the Association shall be the address of the Office of the

Commissioner unless otherwise designated by the Board of Directors.

B. The Board of Directors may employ 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, firms or corporations shall keep and maintain such records of their activities as may be required by the Board.

C. The Board of Directors may also delegate any or all powers and duties of the Association, except those described in O.C.G.A. § 33-38-7 (a)(14)(C) and O.C.G.A. § 33-38-15 of the Code, to a corporation, association, or other organization which performs or will perform functions similar to those of this Association or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the Association and shall be paid for its performance of any function of the Association. A delegation under this section shall take effect only with the approval of both the Board of Directors and the Commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this Chapter.

D. The Board may open such bank accounts as it deems necessary for the proper administration of Association business. Reasonable delegation and withdrawal authority to which accounts for Association business will be made consistent with prudent fiscal policy.

E. In order to effectuate the purposes set forth in O.C.G.A. § 33-38-16 of the Code concerning the prevention of 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 report shall be considered public documents. The Board of Directors may also review the Insurance Code 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.

F. The Purpose of this paragraph is to provide the framework for allocating Class B assessments attributable to the Association's obligations for any covered long-term care policies between the "Health Insurance Account" and the "Life Insurance and Annuity Account" defined below. The allocation method outlined below is intended to implement the requirements of O.C.G.A. § 33-38-15 (c)(1) of the Act. These provisions are intended to result in a net allocation of any Class B assessments for the Association's long-term care policy obligations in equal 50% shares to "Accident and Health Member Insurers" and "Life and Annuity Member Insurers" as those two categories of member insurers are defined below. In accordance with O.C.G.A. § 33-38-15 (c)(1) of the Act if a Class B assessment is authorized due to covered long-term care policies, a portion of the Association's Class B assessment authorized to meet its obligations for the covered long-term care policies (the "LTC Assessment") shall be allocated to the Life Insurance and Annuity Account, without dividing it between the subaccounts thereof, with the remaining portion of the LTC Assessment allocated to the Health Account. The following definitions shall apply only for the purposes of allocating any such Class B assessment for covered long-term care policies to the Life Insurance and Annuity Account and the Health Insurance Account in accordance with the below formula:

“Accident and Health Member Insurer” means any member insurer that does not qualify as a Life and Annuity Member Insurer.

“Health Insurance Account” shall mean the health insurance account established under O.C.G.A. § 33-38-5(c) of the Act.

“LAMIHA” shall mean the quotient of (a) the Life and Annuity Member Insurers’ aggregate assessable premium in the Health Account divided by (b) the total assessable premium in the Health Account;

“LAMILAA” shall mean the quotient of (a) the Life and Annuity Member Insurers’ aggregate assessable premium in the Life Insurance and Annuity Account divided by (b) the total assessable premium in the Life and Annuity Account.

“Life Insurance and Annuity Account” shall mean the aggregate life insurance and annuity account established under O.C.G.A. § 33-38-5(c) of the Act without dividing such account into subaccounts.

“Life and Annuity Member Insurers” shall mean each and every member insurer having (i) total assessable premium in the Life and Annuity Account greater than or equal to (ii) its total assessable premium in the Health Insurance Account, where assessable premium in the Health Account includes, but is not limited to, the member insurer’s assessable health maintenance organization premiums but shall exclude the member insurer’s assessable premiums for disability income and long-term care insurance. Note: The exclusion of a member insurer’s assessable premiums for disability income and long-term care insurance shall be applied only for the purpose of the definition of “Life

Insurance and Annuity Member Insurers," and such exclusion shall not apply for any other purposes.

The amount of the LTC Assessment allocated to the Life and Annuity Account shall be determined in accordance with the following formula:

Life and Annuity - (.50 -LAMIHA)

Account LTC = LTC Assessment (LAMILAA - LAMIHA)

Assessment Share

The amount of the LTC Assessment not allocated to the Life Insurance and Annuity Account as provided above shall be allocated to the Health Insurance Account. The amount of any LTC Assessment allocated to the Life Insurance and Annuity Account or to the Health Account shall be allocated among member insurers in accordance with O.C.G.A. § 33-38-15 (c)(2) of the Act, except that the total assessable premium in the entire Life and Annuity Account shall be used in the aggregate without

dividing it between the subaccounts.

ARTICLE IV. 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 Secretary-Treasurer of the Board of Directors with copies being furnished to each Board member and to the Commissioner.

B. The Board of Directors shall make an annual report as required by O.C.G.A. § 33-38-12 of the Code and submit it to the Commissioner not later than 10 days after the date of the Annual Meeting. Such report shall include a financial report and a report of Association activities

during the preceding calendar year on forms approved by the Commissioner.

C. In the event a member insurer shall be declared an "impaired insurer" or “insolvent insurer" as defined in O.C.G.A. § 33-38-4(13) and (14) of the Code, which necessitates the levy of an assessment by the Association or the procurement of funds in a manner authorized to the Association, the Board shall, once each calendar year, appoint certain of the member insurers as an audit committee. The audit committee shall consist of at least three members of the Board. Such 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.

ARTICLE V. MEMBERSHIP

Pursuant to O.C.G.A. § 33-38-4(15) of the Code, a “member insurer” means any insurer, health maintenance organization, or health care corporation which is licensed, or which holds a certificate of authority to transact in this state any kind of insurance, health care plan, or health maintenance organization business for which coverage is provided under Code Section 33-38-2 and includes any insurer, health care corporation, or health maintenance organization whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn.

Appeals.

Any member insurer aggrieved by an Act of the Association shall appeal to the Board of Directors 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 (30)

days, the member insurer may appeal to the Commissioner within thirty (30) days after the action or decision of the Board or the expiration of the thirty (30) day period which the Board failed to act on such complaint.

ARTICLE VI. INDEMNIFICATION

A. All persons, except the Commissioner and his representatives, shall be indemnified by the Association for all expenses incurred in the defense of any action, suit or proceeding brought against such person on account of any action taken by him in the performance of his powers and duties under the Georgia Life and Health Insurance Guaranty Association Act, unless such person 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.

In the event of settlement before final adjudication, such indemnity shall be provided only if the Association is advised by independent counsel that such person did not, in such counsel's opinion, commit such a breach of duty. The expense of such indemnification shall be assessed against member insurers in accordance with O.C.G.A. § 33-38-15 of the Code.

B. This Article is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity granted by O.C.G.A. § 33-38-14 of the Code.

ARTICLE VII. CONFORMITY TO STATUTE

O.C.G.A. § 33-38 of the Code as written, and as may be hereafter amended, is incorporated as a part of this Plan of Operation, and as such is attached hereto. In the event of

any conflict between this Plan and O.C.G.A. § 33-38 of the Code, O.C.G.A. § 33-38 of the Code shall prevail.