



Date: 7/5/2023

Virtual Meeting

MORTGAGE GUARANTY INSURANCE (E) WORKING GROUP

Thursday, July 13, 2023

12:00 – 1:00 p.m. ET / 11:00 a.m. – 12:00 p.m. CT / 10:00 – 11:00 a.m. MT / 9:00 – 10:00 a.m. PT

ROLL CALL

Jackie Obusek, Chair	North Carolina	Margot Small	New York
Kurt Regner	Arizona	Diana Sherman	Pennsylvania
Monica Macaluso/Joyce Zeng	California	Amy Garcia	Texas
Jane Nelson	Florida	Amy Malm/Levi Olson	Wisconsin
John Rehagen	Missouri		

NAIC Support Staff: Andy Daleo

AGENDA

1. Consider Adoption of its Spring National Meeting Minutes —*Jackie Obusek (NC)* Attachment 1
2. Consider Adoption of the Draft of the *Mortgage Guaranty Insurance Model Act* (#630)—*Jackie Obusek (NC)* Attachment 2
3. Discuss Any Other Matters Brought Before the Working Group
—*Jackie Obusek (NC)*
4. Adjournment

Date: 3/28/23

Mortgage Guaranty Insurance (E) Working Group
Louisville, Kentucky
March 22, 2023

The Mortgage Guaranty Insurance (E) Working Group of the Financial Condition (E) Committee met March 22, 2023. The following Working Group members participated: Jackie Obusek, Chair (NC); Kurt Regner (AZ); Monica Macaluso (CA); Virginia Christy (FL); John Rehagen (MO); Margot Small (NY); Melissa Greiner and Michael McKenney (PA); Amy Garcia (TX); and Amy Malm and Levi Olson (WI).

1. Adopted its 2022 Fall National Meeting Minutes

Malm made a motion, seconded by Rehagen, to adopt the Working Group's Dec. 13, 2022, minutes (*see NAIC Proceedings – Fall 2022, Financial Condition (E) Committee, Attachment Three*). The motion passed unanimously.

2. Discussed Comments Received on the Exposure Draft of Model #630

Obusek commented that during the 2022 Fall National Meeting, the Working Group discussed draft revisions to the *Mortgage Guaranty Insurance Model Act* (#630) (Attachment ____). Following this discussion, the Drafting Group met and integrated revisions to the draft and re-exposed Model #630 for a 15-day public comment period that ended March 14. As a result of the exposure, a letter was received from the mortgage guaranty consortium (MGC), the Reinsurance Association of America (RAA), and the Center for Economic Justice (CEJ) (Attachment ____). Obusek stated that the goal is to hear from those who submitted comments and allow Working Group members and others an opportunity to ask questions.

Benjamin Schmidt (Radian Guaranty Inc.) commented that within Section 10B(1) when an insurer establishes its contingency reserve in a segregated account or collateral in a trust that serves the same function as a contingency reserve in the case of a reinsurer. The reinsurers are not filing statutory financial statements and would not have the ability to establish a contingency reserve. The MGC asked for clarification on this provision. Malm asked for clarification regarding who has control of the trust if the reinsurer establishes it. Schmidt commented that it is clarified in the reinsurance agreement that if the reinsurer does not pay its obligations, the mortgage insurer would have access to pay from that account. Heidi Heyrman (Mortgage Guaranty Insurance Corporation) commented that the reinsurers would have no ability to transfer or withdraw money from the trust account. Malm questioned whether it would be possible for other states to not have that requirement and the reinsurance agreement to be set up without that type of collateral. Schmidt indicated that it would be possible; in that case, there would not be credit for the contingency reserve, and that company would set up a contingency reserve. He indicated that the concern with the current language is that only a mortgage insurer would be able to establish that contingency reserve.

Schmidt commented that Section 12D(1) referenced the chief executive officer (CEO) and the chief financial officer (CFO), and some mortgage insurers do not have those positions. Those titles would be at the parent level. The MGC recommends using the term "highest ranking officer" or "highest ranking financial officer."

Schmidt stated that within Section 14 on policy forms and policy rates filed, the July 2000 version of the model has a note on open rating states that would allow a state that adopts the model to delete a portion of the provision and insert its own rating law. He indicated that in certain states, they would want mortgage insurance to be treated as any other line in their state. He commented that this flexibility might allow for more states to adopt the model.

Schmidt commented that regarding to Section 21, the inclusion would allow for less frivolous lawsuits, and there are means for redress if warranted. He stated that frivolous lawsuits weaken the financial condition of companies due to the significant legal fees. There is the risk of plaintiffs' attorneys misconstruing the regulatory intent of these provisions. Schmidt stated that the comment letter regarding this section stated that the state insurance regulators do not have an adequate track record of bringing mortgage insurer enforcement actions. He stated that this accretion overlooks that insurance departments have mechanisms for the enforcement of their laws other than litigation, such as periodic market examinations and desk reviews. Further, he indicated that the no private right of action does not preempt other remedial statutes and causes of action that could apply to the same underlying conduct. He stated that it is not an immunity provision for the mortgage insurers, and it would not insulate the mortgage insurer from being sued for breach of contract of the insurance policy, bad faith, separate federal and state remedial statutes, or common law claims.

