

**FLORIDA LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION
PLAN OF OPERATION**

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Article 1. **Plan of Operation**

This Plan of Operation, hereinafter referred to as the Plan, shall become effective upon written approval of the Department of Financial Services (“Department”) as provided in Section 631.721(1)(a), Florida Statutes, of the Florida Life and Health Insurance Guaranty Association Act, as set forth in Part III, Chapter 631, Florida Statutes.

Article 2. **Board of Directors**

- A. There shall be a Board of Directors in accordance with the provisions of Section 631.716, Florida Statutes.
1. The Board of Directors shall consist of eleven (11) member insurers, one of which must be a member of the Board of Directors of the Health Maintenance Association Consumer Assistance Plan (“HMOCAP”) established under Part IV, Chapter 631, Florida Statutes. Board members shall be elected for terms of three (3) years so that the terms of all Directors shall not expire in the same year. To provide for staggered terms, some Directors elected initially for terms of less than three (3) years.
 2. The Board of Directors, other than the HMOCAP Director, shall be elected by the member insurers as provided in Section 631.716, Florida Statutes, and shall fairly represent member insurers. The ten insurers other than the HMOCAP Director, shall be elected in the following manner:
 - a. At least ninety (90) days prior to the annual meeting, the Board shall request nominees for member companies to serve on the Board from all member insurers. In the event the Executive Director determines that based upon nominations received, all member insurers will not be fairly represented, the Executive Director shall request that the nominating committee provide the required number of nominations from the industry sector without sufficient nominees. For purposes of this Article “fairly represented”

shall require that the Board shall be apportioned based upon the ratio of Life and Annuity assessable premium to the Accident and Health assessable insurance premium. In addition, “fairly represented” shall mean that no fewer than three (3) elected board members must be Life and Annuity Member Insurers and no fewer than three (3) elected members must be Accident and Health Member Insurers. The determination of whether a nominee or Board Member is primarily a Life and Annuity or an Accident and Health Member Insurer shall be based upon definitions set forth in Article 9. Section B.6.a. and f.

- b. The Board shall make the names of said nominees known to member insurers at least sixty (60) days prior to the annual meeting of the Board, and the election of new Board members shall be by mail or electronic ballot of all member insurers in accordance with this Article. To assure that all member insurers are fairly represented, the Executive Director may require all member insurers voting in the election to vote for one or more candidates from a potentially under represented industry sector.
- c. The ten (10) insurers, elected on a staggered basis, with the largest number of votes cast by member insurers on a cumulative weighted voting basis shall be elected by the members to the Board. The initial Board of Directors shall be elected by the member insurers at the organizational meeting, with each insurer being entitled to one vote in person or by proxy. Prior to subsequent annual meetings of the Board, Directors shall be elected by member insurers by votes cast on a cumulative weighted basis using the net assessable Florida direct premiums received as provided by the Department for the last available year for the kinds of insurance specified in Section 631.713(1), Florida Statutes. Each member insurer shall have at least one vote in electing a member to the Board of Directors. In the event there are more nominations than positions to be filled, the member insurers receiving the greatest number of votes, on a non-cumulative basis, shall be elected.
- d. At least one (1) insurer elected pursuant to sub-subparagraphs A.2.c. must be a Florida domestic insurer.
- e. Each elected member insurer shall designate its representative, and any alternate, from the same member insurer.
- f. The previously elected board members shall serve until their successors have been duly elected and qualified to serve.
- g. Vacancies occurring on the Board of Directors between annual meetings of the Board shall be filled by a majority vote of the remaining members of the Board with the approval of the Department. A vacancy in the HMOCAP Director position shall be filled by HMOCAP subject to Department approval and confirmed by the FLAHIGA Board. Vacancies occurring in elective offices between annual meetings shall be filled by majority vote of the Board. Such appointees shall serve for the unexpired term. In the event the Department shall determine that all member insurers are not fairly represented, it shall disapprove the membership of the Board and order another election. In the interim between such disapproval and the subsequent election, the

Department may appoint a temporary Board of Directors which fairly represents the member insurers.

3. Upon election of the Board of Directors, the Association shall notify the Department and request its written approval of the Board as elected. A replacement of a member insurer representative shall be submitted for approval and appointment by the Department in the same manner as original appointees.
 4. The members elected to the Board of Directors shall elect a Chair, Vice Chair, 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. Officers shall serve a term of three (3) years. The office of Chair shall alternate every three (3) years between a member of the Board that represents the Life and Annuity sector, and a member of the Board representing the Accident and Health sector.
- B. At any meeting of the Board of Directors, each member of the Board shall have one vote. Meeting participation may be through telephonic or physical presence, or by written consent. A majority of the Board (however participating) shall constitute a quorum for the transaction of business and the acts of a majority of the Board members participating at a meeting at which a quorum is deemed present shall be the acts of the Board. Notwithstanding the foregoing, the affirmative vote of a majority of the full Board (however participating) is required to:
1. Approve a contract with a servicing facility;
 2. Levy an assessment or provide for a refund;
 3. Borrow money, lend money or establish or change a line of credit;
 4. Approve reinsurance contracts, assumption agreements or guaranty plans;
 5. Adopt amendments to this Plan; and
 6. Recommend statutory changes to Chapter 631, Part III.

