

**NEW JERSEY LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION  
ANTITRUST COMPLIANCE POLICY**

**I. STATEMENT OF COMPLIANCE**

The New Jersey Life and Health Insurance Guaranty Association (the “Guaranty Association”) is committed to adhering strictly to the letter and spirit of the state and federal antitrust laws.

**II. INTRODUCTION**

**A. The Guaranty Association**

The Guaranty Association is comprised of member life and health insurers who shall be and remain members of the Association as a condition of their authority to transact insurance in the state of New Jersey pursuant to N.J.S.A. 17B:32A-1, et seq. (the “Guaranty Association Act”). The purpose of the Guaranty Association Act is to provide a safety net for policyholders of insolvent insurers.

**B. The Antitrust Laws**

The antitrust laws are generally designed to protect free market competition and trade, and to prevent competitors from joining forces to manipulate or restrict such fair competition. To this end, the antitrust laws prohibit certain anti-competitive activities, including collusion or conspiracies in restraint of trade, monopolies, or attempt to monopolize, and certain other activities, which may unreasonably restrain trade, such as boycotts, coercion, refusal to yield, price fixing and illegal tying or market allocation arrangements.

**C. Application Of The Antitrust Laws To Insurers/Guaranty Association**

Congress has provided insurers and those engaged in the “business of insurance,” such as each member insurer of the Guaranty Association, a limited statutory exemption from liability

under federal antitrust laws through enactment of the McCarran-Ferguson Act of 1945. Pursuant to the McCarran-Ferguson Act exemption, federal antitrust laws are inapplicable to the business of insurance, to the extent regulated by state law, unless the conduct at issue involves a boycott, coercion or intimidation. In addition, there are arguments available to support limited exemption from state antitrust laws. However, the exact scope of the McCarran-Ferguson Act and any applicable state law exemption is subject to interpretation on a case-by-case basis, and the protections afforded are, therefore, uncertain. Moreover, the applicability and scope of state immunity statutes have not been judicially tested by New Jersey courts in the antitrust context.

**D. Purpose Of This Policy**

The Guaranty Association's Antitrust Policy (the "Policy") has been adopted to achieve certain goals of a non-remedial nature, including:

- (1) raising the awareness and understanding of antitrust laws for everyone involved in the Guaranty Association's activities;
- (2) establishing guidelines for Guaranty Association member insurers and contract providers to ensure continuing compliance with the antitrust laws; and
- (3) further minimizing the risk of any antitrust investigation or adverse claims.

**III. SCOPE AND APPLICATION OF THE POLICY**

This Policy applies to all directors, officers, employees, agents, representatives and consultants of the Guaranty Association and to every individual otherwise engaged in any activities on behalf of or sponsored by the Guaranty Association, including outside consultants, such as lawyers and accountants.

The Guaranty Association adopts this Policy to govern the conduct of all Guaranty Association meetings and functions.

#### **IV. GUARANTY ASSOCIATION ACTIVITIES**

Guaranty Association activities are directed towards facilitating the prompt and efficient resolution of life and health insurance company insolvencies by assisting member insurers pursuant to the Guaranty Association Act. The Guaranty Association performs its statutory functions through meetings, due diligence and the coordination of activities with other guaranty associations through the National Organization of Life and Health Guaranty Association (“NOLHGA”). All such activities will be conducted in strict compliance with this Policy and all applicable antitrust laws.

##### **A. Internal Activities**

##### **1. The Exchange of Competitive Information**

The Policy specifically prohibits the discussion and/or exchange of “competitive information” (as defined below) at all Guaranty Association meetings and functions, including during coffee breaks, meals and social gatherings. “Competitive information” is defined herein to include, but is not limited to, information concerning:

- Raising, lowering or stabilizing rates;
- Actual current or future rates, including actuarial projections, what is a “fair” profit level;
- Credit terms and other price-related or ancillary terms;
- Individual company results or profits, or current or future marketing or pricing strategies or business plans;
- Allocation of markets, territories or potential insureds;
- The concerted refusal to deal with a customer, group of customers, supplier, competitor or to provide an insurance product or service;

- Decisions to quote or not to quote any certain type or classes of risks or type or classes of insureds; and
- Any other matter on which insurers ordinarily compete with one another.

Discussions and/or exchange of any other information that could be considered “competitively sensitive” is also ill-advised and is discouraged.

## **2. Meeting Procedures**

All Guaranty Association Board meetings, whether in-person or telephonically, will be conducted in accordance with the following procedures:

- Prior to each meeting, a written agenda will be prepared and distributed;
- Absent extraordinary circumstances, meetings will be limited to the subjects shown on the agenda;
- Each meeting will be memorialized with written minutes which will summarize briefly all subjects discussed and conclusions, if any, reached during the meeting, which minutes will be distributed to all those who were present;
- All agenda and minutes will be reviewed by the Guaranty Association’s legal counsel prior to distribution;
- An antitrust monitor (either outside retained counsel or the Executive Director) will be present at each meeting where representatives of competing member insurers are present. The antitrust monitor will have oversight responsibility for insuring that discussions of impermissible topics do not occur;
- Each individual attending a Guaranty Association meeting or function has an independent responsibility to comply with all applicable state and federal antitrust laws and this Policy;

- Compliance by each individual includes promptly bringing to the attention of an antitrust monitor, or, if no antitrust monitor has been designated, any Guaranty Association officer or employee: (1) any antitrust concerns that may arise; or (2) any specific instances involving the discussion and/or exchange of competitive information.

**B. Involvement With NOLHGA**

**1. Due Diligence**

In order to facilitate the Guaranty Association in fulfilling its statutory purposes, it works with NOLGHA and NOLHGA task forces, staff and consultants, in cooperation with insurance regulators and court-approved receivers, to perform due diligence with respect to financially-troubled or insolvent companies, as well as prospective assuming carriers and other entities that may be interested in purchasing policy blocks. This due diligence includes a detailed portfolio analysis, financial, accounting and actuarial studies and an analysis of coverage and related legal issues affecting the various guaranty associations. Competitive information obtained as a result of due diligence is maintained by NOLGHA, each task force or staff member or consultant and any member Guaranty Association representative involved in this process in confidence, and may not be disclosed, discussed or used for any purpose other than the performance of legitimate business functions of the Guaranty Association.

**2. Policy Blocks**

The Guaranty Association, through NOLHGA, also assists in coordinating disposition of policy blocks of an impaired or insolvent company. In this regard, task forces or staff may prepare or assist in the preparation of marketing strategy and solicit bids on blocks of business, and Guaranty Association member insurer representatives and its Executive Director participate

on those task forces. It is the policy of this Guaranty Association, as well as of NOLHGA, to prohibit use of any bidding or contract award process, or any information obtained in connection therewith, in such a way as to restrict or impair fair competition, or establish monopolistic control by any entity in violation of applicable antitrust law. To the extent involved in a bid process, the Guaranty Association, its member insurers and its own Executive Director should seek to work closely with receivers to conduct joint activities in accordance with the principles set forth in this Policy.

**ANY QUESTIONS REGARDING THIS POLICY SHOULD  
BE DIRECTED EITHER TO THE GUARANTY  
ASSOCIATION'S EXECUTIVE DIRECTOR OR ITS  
OUTSIDE COUNSEL**