Debra Darcy (Consumer Representative) indicated that she would speak on behalf of the comment letter submitted by the CEJ. She commented that Section 21 should be deleted due to the structure of the market, the history of practices that the model law addresses, and the role that some institutions played in the Great Recession. She stated that the structure of the private mortgage insurance market, in which private mortgage insurers sell their product to lenders rather than directly to consumers, meets the NAIC's definition of reverse competition. As such, there need to be extra prohibitions to ensure that there are adequate economic incentives for insurers to follow the provisions in the model law. Darcy further stated that without a private right of action, there could be new tools to sell products in the future that are now not specifically prohibited in the model law. A private right of action ensures that a private mortgage insurer can be held liable when they utilize a practice that is not specifically prohibited in the model but would ultimately harm consumers, the housing market, or the economy. Darcy stated that Section 21 is one-sided; i.e., lenders and consumers cannot sue the private mortgage insurer. However, insurers can sue and have sued lenders and consumers. Darcy also indicated that the assertion that Section 21 will stop frivolous lawsuits neglects the fact that cases have been brought against private mortgage insurers in the past that have not been frivolous. Those cases resulted in penalties and practices that have been changed due to the lawsuits.

Amy Bach (United Policyholders) also spoke on behalf of the comment letter submitted by the CEJ. Regarding Section 21, she commented that curtailing a right that exists in the law today would strain state insurance regulator resources as regulatory agencies do not have the ability to prosecute every consumer violation reported. Bach indicated that the fact that there is another channel of enforcement provides a critical source of consumer protection.

Birny Birnbaum (CEJ) commented that there is no other personal lines model law that has a provision barring a private right of action. He indicated that is because consumers of personal line products need to have some sort of recourse. He stated that the personal lines markets are expansive, further supporting that state insurance regulators need assistance in monitoring these markets.

Obusek indicated that the Drafting Group will reconvene in the coming weeks to arrive at a third and final draft of Model #630. She stated that it is anticipated that a new draft will be available by the end of April, with the intent to hold an open Working Group call in either late April or early May.

3. Discussed Other Matters

Theresa Cameron (Arch Mortgage Insurance Company) summarized a comment letter from mortgage insurers regarding a new proposed U.S. Securities and Exchange Commission (SEC) rule that seeks to prevent conflicts of interest in conjunction with synthetic asset-backed securities (ABS). She indicated that the SEC rule could

inadvertently prohibit mortgage insurers from utilizing mortgage insurance-linked notes (MILNs) because synthetic ABS are not explicitly defined. Since 2015, mortgage insurers have used MILNs as a reinsurance mechanism to disperse and mitigate risks in the ordinary course of business. She requested that the NAIC support that MILNs are an important risk management tool and are encouraged by state insurance regulators to manage risk, provide protection, and enhance mortgage insurers' capital position.

Obusek indicated that the mortgage insurers' comment letter regarding the concerns about the SEC rule has been sent to the appropriate NAIC staff and will be presented to the Government Relations (EX) Leadership Council to coordinate communication with the SEC.

Having no further business, the Mortgage Guaranty Insurance (E) Working Group adjourned.

SharePoint/NAIC Support Staff Hub/Member Meetings/E CMTE/MGIWG/2023 Spring NM/MGIWG Minutes March 22 2023.docx

Draft: [May 11, 2023]

Adopted by Mortgage Guaranty Insurance (E) Working Group—[insert date]

Adopted by [insert parent committee]—[insert date]

MORTGAGE GUARANTY INSURANCE MODEL ACT

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Section 1. Title

This Act may be cited as the Mortgage Guaranty Insurance Act.

Section 2. Definitions

The definitions set forth in this Act shall govern the construction of the terms used in this Act but shall not affect any other provisions of the code.

A. ~~A.~~ “Authorized ~~real estate security,~~” for the purpose of this Act, Real Estate Security” means ~~an:~~

(1) ~~An~~ amortized note, bond or other ~~evidence~~ instrument of indebtedness, except for reverse mortgage loans made pursuant to [insert citation of state law that authorizes reverse mortgages] of the real property law, evidencing a loan, not exceeding ninety five one hundred three percent (95103%) of the fair market value of the real estate, secured by a mortgage, deed of trust, or other instrument that constitutes, or is equivalent to, a first lien or charge on real estate junior lien or charge on real estate, with any percentage in excess of one hundred percent (100%) being used to finance the fees and closing costs on such indebtedness; provided:

(a) ~~(1)~~ The real estate loan secured in this manner is one of a type that a ~~bank, savings and loan association, or an insurance company~~ creditor, which is supervised and regulated by a department of ~~this~~ any state or territory of the U.S. or an agency of the federal government, is

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authorized to make, or would be authorized to make, disregarding any requirement applicable to such an institution that the amount of the loan not exceed a certain percentage of the value of the real estate;

(2b) ~~The improvement on loan is to finance the acquisition, initial construction or refinancing of real estate that is a:~~

- ~~(i) Residential building designed for occupancy by not more than four families, a one-family residential condominium or unit in a planned unit development, or any other one-family residential unit as to which title may be conveyed freely; or~~
- ~~(ii) Mixed-use building with only one non-residential use and one one-family dwelling unit; or~~
- ~~(iii) Building or buildings designed for occupancy as specified by Subsections A(1) and A(2) of this section; and by five (5) or more families or designed to be occupied for industrial or commercial purposes.~~

(3c) The lien on the real estate may be subject to and subordinate to ~~the following:~~