By such vote, the Directors may also authorize the Chairman, the Executive Committee or other persons to revise as necessary, as well as to execute, all documentation required to give effect to the Board's action.

- C. An annual meeting of the Board shall be held at such time and place the Board, upon proper notice, shall designate. At each annual meeting the Board shall:
1. Review the Plan and submit proposed amendments, if any, to the Department for approval.
 2. Review each outstanding contract or agreement, if any, and recommend 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 Section 631.718, Florida Statutes and as set forth in Section E. 6. of this Plan. The Board may waive the collection of an assessment from a member insurer in accordance with Section 631.718(4), Florida Statutes.

4. Review, consider and act on any other matters deemed by the Board to be necessary and proper for the administration of the Association.
- D. 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 matters arising from 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 Section 631.717, Florida Statutes, 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 or engaged by the Association to implement and carry out broad directives of the Board made pursuant to its statutorily imposed duties. 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 Section 631.717(13)(f), Florida Statutes, to bring legal actions or provide for the defense thereof in order to avoid payment of improper claims. FLAHIGA shall register with the Department as agent for receipt of service of process.

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. In addition to the foregoing powers, the Board shall have and exercise such other powers as may be reasonably necessary to implement its powers and responsibilities under the Act.
 7. Issue to each member insurer a certificate of contribution for each Class (B) assessment paid, showing 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 of such certificate as determined by the Department, if any, 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.
- E. Special meeting 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 seven (7) 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, shall be as valid a Board action as though authorized at an annual or a regular 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. 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 upon approval of such expenses by the Treasurer or Chairman, but members of the Board shall not otherwise be compensated by the Association for their services. In accord with FS 631.716(3), the following expenses are generally recognized as reimbursable to members of the Board of Directors: reasonable travel expenses, meals and lodging directly connected with the attendance at meetings, conferences and seminars in furtherance of the Association's purposes; fees levied by any sponsoring organization for attendance at the organization's events which are directly related to the discharge of duties and obligations of FLAHIGA as a Director; books, tapes and electronic materials directly relating to the discharge of duties and obligations as a director of FLAHIGA, such items being recognized as property of FLAHIGA. If any request for reimbursement is questioned by the persons authorized to approve and to pay the requested reimbursement, the matter shall be referred to the Audit Committee for review.
- G. Upon receipt of a domestic Rehabilitation or a domestic or foreign Liquidation Order regarding a member insured, the Chairman of the Board of Directors is empowered to call a meeting of the Executive Committee, with notice to all members of the Board of Directors. The Executive Committee shall be empowered at its discretion to grant funding requests relating to records stabilization and hardship claims, provided however, any funds authorized by the Executive Committee shall be from existing account balances.

Article 3. Operations

- A. The official address of the Association shall be in Tallahassee, Florida, unless otherwise designated by the Board of Directors.
- B. The Board of Directors may employ or engage 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, including attorneys at law, actuaries, accountants, claims personnel and such other specialists or persons whose advise or assistance is deemed by the Board to be necessary to the discharge of its duties.
- C. Such persons referenced in "B" above may include an Executive Director who would render services as may be appropriate for the purpose of the Association as may be announced by the Chair and the Board from time to time. Such a 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 directives of the Chair and the Board, while exercising independent judgment that is informed by an understanding of the Board's view of its obligation to protect Florida policyholders under FS Chapter 631 Part III. A more specific listing of the qualifications, duties and obligations of the Executive Director shall be listed in the Association's Procedures Manual.
- D. The Executive Director is expected to represent the Association in all aspects of NOLHGA and multi-state collaboration, including insolvency and non-insolvency committees, working groups and task forces of significance in the protection of Florida policyholders. The Executive Director shall confer no less than monthly with the Chair regarding ongoing NOLHGA matters and positions taken, or intended to be taken, by the Executive Director in the course of his or her NOLHGA participation. While the Executive Director may play an active role in formulating positions of NOLHGA committees, working groups and task forces, he or she shall have no authority to bind the Association in any matter without the explicit authorization by majority vote of the Board of the Association. The Board may use the mailing address of such person, or such firm or corporation as the official address of the Association. Such person or such persons, firms or corporations shall keep and maintain such records of the activities as may be required by the Board.
- E. The Board may open such bank accounts as necessary for the proper administration of association business. The Treasurer shall recommend for the Board's consideration and approval check signature limits, wire authority limits, authorized personnel and procedures regarding all financial accounts. Reasonable delegation of authority regarding such accounts for Association business will be made consistent with prudent fiscal policy. The Treasurer shall also recommend at each Annual Meeting, and from time to time as necessary, an investment policy to be approved by the Board.
- F. In order to effectuate the purposes set forth in Section 631.723, Florida Statutes, 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 for such insurer or to the public interest. No such reports shall be considered public documents. The Board of Directors may review the Insurance Code and appropriate Regulations with a view toward making recommendations to

