FILED
AUG 12 2020
Department of Insurance
State of Idaho

BEFORE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE

OF THE STATE OF IDAHO

In the Matter of:	Docket No. 18-3806-20
IDAHO INSURANCE GUARANTY ASSOCIATION	**ORDER APPROVING PLAN OF OPERATION**

WHEREAS, Idaho Code § 41-3609(1)(a) provides that the IDAHO INSURANCE GUARANTY ASSOCIATION ("IIGA"), created under Idaho Code § 41-3606, shall submit to the Director of the Idaho Department of Insurance ("Director") its plan of operation and amendments thereto, which shall become effective upon written approval of the Director; and

WHEREAS, the IIGA has submitted for the Director's approval its most recent plan of operation, which eight-page document titled "Idaho Insurance Guaranty Association Plan of Operation" is attached hereto and incorporated herein as Exhibit 1, and includes noted amendments to Articles 2.A.1 and 2.C; and

NOW THEREFORE, the Director having reviewed Exhibit 1 and finding it to be consistent with the provisions of chapter 36, title 41, Idaho Code, and concluding that it is in the best interests of the IIGA and its members to confirm approval of the IIGA plan of operation,

IT IS HEREBY ORDERED that the Idaho Insurance Guaranty Association Plan of Operation attached hereto and incorporated herein as Exhibit 1 is hereby approved pursuant to Idaho Code § 41-3609(1)(a).

DATED this 11 day of August, 2020.

STATE OF IDAHO
DEPARTMENT OF INSURANCE

Dean L. Cameron
Director

NOTIFICATION OF RIGHTS

This is a final order of the agency. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the motion for reconsideration within twenty-one (21) days of its receipt, or the motion will be considered denied by operation of law. See Idaho Code § 67-5246(4).

Any such motion for reconsideration shall be served on the Director of the Idaho Department of Insurance, addressed as follows:

Dean L. Cameron, Director
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved by this final order or orders previously issued in this case may file a petition for judicial review in the district court of the county in which:

i. A hearing was held;

ii. The final agency action was taken;

iii. The party seeking review of the order resides, or operates its principal place of business in Idaho; or

iv. The real property or personal property that was the subject of the agency action is located.

A petition for judicial review must be filed within twenty-eight (28) days of: (a) the service date of this final order, (b) the service of an order denying motion for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a motion for reconsideration, whichever is later. See Idaho Code § 67-5273. The filing of a petition for judicial review does not itself stay the effectiveness or enforcement of the order under appeal. Idaho Code § 67-5274

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of August, 2020, I caused a true and correct copy of the foregoing ORDER APPROVING PLAN OF OPERATION to be served upon the following by the designated means:

Morgan W. Richards P.O. Box 2076 Boise, ID 83701 mwrlaw@cableone.net	☐ first class mail ☐ certified mail ☐ hand delivery ☐ via facsimile ☒ via email
Idaho Insurance Guaranty Association 1873 S. Bellaire Street #920 Denver, CO 80222-4386	☒ first class mail ☐ certified mail ☐ hand delivery ☐ via facsimile ☐ via email
Chad Anderson, President Western Guaranty Fund Services canderson@wgfs.org	☐ first class mail ☐ certified mail ☐ hand delivery ☐ via facsimile ☒ via email

Pamela Murray

Pamela Murray

IDAHO INSURANCE GUARANTY ASSOCIATION
PLAN OF OPERATION

ARTICLE 1. PLAN OF OPERATION

This Plan of Operation, hereinafter, referred to as the Plan, shall become effective upon written approval of the Director of the Department of Insurance (Director of Insurance).

ARTICLE 2. BOARD OF DIRECTORS

A. There shall be a Board of Directors in accordance with the Idaho Insurance Guaranty Association Act, Title 41, Chapter 36, Idaho Code.

1. The Board of Directors shall consist of not less than five or more than nine persons representing member insurers who shall be elected for staggered terms of three years each <u>or for such additional time as it takes to elect their successors</u>. The Board of Directors shall be elected by the member insurers on the basis of one vote per member insurer provided that if more than one member of a group of wholly owned or controlled companies is a member of this Association only one vote will be allowed for the entire group.