- ~~(a) The lien of any public bond, assessment or tax, when no installment, call or payment of or under the bond, assessment or tax is delinquent; and~~
- ~~(b) Outstanding mineral, oil, water or timber other liens, leases, rights, rights of way, easements or rights of way of support, sewer rights, building restrictions or other restrictions or, easements, covenants, conditions or regulations of use, or outstanding leases upon the real property under which rents or profits are reserved to the owner thereof that do not impair the use of the real estate for its intended purpose.~~

(2) ~~Notwithstanding the foregoing, a loan referenced in Section 2A(1) of this Act may exceed 103% of the fair market value of the real estate in the event that the mortgage guaranty insurance company has approved for loss mitigation purposes a request to refinance a loan that constitutes an existing risk in force for the company.~~

(3) ~~An amortized note, bond or other instrument of indebtedness evidencing a loan secured by an ownership interest in, and a proprietary lease from, a corporation or partnership formed for the purpose of the cooperative ownership of real estate and at the time the loan does not exceed one hundred three percent (103%) of the fair market value of the ownership interest and proprietary lease, if the loan is one of a type that meets the requirements of Section 2A(1)(a), unless the context clearly requires otherwise, any reference to a mortgagor shall include an owner of such an ownership interest as described in this paragraph and any reference to a lien or mortgage shall include the security interest held by a lender in such an ownership interest.~~

B. ~~“Bulk Mortgage Guaranty Insurance” means mortgage guaranty insurance that provides coverage under a single transaction on each mortgage loan included in a defined portfolio of loans that have already been originated.~~

C. ~~“Certificate of Insurance” means a document issued by a mortgage guaranty insurance company to the initial insured to evidence that it has insured a particular authorized real estate security under a master policy, identifying the terms, conditions and representations, in addition to those contained in the master policy and endorsements, applicable to such coverage.~~

D. ~~“Commissioner” means [insert the title of the principal insurance supervisory official] of this state, or the [insert the title of the principal insurance supervisory official]’s deputies or assistants, or any employee of the [insert name of the principal insurance regulatory agency] of this state acting in the [insert the title of the principal insurance supervisory official]’s name and by the [insert the title of the principal insurance supervisory official]’s delegated authority. “Commissioner.” The term “commissioner” shall mean the insurance commissioner, the commissioner’s deputies, or the Insurance Department, as appropriate.~~

Drafting Note: Insert the title of the chief insurance regulatory official wherever the word “commissioner” appears.

E. _____

~~B. “Contingency reserve~~“Contingency Reserve” means an additional premium reserve established to protect policyholders against the effect of adverse economic cycles.

~~C. “Mortgage guaranty insurance” is~~F. “Domiciliary Commissioner” means the principal insurance supervisory official of the jurisdiction in which a mortgage guaranty insurance company is domiciled, ~~or that principal insurance supervisory official’s deputies or assistants, or any employee of the regulatory agency of which that principal insurance supervisory official is the head acting in that principal insurance supervisory official’s name and by that principal insurance supervisory official’s delegated authority.~~

G. “Effective Guaranty” refers to the assumed backing of existing or future holders of securities by virtue of their issuer’s conservatorship or perceived access to credit from the U.S. Treasury, as opposed to the direct full faith and credit guarantee provided by the U.S. government.

H. “Loss” refers to losses and loss adjustment expenses.

I. “Master Policy” means a document issued by a mortgage guaranty insurance company that establishes the terms and conditions of mortgage guaranty insurance coverage provided thereunder, including any endorsements thereto.

J. “Mortgage Guaranty *

~~(1) Insurance” is insurance~~ against financial loss by reason of nonpayment of principal, interest or other sums agreed to be paid under the terms of any ~~note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate, provided the improvement on the real estate is a residential building or a condominium unit or buildings designed for occupancy by not more than four families;~~authorized real estate security.

~~(2) Insurance against financial loss by reason of nonpayment of principal, interest or other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate, providing the improvement on the real estate is a building or buildings designed for occupancy by five (5) or more families or designed to be occupied for industrial or commercial purposes; and~~

~~(3) Insurance against financial loss by reason of nonpayment of rent or other sums agreed to be paid under the terms of a written lease for the possession, use or occupancy of real estate, provided the improvement on the real estate is a building or buildings designed to be occupied for industrial or commercial purposes.~~

K. “Mortgage Guaranty Quality Assurance Program” means an early detection warning system for potential underwriting compliance issues which could potentially impact solvency or operational risk within a mortgage guaranty insurance company.

L. “NAIC” means the National Association of Insurance Commissioners.

M. “Pool Mortgage Guaranty Insurance” means mortgage guaranty insurance that provides coverage under a single transaction or a defined series of transactions on a defined portfolio of loans for losses up to an aggregate limit.

N. “Right of Rescission” represents a remedy available to a mortgage guaranty insurance company to void a certificate and restore parties to their original position, based on inaccurate, incomplete or misleading information provided to, or information omitted or concealed from, the mortgage guaranty insurance company in connection with the insurance application, resulting in an insured loan that did not meet the mortgage guaranty insurance company’s eligibility requirements in effect on the date of submission of the insurance application.

O. “Risk in Force” means the mortgage guaranty insurance coverage percentage applied to the unpaid principal balance.

Section 3. Insurer's Authority to Transact Business

A company may not transact the business of mortgage guaranty insurance until it has obtained a certificate of authority from the commissioner.