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

- G. The following committees shall be standing committees annually appointed or reappointed by the Chair: Nominating Committee (principal task is to nominate officers and directors); Executive Committee (principal task is to provide administration supervision of FLAHIGA between Board meetings and to otherwise undertake such duties and responsibilities as are agreed to by a majority of the full Board); Audit Committee (principal task is to review annual audit process and to review and comment upon such financial matters as may be referred to by the Chair, the Treasurer or the Executive Director); Legislative Committee (principal task is to consider proposed amendments and interpretations of the FLAHIGA Act, and to assist with drafting of same and to otherwise render assistance with legislative issues); Investment Committee (principal task is to formulate a sound investment strategy for FLAHIGA while recognizing the special purpose of the Association the Committee assists in the selection of providers of investment services and the monitoring of their performance consistent with the approved investment strategy). All Committees shall report to the Directors at least annually as may be requested by the Chair. In addition to appointing the committees, the FLAHIGA Chair shall appoint their respective chairs.
- H. The Association operates in close collaboration with other state life, health and annuity associations through affiliation with the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA). When knowledge is obtained that a member insurer licensed in Florida is, or will likely be, the subject of disciplinary action including rehabilitation or liquidation by the domicile state, the collaborative protocols set out in the "MPC Insolvency Task Force Guidelines" and the "Rules and Procedures of the Member's Participation Council" describe and/or define the terms and/or circumstances under which collaborative action is taken. These terms and/or circumstances include the selection of consultants, the budgeting process, the formation of working groups and task forces, the formation of committees and other matters. The Association will be responsible for a pro rata share of the related expenditures, provided that a majority of the full Board approves FLAHIGA participation under F.S. 631.717(6) or F.S. 631.717 (1), (2) or (3).
- I. Arrangements shall be made with NOLHGA to ensure the Association and its Board members are given in a timely fashion the identity of all consultants, their billing basis, all task force budgets and amendments thereto, and the membership of the working groups, task forces and committees. The "MPC Insolvency Task Force Guidelines" and the "Rules and Procedures of the Members' Participation Council" shall be available to the Board and shall be a part of the FLAHIGA Procedures Manual. As a participant in NOLHGA, the Association will also be responsible for its pro rata share of the annual dues levied by NOLHGA. The NOLHGA dues and all assessments shall be made available to the Association's Board members prior to payment.
- J. Regarding any delinquency, rehabilitation or liquidation, NOLHGA shall have no power to bind the Association without the explicit consent by a majority vote of the full Board regarding any contract with a servicing facility, any reinsurance contract, any assumption agreements, any guaranty plans or any agreements with a receiver requiring any action, relinquishing the right to take any action, or regarding any claims, rights, obligations and/or entitlements of the Association arising from its duties and obligations under F.S. Chapter 631 Part III.

- K. FLAHIGA shall obtain the approval of the Department if it enters into an arrangement with an impaired insurer under Section 631.717(1)-(3), Florida Statutes.
- L. FLAHIGA may assist and advise the Department, upon its request, concerning rehabilitation, payment of claims, continuation of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer. FLAHIGA is under the supervision of the Department, shall be subject to the applicable provisions of the insurance laws of this state, and in the event FLAHIGA fails to act within a reasonable time period to fulfill its duties under Section 631.717(2), (3), (13)(g), (15)(c) and (g), the Department shall have the power and duties of FLAHIGA under Part III of Chapter 631, Florida Statutes, with respect to insolvent insurers.