2. Upon election of the Board of Directors, the Association shall notify the Director of Insurance and request his approval of the Board. In the event the Director of Insurance shall determine that all member insurers are not fairly represented, he shall disapprove the membership of the Board and order another election. In the interim between such disapproval and the subsequent election, the Director of Insurance may appoint a temporary Board of Directors which fairly represents the member insurers.

3. The Board of Directors shall elect a Chairman and such other officers as may seem desirable from among its members, each to serve for a period of one year.

4. Any member of the Board may designate an alternate representative from the same company to serve from time to time in the place or stead of the actual elected representative.

5. In the event that any director shall, because of illness, non-attendance at meetings or any other reason, be deemed unable to satisfactorily perform his designated functions as a director by missing three consecutive Board meetings, the Board of Directors may declare the office vacant. Vacancies shall be filled by a majority vote of the Board, subject to approval of the Director of Insurance. A successor shall hold office for the unexpired portion of the term of his predecessor. Such action may be taken at any regular meeting or any special meeting of the Board of Directors for which notice of the proposed removal shall have been given.

B. A majority of the Board shall constitute a quorum for the transaction of business and the acts of a 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 a majority of the Board Members is required to:

1. Approve a contract with a servicing facility,
2. Levy an assessment or provide a refund,
3. Borrow money.

C. The Board shall hold an annual meeting ~~at the office of the Director of Insurance in the month of June~~ during the annual meeting of the Western Guaranty Fund Services, unless the Board, upon proper notice, shall designate some other date or place. At each annual meeting the Board shall;

1. Review the Plan and submit proposed amendments, if any, to the membership for approval or rejection. Affirmative response from member insurers transacting at least sixty (60) percent of the total net direct written premium for kinds of insurance covered by the Idaho Insurance Guaranty Association Act, shall be necessary for approval of amendments. Such amendments shall be effective upon written approval of the Director of Insurance.

2. Review each outstanding contract with servicing facilities, and, to the extent possible, make any necessary corrections, improvements or additions.

3. Review operating expenses and covered claims costs and determine if an assessment or a refund of prior assessment, and the amount of either is necessary for the proper administration of the Association. If such assessment or refund is determined to be necessary, the Board shall levy such assessment or make such refund in accordance with Section 41-3608 (l) (c) Idaho code. The Board may waive collection from or refuse refund to a member insurer when the amount to be assessed or refunded is less than $25.00.

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

D. The Board shall, if necessary, hold a meeting promptly after receiving notice from the Director of Insurance of the insolvency of any member insurer. Meetings held in response to notification from the Director of Insurance may be considered of an "emergency nature"; and, if so considered, may be convened within 48 hours on oral or written notice provided each member of the Board has reasonable opportunity to attend. At such meeting or a subsequent meeting the Board shall;

1. Establish procedures by which claims may be filed with the association. Notice of claims filed with the receiver or liquidator of the insolvent insurer shall be deemed notice to the association. Forms approved by the receiver or liquidator of the insolvent insurer or a

letter providing the claim information may also be filed directly with the association or its designated claims processing agent.

2. The Board or designated servicing facility, shall work closely with the receiver, liquidator or statutory successor and seek the liquidator's, receiver's, or statutory successor's approval of having the Board, or a designated servicing facility, take direct physical control of that portion of the insolvent insurer's records deemed by the Board to be necessary for the discharge of its duties imposed by law.

3. 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, keeping in mind the policy of the Association to keep expenses of the Association at a minimum. Such persons may include a managing secretary who should be knowledgeable about insurance matters and such other persons deemed by the Board to be necessary to the discharge of its duties imposed by law. The Board may agree to compensate such persons as to best serve the interest of the Association and public. (41-3608 [2] [a]).