Section 4. Mortgage Guaranty Insurance as Monoline

A mortgage guaranty insurance company that anywhere transacts any class of insurance other than mortgage guaranty insurance is not eligible for the issuance of a certificate of authority to transact mortgage guaranty insurance in this state nor for the renewal thereof.

Section 5. Risk Concentration

A mortgage guaranty insurance company shall not expose itself to any loss on any one authorized real estate security risk in an amount exceeding ten percent (10%) of its surplus to policyholders. Any risk or portion of risk which has been reinsured shall be deducted in determining the limitation of risk.

Section 6. Capital and Surplus

- A. **Initial and Minimum Capital and Surplus Requirements.** A mortgage guaranty insurance company shall not transact the business of mortgage guaranty insurance unless, if a stock insurance company, it has paid-in capital of at least \$~~10~~15,000,000 and paid-in surplus of at least \$~~15~~20,000,000, or if a mutual insurance company, a minimum initial surplus of \$~~25~~20,000,000. A stock insurance company or a mutual insurance company shall at all times thereafter maintain a minimum policyholders' surplus of at least \$~~15,000~~20,000,000.

Section 4. Insurer's Authority to Transact Business

No mortgage guaranty insurance company may issue policies until it has obtained from the commissioner of insurance a certificate setting forth that fact and authorizing it to issue policies.

- B. **Section 5. Minimum Capital Requirements Applicability.** A mortgage guaranty insurance company formed prior to the passage of this Act may maintain the amount of capital and surplus or minimum policyholders' surplus previously required by statute or administrative order for a period not to exceed twelve months following the effective date of the adoption of this Act.
- C. **Minimum Capital Requirements Adjustments.** The domiciliary commissioner may by order reduce the minimum amount of capital and surplus or minimum policyholders' surplus required under Section 6A under the following circumstances:
- (1) For an affiliated reinsurer that is a mortgage guaranty insurance company and that is or will be engaged solely in the assumption of risks from affiliated mortgage guaranty insurance companies, provided that the affiliated reinsurer is in run-off and, in the domiciliary commissioner's opinion, the business plan and other relevant circumstances of the affiliated reinsurer justify the proposed reduction in requirements.
 - (2) For mortgage guaranty insurance companies that are in run-off and not writing new business that is justified in a business plan, in the domiciliary commissioner's opinion.

Section 7. Geographic Concentration

- A. A mortgage guaranty insurance company shall not insure loans secured by a single risk in excess of ten percent (10%) of the company's aggregate capital, surplus and contingency reserve.
- B. No mortgage guaranty insurance company shall have more than twenty percent (20%) of its total insurance in force in any one Standard Metropolitan Statistical Area (SMSA), as defined by the United StatesU.S Department of Commerce.
- C. The provisions of this section shall not apply to a mortgage guaranty insurance company until it has possessed

a certificate of authority in this state for three (3) years.

Section 68. Advertising

No mortgage guaranty insurance company or an agent or representative of a mortgage guaranty insurance company shall prepare or distribute or assist in preparing or distributing any ~~brochure, pamphlet, report or any form of~~ advertising media or communication to the effect that the real estate investments of any financial institution are “insured investments,” unless the ~~brochure, pamphlet, report or~~ advertising media or communication clearly states that the loans are insured by mortgage guaranty insurance companies possessing a certificate of authority to transact mortgage guaranty insurance in this state or are insured by an agency of the federal government, ~~as the case may be~~.

Section 79. Investment Limitation

~~A mortgage guaranty insurance company shall not invest~~Investments in notes or other evidences of indebtedness secured by a mortgage or other liens upon residential real property ~~shall not be allowed as assets in any determination of the financial condition of a mortgage guaranty insurer~~. This section shall not apply to obligations secured by real property, or contracts for the sale of real property, which obligations or contracts of sale are acquired in the course of ~~the~~ good faith settlement of claims under policies of insurance issued by the mortgage guaranty insurance company, or in the good faith disposition of real property so acquired. ~~This section shall not apply to investments backed by the full faith and credit of the U.S. Government or investments with the effective guaranty of the U.S. Government. This section shall not apply to investments held by a mortgage guaranty insurance company prior to the passage of this Act.~~

Section 8. ~~Coverage Limitation~~10. Reserve Requirements

- A. Unearned premium Reserves, Loss Reserves, and Premium Deficiency Reserves. Financial reporting will be prepared in accordance with the Accounting Practices and Procedures Manual and Annual Financial Statement Instructions of the NAIC.
- B. Contingency Reserve. Each mortgage guaranty insurance company shall establish a contingency reserve subject to the following provisions:
 - (1) The mortgage guaranty insurance company shall make an annual contribution to the contingency reserve which in the aggregate shall be equal to fifty percent (50%) of the direct earned premiums reported in the annual statement or net earned premiums reported if the reinsurer maintains the contingency reserve.
 - (2) Except as provided within this Act, a mortgage guaranty insurance company’s contributions to the contingency reserve made during each calendar year shall be maintained for a period of 120 months, to provide for reserve buildup. The portion of the contingency reserve established and maintained for more than 120 months shall be released and shall no longer constitute part of the contingency reserve.
 - (3) Withdrawals may be made from the contingency reserve on a first-in, first-out basis or such other basis, with the prior written approval of the domiciliary commissioner, based on the amount by which:
 - (a) Incurred losses and loss adjustment expenses exceed 35% of the direct earned premium in any year. Provisional withdrawals may be made from the contingency reserve on a quarterly basis in an amount not to exceed 75% of the withdrawal as adjusted for the quarterly nature of the withdrawal; or
 - (b) Upon the approval of the domiciliary commissioner and 30-day prior notification to non-domiciliary commissioners, a mortgage guaranty insurer may withdraw from the contingency reserve any amounts which are in excess of the requirements of Section 15 as required in [insert section of the mortgage guaranty Insurance model law requiring minimum policyholder’s position] as filed with the most recently filed annual statement.
 - (i) The mortgage guaranty insurance company’s domiciliary commissioner may consider loss developments and trends in reviewing a request for withdrawal. If any portion of the