Article 4. Records and Reports

- A. The Board of Directors shall give reasonable notice of all meetings to the public, in compliance with Section 286.011, Florida Statutes. Portions of such meetings and any records, which involve carrying out duties set forth in Section 631.717, Florida Statutes are confidential and exempt from the provisions of Section 119.07(1), Florida Statutes, until the termination of delinquency proceedings. All other records of FLAHIGA shall be subject to the applicable public records requirements of Chapter 119, Florida Statutes.
- B. All individually identifiable health or financial information received or transmitted in electronic form in the course of FLAHIGA's activities shall be exempt from Chapter 119, Florida Statutes in accordance with Section 631.195, Florida Statutes, and be encrypted or otherwise secured against public exposure. All individually identifiable health or financial information maintained at the offices of FLAHIGA or its places of storage, shall be securely maintained so as to protect individual privacy interests. In the event of participation through NOLHGA in a multi-state life, health and/or annuity insolvency, FLAHIGA shall operate in accord with the NOLHGA Members Participation Council privacy procedures, including amendments thereto, which shall meet the provisions of Section 631.195, Florida Statutes.-
- C. Minutes of the proceeding of each Board meeting shall be made. The original of these minutes, after approval by the Board, shall be signed by the Chair, the Committee Chair, or the Secretary of the Board of Directors with copies being furnished to each Board member and to the Division of Rehabilitation and Liquidation, Department of Financial Services. The approved original minutes shall be kept on file in the Association's office. Copies of such minutes shall be provided to a member insurer or members of the public upon request, but information contained therein specifically regarding any member insurer in rehabilitation, impairment, liquidation or administrative supervision, or similar status (regardless of the state of domicile) may be withheld until termination of such status.
- D. The Board of Directors shall make any annual report as required by Section 631.725, Florida Statutes, not later than May 1 of each year to the Department. Such report shall include a financial report for the preceding calendar year in a form approved by the Department and a review of the activities of the Association during the preceding calendar year.
- E. In the event a member insurer shall be declared an "impaired insurer" or "insolvent insurer" as defined in Section 631.714, Florida Statutes, which necessitates the levy of an assessment by

the Association or the procurement of funds in a manner authorized to the Association, the Board Chairman shall, once each calendar year, appoint an audit committee. The audit committee shall consist of three members of the Board of Directors. Such committee shall provide recommendations to the Board of Directors regarding:

1. The oversight of the organizations financial statements and internal controls;
 2. The independent auditors qualifications and independence; and
 3. The performance of FLAHIGA's internal audit controls and the independent auditor.
- F. Records, reports and all other documents are to be retained for the period of their immediate use, and in conformance with Chapter 119, Florida Statutes, unless longer retention is required for historical reference, contractual or legal requirements, or for other purposes as identified in the Association's Document Retention and Destruction Policy. Materials no longer required, or having satisfied their recommended period of retention, shall be disposed of in accordance with Chapter 119, Florida Statutes. The Document Retention and Destruction Policy shall be attached to the FLAHIGA Procedures Manual.
- G. The Association's work with NOLHGA and with life and health guaranty associations in other states generates multi-party insolvency-related documents, including those executed by representatives of FLAHIGA. The original executed documents are normally maintained by NOHLGA on behalf of the guaranty association system, with the participant associations affected by an insolvency receiving copies. In such cases, copies of multi-party insolvency related materials shall be maintained by the Associations as though they were original documents.
- H. The Association shall maintain, and update from time to time, a Procedures Manual at its offices which shall generally catalogue the various operations of the Association and serve as a resource for the guidance of persons performing services for or on behalf of the Association. The Procedures Manual is deemed a resource to be reasonably interpreted under the prevailing circumstances, and not a mandate for absolute compliance.

Article 5. Membership and Appeals

- A. Each insurer which was admitted as of October 1, 1979, to transact the kinds of insurance covered by the Florida Life and Health Insurance Guaranty Association Act in the State of Florida shall be a member insurer of this 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 the Association. A member insurer which ceases to be admitted after said date shall automatically cease to be a member effective on the day following the termination of expiration of its license to transact the kinds of insurance covered by said Act; provided, however, such insurer shall remain liable for any assessment or assessments based on an insolvency or insolvencies occurring prior to the cessation of its status as a member insurer in the Association.
- B. Any member insurer aggrieved by an act of the Association shall appeal to the Board of Directors before appealing to the Office of Insurance Regulation. 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 30 days, the member insurer may appeal to the Office of Insurance Regulation within 30 days after the action or decision of the Board or the expiration of the 30 day period with which the Board failed to act on such complaint. Any member insurer which makes an appeal to the Office of Insurance Regulation pursuant to this Article must provide the Association with notice of the appeal by sending a copy of the appeal to the Association by certified mail, courier service requiring a signed receipt, or by hand no later than the day following the day on which the appeal was sent to the Office of Insurance Regulation. Failure to notify the Association within the time and in the manner set forth in this Plan shall bar any claim that a member insurer might otherwise have respect to any act taken by the Association or its Board of Directors, unless otherwise agreed to in writing by the Association.

- C. If a member insurer's appeal pertains to a protest of all or part of an assessment, the member insurer shall pay when due the full amount of the assessment as set forth in the notice of assessment provided by the Association. The payment shall be available to meet Association obligations during the pendency of the protest or of any subsequent appeal to the judicial system. Payment by a protesting member insurer shall be accompanied by a statement in writing that the payment is made under protest and setting forth a statement of the grounds for the protest. Health Maintenance Organizations under the jurisdiction of the HMOCAP under Part IV, Chapter 631, Florida Statutes shall direct any assessment protests to HMOCAP after first paying the assessment to the HMOCAP, unless in the opinion of the Board of HMOCAP, payment of the assessment would endanger the ability of the HMO to fulfill its contractual obligations.