4. Consider and decide to what extent and in what manner the Board shall review and contest settlements and releases or judgments, orders, decisions, verdicts and findings to which the insolvent insurer or its insureds were parties in accordance with Section 41-3608 (l) (e) Idaho Code.

5. Consider and decide what assessment, if any, should be levied or whether any refund should be made to member insurers. If such assessment or refund is determined to be necessary, the Board shall levy such assessment or make such refund in accordance with Section 41-3608 (1)(d) Idaho Code. The Board may waive collection from or refuse refund to a member insurer when the amount to be assessed or refunded is less than $25.00.

6. Take all steps permitted by law, and deemed necessary to protect the Association's rights against the estate of the insolvent insurer.

E. The Board may determine a schedule of such other regular meetings as it may deem appropriate. (41-3609 [3] [f]) Special meetings of the Board may be called by the Chairman or at the request of any two Board Members with not less than five days written notice being given to each Board Member of the time and place and purpose or purposes of any special meeting. Any Board Member not present may consent in writing to any specific action taken by the Board. 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 a regular meeting of the matter deemed by it to be necessary for the proper administration of the Association

F. Members of the Board shall serve without compensation, but they may be reimbursed for necessary travel expenses incurred in attendance at Board meetings. Such expenses shall be submitted to the Board for approval and subsequent payment. (41-3607 [3])

ARTICLE 3. OPERATIONS

A. The official address of the Association shall be the address of the Chairman of the Board unless otherwise designated by the Board.

B. The Board may employ such persons, firms or corporations to perform such administrative functions as are necessary for the Board's performance of the duties imposed on the Association. Such persons, firms or corporation shall keep such records of its activities as may be required by the Board.

C. The Board may open one or more bank accounts for use in Association business. Reasonable delegation of deposit and withdrawal authority to such accounts for Association business may be made consistent with prudent fiscal policy. The Board may borrow money from any person or organization, including a member insurer, or from an appointed servicing facility as the Board in its judgment deems advantageous for the Association and the public.

D. The board shall determine how funds received from liquidators will be utilized to help administer the Association. Funds so received will be allocated to provide the proper balance for payment of claims and affiliated expenses, the costs of administration and, when appropriate, refunds.

E. The Board, by majority vote, may from time to time delegate to its claim handling agent and/or one or more Board Members, such claim settlement authority, as the Board in its discretion, deems prudent.

F. The Board may levy an assessment to cover the reasonable costs of administering the Association; however, newly admitted companies shall pay an initial administrative assessment of $100.00 The Board may waive the collection or refund from a member insurer when the amount produces an assessment or refund of less than $25.00.

G. The Board may contract with one or more persons, firms or corporations to serve as servicing facilities, should the Board receive notice from the Director of Insurance of an insolvency of a member insurer. Such contract terms shall comply with the Idaho Insurance Guaranty Association Act and be subject to the approval of the Director of Insurance. Such contract terms may include:

1. Terms of payment to the servicing facility.

2. Extent of authority delegated to the servicing facility.

3. Procedures for giving the receiver timely notice, sufficient to protect the Association's right of subrogation against the receiver, liquidator, or statutory successor, of each and

every covered claim not otherwise reported to the receiver, liquidator or statutory successor.

4. Procedures contemplated for the handling of covered claims as defined in the Idaho Insurance Guaranty Association Act. These procedures may include the right to request from or offer to any person arbitration of his covered claims.

5. Procedures for the printing or preparation of forms necessary for the proper handling of covered claims.

6. Requirement of bond for faithful performance.

7. Any other provisions deemed necessary and desirable by the Board of Directors.

H. In order to effectuate the purposes set forth in Section 41-3613 Idaho Code, Prevention of Insolvencies, the Board may develop procedures for discovering and reporting any member that may be insolvent or in financial condition hazardous to the policyholders or the public. No such reports shall be considered public documents.

The Board of Directors, at its annual meeting, or at any other meeting called for this purpose, shall review the insurance code and regulations with a view towards making recommendations to the Director of Insurance for the detection and prevention of insurer insolvency.