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contingency reserve for which withdrawal is requested is maintained by a reinsurer or in a segregated account or trust of a reinsurer, the domiciliary commissioner may also consider the financial condition of the reinsurer.

C. **Miscellaneous.** Unearned premium reserves and contingency reserves on risks insured before the effective date of this Act may be computed and maintained as required previously.

Section 11. Reinsurance

- A. **Prohibition of Captive Reinsurance.** A mortgage guaranty insurance company shall not enter into captive reinsurance arrangements which involve the direct or indirect ceding of any portion of its insurance risks or obligations to a reinsurer owned or controlled by an insured; any subsidiary or affiliate of an insured; an officer, director or employee of an insured or any member of their immediate family; a corporation, partnership, trust, trade association in which an insured is a member, or other entity owned or controlled by an insured or an insured's officer, director or employee or any member of their immediate family that has a financial interest; or any designee, trustee, nominee or other agent or representative of any of the foregoing.
- B. **Reinsurance Cessions.** A mortgage guaranty insurer may, by written contract, reinsure any insurance that it transacts, except that no mortgage guaranty insurer may enter into reinsurance arrangements designed to circumvent the compensating control provisions of Section 17 or the contingency reserve requirement of Section 10. The unearned premium reserve and the loss reserves required by Section 10 shall be established and maintained by the direct insurer or by the assuming reinsurer so that the aggregate reserves shall be equal to or greater than the reserves required by direct writer. The cession shall be accounted for as provided in the accounting practices and procedures prescribed or permitted by the applicable Accounting Practices and Procedures Manual of the NAIC.

Section 12. Sound Underwriting Practices

- A. **Underwriting Review and Approval Required.** All certificates of mortgage guaranty insurance, excluding policies of reinsurance, shall be written based on an assessment of evidence that prudent underwriting standards have been met by the originator of the mortgage. Delegated underwriting decisions shall be reviewed based on a reasonable method of sampling of post-closing loan documentation to ensure compliance with the mortgage guaranty insurance company's underwriting standards.
- B. **Quality Control Reviews.** Quality control reviews for bulk mortgage guaranty insurance and pool mortgage guaranty insurance shall be based on a reasonable method of sampling of post-closing loan documentation for delegated underwriting decisions to ensure compliance with the representations and warranties of the creditors or creditors originating the loans and with the mortgage guaranty insurance company's underwriting standards.
- C. **Minimum Underwriting Standards.** Mortgage guaranty insurance companies shall establish formal underwriting standards which set forth the basis for concluding that prudent underwriting standards have been met.
- D. **Underwriting Review and Approval.** A mortgage guaranty insurance company's underwriting standards shall be:

(1) A mortgage guaranty insurance company shall limit its coverage net of reinsurance ceded to a reinsurer in which the company has no interest to a maximum of twenty-five percent (25%) of the entire indebtedness to the insured or in lieu thereof, a mortgage guaranty insurance company may elect to pay the entire indebtedness to the insured and acquire title to the authorized real estate security.

~~Section 9.~~ Reviewed and approved by executive management, including, but not limited to the highest-ranking executive officer and financial officer; and

(2) Communicated across the organization to promote consistent business practices with respect to underwriting.

- E. **Notification of Changes in Underwriting Standards.** On or before March 1 of each year, a mortgage guaranty insurance company shall file with the domiciliary commissioner changes to its underwriting standards and an analysis of the changes implemented during the course of the immediately preceding year. The annual summary of material underwriting standards changes should include any change associated with loan to value ratios, debt to income ratios, borrower credit standing or maximum loan amount which has resulted in a material impact on net premium written of +/- 5% from prior year to date.

Nondiscrimination. In extending or issuing mortgage guaranty insurance, a mortgage guaranty insurance company

- A. ~~A mortgage guaranty insurance company that anywhere transacts any class of insurance other than mortgage guaranty insurance is not eligible for the issuance of a certificate of authority to transact mortgage guaranty insurance in this state nor for the renewal thereof.~~
- B. ~~A mortgage guaranty insurance that anywhere transacts the classes of insurance defined in Section 2A(2) or 2A(3) is not eligible for a certificate of authority to transact in this state the class of mortgage guaranty insurance defined in Section 2A(1). However, a mortgage guarantee insurance company that transacts a class of insurance defined in Section 2A may write up to five percent (5%) of its insurance in force on residential property designed for occupancy by five (5) or more families.~~

Section 10. Underwriting Discrimination

- A. ~~Nothing in this chapter shall be construed as limiting the right of a mortgage guaranty insurance company to impose reasonable requirements upon the lender with regard to the terms of a note or bond or other evidence of indebtedness secured by a mortgage or deed of trust, such as requiring a stipulated down payment by the borrower may not .~~
- F. ~~B. ~~No mortgage guaranty insurance company may discriminate in the issuance or extension of mortgage guaranty insurance on the on the basis of the applicant's sex, marital status, race, color, creed or national origin, national origin, disability, or age or solely on the basis of the geographic location of the property to be insured unless the discrimination related to geographic location is for a business purpose that is not a mere pretext for unfair discrimination; or the refusal, cancellation, or limitation of the insurance is required by law or regulatory mandate.~~~~

C. ~~No policy~~**Drafting Note:** States and jurisdictions should consult their constitution or comparable governance documents and applicable civil rights legislation to determine if broader protections against unacceptable forms of discrimination should be included in Section 12F.