Article 6. Indemnification

- A. All persons, except the Department and its representatives, described in Section 631.727, Florida Statutes, shall be indemnified by the Association for all expenses incurred in the defense of any action taken by him in the performance of his powers and duties under the Florida 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 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 Section 631.718, Florida Statutes.
- B. This Article is intended to operate as a supplement and additional safeguard to, and not in place of, the immunity granted to member insurers or their agents or employees, FLAHIGA or its agents or employees, members of the Board of Directors, the Chief Financial Officer, or the Department or Office of Insurance Regulation or their representatives by Section 631.727, Florida Statutes.

Article 7. Conformity to Statute

Chapter 631, Part III, Florida Statutes, as written, and as may be hereafter amended, is incorporated as a part of this Plan.

Article 8. Code of Ethics/ Conflicts of Interest

A. No member of the Board of Directors shall participate in any matter which would inure to its special private gain beyond any benefits to be normally anticipated because of being a member insurer without first disclosing interest in the matter. The bar to participation shall include participating in Board discussions and voting on the subject. Public disclosure may be written or may be announced verbally with a request that the interest be recorded in the official minutes. Such disclosure shall be made at the earliest opportunity. Board members, their representatives, employees and all persons engaged in the performance of work or services on behalf of the Association shall abide by the following principles:

1. No favor, gift or other consideration which could reasonably be perceived as tending to influence any decision made or to be made on behalf of the Association, or in discharge of its statutory responsibilities, can be accepted. No non-public information acquired as a result of the performance of Association duties can be used to derive any personal monetary benefit, through securities trading or purchasing or otherwise, directly or indirectly;
2. Non-public and confidential information will be communicated or disseminated only to Board members, employees or persons engaged to assist the Association or other like guaranty associations and those employed or engaged by them relating to statutory duties, to governmental departments and personnel, or to other persons or entities as may be directed by the Association, all on a "need to know" basis and under circumstances where the recipient of such information has committed to keep such information confidential and not use such information outside of the scope of his/her authority;
3. Any interest in any matter which might reasonably represent a conflict of interest or the appearance of a conflict of interest within the context of the interests of the Association, its obligations to policyholders and the full and fair execution of the Association's duties and responsibilities shall be avoided;
4. No unlawful, improper or unethical conduct shall be participated in on behalf of the Association or in the course of performing work or services for the Association;
5. No member of the Board of Directors shall participate in any matter which would inure to its special private gain beyond any benefits to be normally anticipated because of being a member insurer without first disclosing interest in the matter, which disclosure shall be recorded in the official records of the Association; and
6. No member of the Board of Directors shall vote on, or seek to influence the voting on, that member's involvement in any assumption reinsurance, third party administration arrangement, or other financial arrangement to which that member, or any known affiliate, is a party participant.
7. Board members, their representatives, employees and persons engaged by contract by the Association with decision making authority shall be required to annually sign a statement that: a) they have received and have read the Code of Ethics/Conflicts of Interest section of the FLAHIGA Plan of Operation; and b) they have not knowingly violated the

requirements and restrictions therein. The executed statements shall be returned to and kept with, the files of the Association.

- B. Violations of the above principles shall be treated as serious matters and shall immediately be reported to the Association's General Counsel or to the Chair, or both. The Chair may seek guidance and direction from the General Counsel and/or the Chair may refer the matter to the Audit Committee for review of the facts and its recommendation to the Board of Directors. Besides measures to remove any conflict of interest and to see that ethical practice is restored or upheld, the Board of Directors may take such action as a majority shall deem appropriate under the circumstances. Particular questions regarding conflict issues may be presented to the General Counsel, Department of Financial Services, on a consultation basis.
- C. All direct engagement letters and contracts for employment with, or for services to, the Association relating to its statutory duties shall reference this Article and shall provide that compliance therewith shall be an express condition of the engagement, employment or contract. A copy of this Article shall be supplied to all engaged, employed or contracting parties providing such services.
- D. The Executive Director, staff and Board members of FLAHIGA shall not personally represent another person or entity for compensation before FLAHIGA for a period of two years following the termination of employment or Board service. This shall not prohibit a former Board member from fulfilling their duties as an employee of an insurance company related to any requirements or duties placed on insurers as set forth in Part III of Chapter 631, Florida Statutes.
- E. Communications regarding inquires or concerns about any matter addressed in this Article, other than reports of violations, shall be first directed to the Association's General Counsel, who shall keep the Chair and the Board appropriately informed. Compliance with this Article shall be reported upon at every Annual Meeting.