The Association shall develop forms for reporting the history and cause of each insolvency processed and shall maintain a continuing file of such reports.

ARTICLE 4. 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 Chairman with copies being furnished to each Board Member and the Director of Insurance.

B. The Board shall make an annual report to the Director of Insurance and to the member insurers. Such report shall include a review of the Association's activities and an accounting of its income and disbursements for the past year in accordance with Section 41-3614 Idaho Code.

C. After the appointment of a receiver, liquidator or statutory successor and the levy of an assessment by the Association, the Board shall, once every year, select and employ an independent outside auditor. Such auditor shall audit all books and records of the Association and shall report its findings to the Board and to the Director of Insurance.

ARTICLE 5. MEMBERSHIP

A. Insurers which were admitted, as of July 1, 1970, to transact the kinds of insurance covered by the Idaho Insurance Guaranty Association Act in the State of Idaho shall be members of this Association. Each insurer admitted after July 1, 1970, to transact the kinds of insurance covered by the Idaho Insurance Guaranty Association Act shall automatically become effective on the date of its admission, a member in this Association. An insurer which ceases to be admitted after July 1, 1970, 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 Idaho Insurance Guaranty Association Act; provided such insurer shall remain liable for any assessments based on insolvencies occurring prior to the termination of its license.

B. Any member insurer aggrieved by an action of the Association shall appeal to the Board before appealing to the Director of Insurance. If such member insurer is aggrieved by the final action of decision of the Board or if the Board does not act on such complaint within 30 days, the member insurer may appeal to the Director of Insurance within 30 days after the action or decision of the Board or the expiration of the 30 days. Any decision by the Director of Insurance shall be subject to judicial review in accordance with chapter 2 of the Insurance Code.

ARTICLE 6. INDEMNIFICATION

A. For purposes of this Article, the term "Association Representative" shall mean any director, committee member, officer, or employee of the Association (other than the Director of Insurance and his representatives) acting or failing to act in the performance of his or her duties under the Idaho Insurance Guaranty Association Act.

B. The Association shall indemnify any Association Representative who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he or she is or was an Association Representative, against expenses (including attorneys fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if his or her conduct meets the following standard: that he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Determination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person's conduct did not meet the applicable standard set out immediately above.

C. The Association shall indemnify any Association Representative who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he or she is or was an Association Representative against expenses (including attorneys fees) and amounts paid in settlement actually and reasonably incurred by him or

her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Association, and except that no such indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

D. Any indemnification under paragraphs B or C of this Article (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification is proper in the circumstances because the person to be indemnified has met the applicable standard of conduct set forth in paragraphs B and C above. Such determination shall be made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding or (ii) if such a quorum is not obtainable, (or, even if obtainable, if a quorum of disinterested directors so directs) by independent legal counsel in a written opinion.

E. Expenses (including attorneys fees) incurred by an Association Representative in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Association in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of an Association Representative to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Association as provided in this Article.

F. The indemnification and advancement of expenses provided by or granted pursuant to the other paragraphs of this Article shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any statute, agreement, vote of Members or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

G. The Association shall have power to purchase and maintain insurance on behalf of any person who is or was an Association Representative against any liability asserted against him or her and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability under the provisions of the Article.

H. The indemnification and advancement of expenses provided by, or granted pursuant to this Article shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be an Association Representative and shall inure to the benefits of the heirs, executors, and administrators of such a person. Any repeal or modification of this Article shall not adversely affect any right to indemnification or advancement of expenses of any present or former Association Representative existing at the time of such repeal or modification.

I. If this Article or any portion hereof is invalidated by any court of competent jurisdiction, then the Association shall nevertheless provide such indemnification and advancement of expenses as would otherwise be permitted under any portion of this Article that shall not have been invalidated.

J. This Article is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity granted by Section 41-3617 Idaho Code.

ARTICLE 7. CONFORMITY TO STATUTE

The Idaho Insurance Guaranty Association Act as written, and as may be amended, is incorporated as part of this plan and as such is attached hereto.