Section 13. ~~mortgage guaranty insurance~~Quality Assurance

- A. **Quality Assurance Program.** A mortgage guaranty insurance company shall establish a formal internal mortgage guaranty quality assurance program, which provides an early detection warning system as it relates to potential underwriting compliance issues which could potentially impact solvency or operational risk. This mortgage guaranty quality assurance program shall provide for the documentation, monitoring, evaluation and reporting on the integrity of the ongoing loan origination process based on indicators of potential underwriting inadequacies or non-compliance. This shall include, but not limited to:
- (1) **Segregation of Duties.** Administration of the quality assurance program shall be delegated to designated risk management, quality assurance or internal audit personnel, who are technically trained and independent from underwriting activities that they audit.
 - (2) **Senior Management Oversight.** Quality assurance personnel shall provide periodic quality assurance reports to an enterprise risk management committee or other equivalent senior management level oversight body.
 - (3) **Board of Director Oversight.** Quality assurance personnel shall provide periodic quality assurance reports to the board of directors or a designated committee of directors established to facilitate board of director oversight.

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- (4) **Policy and Procedures Documentation.** Mortgage guaranty quality assurance program, excluding policies and procedures of reinsurance, shall be formally established and documented to define scope, roles and responsibilities.
- (5) **Underwriting Risk Review.** Quality assurance review shall include an examination of underwriting risks including classification of risk and compliance with risk tolerance levels.
- (6) **Lender Performance Reviews.** Quality assurance monitoring provisions shall include an assessment of lender performance.
- (7) **Underwriting Performance Reviews.** Quality assurance monitoring provisions shall assess compliance with underwriting standard.
- (8) **Problem Loan Trend Reviews.** Quality assurance monitoring provisions shall assess prospective risks associated with timely loan payment including delinquency, default inventory, foreclosure and persistency trends.
- (9) **Underwriting System Change Oversight.** Underwriting system program changes shall be monitored to ensure the integrity of underwriting and pricing programs, which impact automated underwriting system decision making.
- (10) **Pricing and Performance Oversight.** Pricing controls shall be monitored to ensure that business segment pricing supports applicable performance goals.
- (11) **Internal Audit Validation.** Periodic internal audits shall be conducted to validate compliance with the mortgage guaranty quality assurance program.
- B. **Regulator Access and Review of Quality Assurance Program.** The commissioner shall be provided access to an insurer's mortgage guaranty quality assurance program for review at any reasonable and thorough examination of the evidence supporting credit worthiness of the borrower and the appraisal report reflecting market evaluation of the property and has determined that prudent underwriting standards have been mettime upon request and during any financial regulatory examination. Nothing herein shall be construed to limit a regulator's right to access any and all of the records of an insurer in an examination or as otherwise necessary to meet regulatory responsibilities.

Section 14.14. Policy Forms and Premium Rates Filed

- A. **Policy Forms.** All policy forms and endorsements, and modifications (excluding bulk mortgage guaranty insurance and pool mortgage guaranty insurance) shall be filed with and be subject to the approval of the commissioner. With respect to owner-occupied, single-family dwellings, the mortgage guaranty insurance policy shall provide that or a mixed-use building described in Section 2A(1)(b), which is owner-occupied at the time of loan origination and for at least 50% of the days within the twelve (12) consecutive months prior to borrower default, the borrower shall not be liable to the insurance company for any deficiency arising from a foreclosure sale.
- B. **Premium Rates.** Each mortgage guaranty insurance company (excluding bulk mortgage guaranty insurance and pool mortgage guaranty insurance) shall file with the department commissioner the rate to be charged and the premium including all modifications of rates and premiums to be paid by the policyholder.
- C. **Premium Charges.** Every mortgage guaranty insurance company shall adopt, print and make available a schedule of insureds the premium charges for mortgage guaranty insurance policies. Premium charges

~~made in conformity via a company website or an integration with the provisions of this Act shall not be deemed to be interest or other charges under any other provision of law limiting interest or other charges in connection with mortgage loans, a third-party system. The schedule premium rate provided shall show the entire amount of premium charge for each the type of mortgage guaranty insurance policy to be issued by the insurance company.~~

Drafting Note: Open rating states may delete a portion or all of ~~this provision~~ Section 14 and insert their own rating law.