Article 9. **Assessment Procedures**

- A. At any annual or special meeting of the Board, the Board may 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 Section 631.718, Florida Statutes.

The Board shall promptly inform the Department of the failure of any member to pay an assessment made pursuant to this paragraph when due. In regard to refunds, the Board shall determine if an excess of funds in an account exists such that the funds could be reasonably considered for refunding. The Board's review for this purpose shall include, but not limited to, a review of assets accruing from assignment, subrogation, net realized gains on estate distributions and income from investments. If the Board determines that such an excess exists, it can in its sole discretion, and in proportion to the contribution of each insurer to that account (to the extent it can be reasonably determined):

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

B. For long-term care related assessments, the following shall apply:

1. In the event of a potential long-term care insurer impairment or insolvency, the Association shall coordinate its activities with HMOCAP, including the development of any plan for handling the administration of the impairment or insolvency. The Association shall share information, including data, with and assist, as applicable the Board of Directors of HMOCAP with the administration and collection of member health maintenance organization assessments for long-term insurer impairments or insolvencies as provided by FLAHIGA and HMOCAP statutes.
2. For purposes of long-term care related assessment procedures as provided for under the formula addresses hereafter in Article 9, benefits provided by a long-term care rider to a life insurance policy or annuity contract are considered the same type of benefit as the base life insurance policy or annuity contract to which the rider relates.
3. The formula set forth in subparagraph 7 is intended to implement the division of assessment responsibility for long-term care insurance covered obligations between the life industry and the health insurance industry as provided by the NAIC amendments to the Model Guaranty Association Act adopted by the NAIC on December 21, 2017 and thereafter adopted by the Florida Legislature and made law through amendments to Part III and Part IV of Chapter 631, Florida Statutes, effective July 1, 2019,
4. Specifically, the formula set forth in subparagraph 7 provides a framework for allocating Class B assessments, attributable to FLAHIGA's obligations for any covered long-term care policies between FLAHIGA's "Health Insurance account," "Life insurance account" and "Annuity account." The allocation method outlined below is intended to implement the requirements of Chapter 631.718(3)(b)2, Florida Statutes. The instructions are intended to result in a net allocation of any Class B assessments for FLAHIGA'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.
5. If a Class B assessment is authorized due to covered long-term care policies, a portion of FLAHIGA's Class B assessment authorized to meets its obligations for the covered long-term care policies (the "LTC Assessment") shall be allocated to the Life and Annuity Account without dividing it between the sub accounts thereof, with the remaining portion of the LTC Assessment allocated to the Health Account.

6. The following definitions shall apply only for the purposes of allocating any such Class B assessment for covered long-term policies to the Life and Annuity Account and the Health Account in accordance with the below formula:
 - a. “Accident and Health Member Insurer” means any member insurer that does not qualify as a Life and Annuity Member Insurer,
 - b. “Health Account” shall mean the health insurance account established under Chapter 631.715(2)(a)1, Florida Statutes.
 - c. “LAMIHA” shall be 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.
 - d. “LAMILAA” shall be the quotient of (a) the Life and Annuity Member Insurers’ aggregate assessable premium in the Life and Annuity Account divided by (b) the total assessable premium in the Life and Annuity Account.
 - e. “Life and Annuity Account” shall mean the aggregate life insurance and annuity account established under Chapter 631.715(2)(a)2 and 3., Florida Statutes, without dividing such account into separate accounts or subaccounts.
 - f. “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 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 premium for disability income and long-term care insurance shall be applied only for purposes of the definition of “Life and Annuity Member Insurers”, and such exclusion shall not apply for any other purposes.
7. The amount of the LTC Assessment allocated to the Life and Annuity Account shall be determined in accordance with the following formula”

$$\begin{array}{r}
 \text{Life and Annuity Account} \\
 \text{LTC Assessment Share}
 \end{array}
 =
 \text{LTC Assessment}
 \times
 \frac{(.50 - \text{LAMIHA})}{(\text{LAMILAA} - \text{LAMIHA})}
 \text{-----divided by-----}$$

The amount of the LTC Assessment not allocated to the Life and Annuity Account as provided above shall be allocated to the Health Account. The amount of any LTC Assessment allocated to the Life and Annuity Account or to the Health Account shall be allocated among member insurers in accordance with Chapter 631.718(5)(a)2., Florida Statutes, 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 10. Contracting and Purchasing Process

The purpose of this Article is to insure the preservation of the integrity of the contracting and purchasing process of FLAHIGA. The goal of FLAHIGA is to secure for all persons and entities desiring to do business with FLAHIGA the benefits of free, fair, and open competition. The opportunity to bid on contracts or to supply commodities and services to FLAHIGA or to otherwise transact business with FLAHIGA is a privilege, not a right, but should remain open to all qualified suppliers of commodities and services required for the organization to carry out its duties. This Article shall set forth the competitive solicitation and purchasing guidelines for FLAHIGA.