Section 12. ~~Outstanding Total Liability~~ 15. Risk in Force and Waivers

- ~~A. A mortgage guaranty insurance Risk in Force. A mortgage guaranty insurance company shall not at any time have outstanding a total liability risk in force, net of reinsurance, under its aggregate mortgage guaranty insurance policies exceeding twenty-five (25) times its capital, surplus and contingency reserve. In the event that any mortgage guaranty insurance company has outstanding total liability risk in force exceeding twenty-five (25) times its capital, surplus and contingency reserve, it shall cease transacting new mortgage guaranty business until such time as its total liability risk in force no longer exceeds twenty-five (25) times its capital, surplus and contingency reserve. Total outstanding liability risk in force shall be calculated on a consolidated an individual entity basis for all mortgage guarantee insurance companies.~~
- ~~B. Waiver. The commissioner may waive the requirement found in Section 15A at the written request of a mortgage guaranty insurer upon a finding that are part of a holding company system the mortgage guaranty insurer's policyholders position is reasonable in relationship to the mortgage guaranty insurer's aggregate insured risk in force and adequate to its financial needs. The request must be made in writing at least 90 days in advance of the date that the mortgage guaranty insurer expects to exceed the requirement of Section 15A and shall, at a minimum, address the factors specified in Section 15C.~~
- ~~C. Waiver Criteria. In determining whether a mortgage guaranty insurer's policyholders position is reasonable in relation to the mortgage guaranty insurer's aggregate insured risk in force and adequate to its financial needs, all of the following factors, among others, may be considered:~~
- ~~(1) The size of the mortgage guaranty insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.~~
 - ~~(2) The extent to which the mortgage guaranty insurer's business is diversified across time, geography, credit quality, origination, and distribution channels.~~
 - ~~(3) The nature and extent of the mortgage guaranty insurer's reinsurance program.~~
 - ~~The quality, diversification, and liquidity of the~~
 - ~~(4) mortgage guaranty insurer's assets and its investment portfolio.~~
 - ~~(5) The historical and forecasted trend in the size of the mortgage guaranty insurer's policyholders position.~~
 - ~~(6) The policyholders position maintained by other comparable mortgage guaranty insurers in relation to the nature of their respective insured risks.~~
 - ~~(7) The adequacy of the mortgage guaranty insurer's reserves.~~
 - ~~(8) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders.~~
 - ~~(9) The quality of the mortgage guaranty insurer's earnings and the extent to which the reported earnings of the mortgage guaranty insurer include extraordinary items.~~
 - ~~(10) An independent actuary's opinion as to the reasonableness and adequacy of the mortgage guaranty insurer's historical and projected policyholders position.~~

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- (11) The capital contributions which have been infused or are available for future infusion into the mortgage guaranty insurer.
- (12) The historical and projected trends in the components of the mortgage guaranty insurer's aggregate insured risk, including, but not limited to, the quality and type of the risks included in the aggregate insured risk.
- D. **Authority to Retain Experts.** The commissioner may retain accountants, actuaries, or other experts to assist in the review of the mortgage guaranty insurer's request submitted pursuant to Section 15B. The mortgage guaranty insurer shall bear the commissioner's cost of retaining those persons.
- E. **Specified Duration.** Any waiver shall be:
 - (1) For a specified period of time not to exceed two years; and
 - (2) Subject to any terms and conditions that the commissioner shall deem best suited to restoring the mortgage guaranty insurer's minimum policyholders position required by Section 15A.

Section 16. Conflict of Interest

A mortgage guaranty insurer may underwrite mortgage guaranty insurance on mortgages originated by the holding company system or affiliate or on mortgages originated by any mortgage lender to which credit is extended, directly or indirectly by the holding company system or affiliate only if the insurance is underwritten on the same basis, for the same consideration and subject to the same insurability requirements as insurance provided to nonaffiliated lenders. Mortgage guaranty insurance underwritten on mortgages originated by the holding company system or affiliate or on mortgages originated by any mortgage lender to which credit is extended, directly or indirectly by the holding company system or affiliate shall be limited to 50% of the insurer's direct premium written in any calendar year, or such higher percentage established in writing for the insurer in the domiciliary commissioner's discretion, based on the domiciliary commissioner's determination that a higher percentage is not likely to adversely affect the financial condition of the insurer.

Section 17. Compensating Balances Prohibited

Except for commercial checking accounts and normal deposits in support of an active bank line of credit, a mortgage guaranty insurance company, holding company or any affiliate thereof is prohibited from maintaining funds on deposit with the lender for which the mortgage guaranty insurance company has insured loans. Any deposit account bearing interest at rates less than what is currently being paid other depositors on similar deposits or any deposit in excess of amounts insured by an agency of the federal government shall be presumed to be an account in violation of this section. Furthermore, a mortgage guaranty insurance company shall not use compensating balances, special deposit accounts or engage in any practice that unduly delays its receipt of monies due or that involves the use of its financial resources for the benefit of any owner, mortgagee of the real property or any interest therein or any person who is acting as agent, representative, attorney or employee of the owner, purchaser or mortgagee as a means of circumventing any part of this section.