A. Definitions. For purposes of this Article, these terms and phrases shall have the following meaning:

1. “Claims Subcontractor” means expert witness, mediator, investigative, court reporter, appraiser, umpire, medical, prescription, ambulance, palliative care or other claim support services or expenditures under the supervision of FLAHIGA defense counsel or internal guaranty fund claims staff.
2. “Commodity” means any of the various supplies, materials, goods, merchandise, food, equipment, information technology and other personal property purchased, leased, or otherwise contracted for by FLAHIGA.
3. “Competitive solicitation” means an invitation to bid, a request for proposals, or an invitation to negotiate.
4. “Emergency purchase” means a purchase which is exempt from competitive solicitation because the failure to take immediate action would jeopardize the mission of the organization. The term of the emergency purchase cannot exceed the amount of time necessary to conduct a competitive solicitation and transition time, if necessary. The Board must be notified immediately of such emergency purchase.
5. “Invitation to Bid” means a written solicitation for competitive bids. The invitation to bid is used when FLAHIGA is capable of specifically defining the scope of work for which a contractual service is required or when FLAHIGA is capable of establishing precise specifications defining the actual commodity or group of commodities required.
6. “Invitation to Negotiate” means a written solicitation for competitive replies to select one or more prospective vendors with which to commence negotiations for the procurement of commodities or contractual services. The invitation to negotiate is used when FLAHIGA determines that negotiations may be necessary to receive the best value.
7. “Ordinary course of business” means expenditures in the normal course of business, including postage, facsimile transmittals, subscriptions, maintenance contracts for office equipment and software, stationery, janitorial services, utilities, telephone, cell phone and long distance charges, staff training, travel, temporary help obtained through professional service agencies, miscellaneous office and break-room supplies and small equipment purchases, building maintenance costs, and other similar products and services necessary

to operate the office and facilities of FLAHIGA within the constraints of the Board approved budget.

8. "Purchasing Categories" means the following classification of goods or services purchases made by FLAHIGA:
 - a. Category 1. Up to \$25,000
 - b. Category 2. From \$25,001 to \$50,000
 - c. Category 3. Above \$50,001
 9. "Prospective Vendor" means a provider of a commodity or a service, capable of delivering such commodity or service to FLAHIGA.
 10. "Request for Proposals" means a written solicitation for competitive proposals. The request for proposals is used when it is not practicable for FLAHIGA to specifically define the scope of work for which the commodity, group of commodities or contractual services is required and when FLAHIGA is requesting that a prospective vendor propose a commodity, group of commodities, or contractual service to meet the specifications of the solicitation document.
 11. "Service(s)" means the rendering by a vendor of time and effort rather than the furnishing of commodities. Services may include, but are not limited to, evaluations, consultations, maintenance, accounting, security, management systems, management consulting, educational training programs, research and development studies or reports, and professional, technical and social services.
 12. "Sole source purchase" means a purchase that is exempt from competitive solicitation because there is only one person or company that can provide the contractual services needed and any attempt to obtain bids would only result in one person or company being available to meet the need.
 13. "Vendor" means a provider of a commodity or service that has been retained or placed under contract by FLAHIGA, or is actively providing such good or service to FLAHIGA.
- B. FLAHIGA shall not be required to utilize the competitive solicitation process for purchasing Category 1 commodities and services, and shall utilize the following purchasing guidelines:
1. All purchases of commodities or services for purchasing Category 1 shall only be made after review and approval of the Executive Director.
 2. All purchases of commodities or services meeting the purchasing Category 1 threshold may be made pursuant to a contract, purchase order, or other such documentation such as invoices or other information consistent with best practices and guaranty fund internal check request procedures.

3. Staff shall endeavor to achieve the most cost effective means for accomplishing its purchasing objectives whenever possible, and shall balance quality and price considerations as a reasonably prudent person would in making all purchases.
 4. Purchases above \$5000, but below the purchasing Category 1 maximum threshold, shall be pre-approved by the Executive Director and require at least two written quotes, telephonic quotes or informal bids whenever practical.
 5. The Board shall annually be provided with a list of all vendors of commodities and services whose cumulative annual purchases exceed \$10,000.
- C. FLAHIGA shall utilize a competitive solicitation process for all purchases of commodities or services equal to or greater than a purchasing Category 2, unless such commodities or services are exempt from the competitive solicitation process pursuant to sub-subparagraph C.2.
1. The following procedures shall apply to commodities or services requiring the utilization of a competitive solicitation process:
 - a. Distribution of any proposed invitation to bid, invitation to negotiate, or request for proposals shall be made through posting on FLAHIGA website, and through mailings to known lists of prospective vendors within the classification of commodity or service sought, or through advertising through appropriate print medium, or any combination thereof. Staff shall utilize discretion as reasonably required, to reach an adequate audience of prospective vendors for each competitive solicitation process.
 - b. All vendor awards for purchases of commodities and services for amounts staff reasonably anticipates will be equal to or greater than a purchasing Category 2 shall be approved by the Board in advance of granting the award to the selected vendor. Items specifically enumerated in the annual budget approved by the Board shall constitute prior Board approval under this provision.
 - c. The purchase of commodities or services equal to or greater than purchasing Category 3 shall require the appointment of an evaluation committee comprised of at least three Board, staff or others as directed by the Executive Director and approved by the Board Chair.
 - d. All copies of request for proposal, invitation to bid or invitation to negotiate documents shall be provided to the Board prior to issuance, and staff may issue such documents without seeking prior Board approval.
 - e. For emergency purchases, the staff shall provide a brief written report to the Board via email immediately before the purchase, which informs the Board of the purchase, the type of services or commodities to be purchased, and the amount or estimated amount of costs associated with the emergency purchase. If FLAHIGA has an ongoing need for the service or commodity purchased on an emergency basis, staff shall thereafter implement a competitive solicitation process and take all reasonable steps to complete the process and issue the award to the winning vendor within 90 days. In the event the

process cannot be completed within 90 days, the staff shall notify the Board of the estimated time frame for completing the competitive solicitation process, and the reasons for such delay.

- f. The competitive solicitation award shall be made by the Board to the prospective vendor whose proposal is determined to be of the best benefit to FLAHIGA as determined by the established evaluation criteria. The Board may delegate vendor selection and award duties to FLAHIGA staff.
 - g. The Board shall annually review the list of vendors selected by staff through a competitive solicitation process of purchasing Category 2 or greater, and shall review the complete list without regard to whether work or purchases are ongoing or completed prior to the annual review.
 - h. Copies of competitive solicitation documents and responses shall be kept in accordance with FLAHIGA's records retention policy.
2. The following services and purchases shall be exempt from the competitive solicitation process:
- a. Claims subcontractors.
 - b. Emergency purchases.
 - c. Claims or litigation legal services, including attorney, paralegal, expert witness, appraisal, umpire, or mediator services.
 - d. Services or commodities provided by governmental agencies, or provided by or through, the NOLHGA, or multistate initiatives involving joint purchases involving other state guaranty funds.
 - e. Sole Source Purchases.
 - f. Training and education services provided to injured employees pursuant to s. 440.491(6).
- D. To assure Board involvement and transparency in the contracting process, FLAHIGA shall adhere to the contract review and approval procedures set forth in this section.
1. Contracts for the following commodities or services shall be approved by the Board prior to execution:
 - a. Special purpose entities issuing bonds, bond counsel, financial advisors, trust companies and investment banks involved with the issuance or potential issuance of bonds to finance the payment of claims.
 - b. General counsel, auditing firm, or any other general consultant.

- c. NOLHGA services contract or a contract approved by the Department with a Servicing Firm as that term is defined in Section 631.721(4), Florida Statutes.
- d. Banks, investment companies, or fund managers that maintain funds of FLAHIGA, or that lend funds to FLAHIGA.
- e. Consultants or employee employment contracts.
- f. Contracts with insurers contracting to assume or service policies of insolvent insurers.
- g. Any vendor engaged for an amount equal to or exceeding purchasing Category 3, which is not specifically listed in Article 9. D.2., D.3. or D.4.

The Board may affirmatively vote in advance to delegate review and final execution of one or more of these classes of contracts to the Executive Director, with review by the General Counsel.

- 2. The Board shall approve standard contracts or agreements for use with the following vendor categories, but shall not be required to approve the actual individual contracts issued to vendors prior to execution:
 - a. Claims related insurance defense attorneys.
 - b. Claims related third party administrators and catastrophe field adjusters.
- 3. The Board shall not be required to approve the following contracts or agreements in advance of execution, but shall review such executed contracts or contract summaries at its annual meeting:
 - a. Any contract which is entered into by FLAHIGA staff, but which has not been pre-approved in accordance with Article 9.D.2. The review will be for all such contracts that were in force for any period of time during the prior year.
 - b. Insurance policies. The Board may elect to review a summary of all insurance coverages in lieu of reviewing the actual policy documents.
 - c. Fidelity bonds supporting appeals.
- 4. The Board shall not be required to review or approve the following classes of contracts or agreements for commodities or services:
 - a. Claims subcontractors.
 - b. Contracts issued in the ordinary course of business.
- 5. Staff shall enter into written contracts for services or commodities as is acceptable and customary for the type of commodity or service being purchased. No contract or agreement

shall be required for the purchase of a commodity or service where in the judgment of the Executive Director the generally accepted practice throughout commerce is to purchase such commodities or services through a less formal means, such as a purchase order or invoice method.