Section 18. Limitations on Rebates, Commissions, Charges and Contractual Preferences

- A. **insuranceInducements.** Unless set forth in the policy and subject to the [state equivalent of the Unfair Trade Practices Act #880], a mortgage guaranty insurance company shall not pay or cause to be paid either directly or indirectly, to any owner, purchaser, lessor, lessee, mortgagee or prospective mortgagee of the real property that secures the authorized real estate security or that is the fee of an insured lease, or any interest therein, or to any person who is acting as an agent, representative, attorney or employee of such owner, purchaser, lessor, lessee or mortgagee, any commission, or any part of its premium charges or any other consideration as an inducement for or as compensation on any mortgage guaranty insurance business.
- B. **Compensation for Placement.** In connection with the placement of any mortgage guaranty insurance, a mortgage guaranty insurance company shall not cause or permit the conveyance of anything of value, including but not limited to any commission, fee, premium adjustment, remuneration or other form of compensation of any kind whatsoever to be paid to, or received by an insured lender or lessor; any subsidiary

or affiliate of an insured; an officer, director or employee of an insured or any member of their immediate family; a corporation, partnership, trust, trade association in which an insured is a member, or other entity in which an insured or an officer, director or employee or any member of their immediate family has a financial interest; or any designee, trustee, nominee or other agent or representative of any of the foregoing, except for the value of the insurance itself or claim payments thereon as provided by contract or settlement.

~~C. C. No mortgage guaranty insurance~~**Rebates.** Unless set forth in the policy and subject to the [state equivalent of the Unfair Trade Practices Act #880], a mortgage guaranty insurance company shall not make a rebate of any portion of the premium charge, as shown by the schedule required by Section 14C. No mortgage guaranty insurance14C. No mortgage guaranty insurance company shall not quote any rate or premium charge to a person that is different than that currently available to others for the same type of coverage. The amount by which a premium charge is less than that called for by the current schedule of premium charges is an unlawful rebate.

D. Undue Contractual Preferences.

(1) Any contract, letter agreement, or other arrangement used to clarify any terms, conditions, or interpretations of a master policy or certificate shall be documented in writing.

(2) Any contractual or letter agreements used to modify or clarify general business practices and administrative, underwriting, claim submission or other information exchange processes shall not contain provisions which override or significantly undermine the intent of key provisions of the mortgage guaranty insurance model act, including mortgage insurer discretion, rights and responsibilities related to:

(a) Underwriting standards.

(b) Quality assurance.

(c) Rescission.

E. Sanctions. The commissioner may, after notice and hearing, suspend or revoke the certificate of authority of a mortgage guaranty insurance company, or in his or her discretion, issue a cease and desist order to a mortgage guaranty insurance company that pays a commission, rebate, or makes any unlawful rebateconveyance of value under this section in willful violation of the provisions of this Act. In the event of the issuance of a cease and desist order, the commissioner may, after notice and hearing, suspend or revoke the certificate of authority of a mortgage guaranty insurance company that does not comply with the terms thereof.

Section 14. Compensating Balances Prohibited

~~F. Except for commercial checking accounts and normal deposits in support of an active bank line of credit, a mortgage guaranty insurance company, holding company or any affiliate thereof is prohibited from maintaining funds on deposit with the lender for which the mortgage guaranty insurance company has insured loans. Any deposit account bearing interest at rates less than what is currently being paid other depositors on similar deposits or any deposit in excess of amounts insured by an agency of the federal government shall be presumed to be an account in violation of this section.~~**Educational Efforts and Promotional Materials Permitted.** A mortgage guaranty insurance company may engage in any educational effort with borrowers, members of the general public, and officers, directors, employees, contractors and agents of insured lenders that may reasonably be expected to reduce its risk of Loss or promote its operational efficiency and may distribute promotional materials of minor value.

Section 19. Rescission

All mortgage guaranty insurance company master policies shall include a detailed description of provisions governing rescissions, re-pricing, and cancellations, which specify the insurer's and insured's rights, obligations and eligibility terms under which those actions may occur to ensure transparency.

Section 20. Records Retention

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A. **Record Files.** A licensed mortgage guaranty insurance company shall maintain its records in a manner which allows the commissioner to readily ascertain the insurer's compliance with state insurance laws and rules during an examination including, but not limited to, records regarding the insurer's management, operations, policy issuance and servicing, marketing, underwriting, rating and claims practices.

~~B.~~ Furthermore, a mortgage guaranty insurance company shall not use compensating balances, special deposit accounts or engage in any practice that unduly delays its receipt of monies due or that involves the use of its financial resources for the benefit of any owner, mortgagee of the real property or any interest therein or any person who is acting as agent, representative, attorney or employee of the owner, purchaser or mortgagee as a means of circumventing any part of this section.

Section 15. — Retention Period. Policy and claim records shall be retained for the period during which the certificate or claim is active plus five (5) years, unless otherwise specified by the insurance commissioner. Recordkeeping requirements shall relate to:

- (1) Records to clearly document the application, underwriting, and issuance of each master policy and certificate of insurance; and
- (2) Claim records to clearly document the inception, handling, and disposition.

C. **Record Format.** Any record required to be maintained by a mortgage insurer may be created and stored in the form of paper, photograph, magnetic, mechanical or electronic medium.

D. **Record Maintenance.** Record maintenance under this Act shall comply with the following requirements:

- (1) Insurer maintenance responsibilities shall provide for record storage in a location that will allow the records to be reasonably produced for examination within the time period required.
- (2) Third-Party maintenance related responsibilities shall be set forth in a written agreement, a copy of which shall be maintained by the insurer and available for purposes of examination.

Section 21. — No Private Right of Action

This Act may not be construed to create or imply a private cause of action for violation of its provisions nor may it be construed to curtail a private cause of action which would otherwise exist in the absence of this Act.

Conflict of Interest

A. — If a member of a holding company system, a mortgage guaranty insurance company licensed to transact business in this state shall not, as a condition of its certificate of authority, knowingly underwrite mortgage guaranty insurance on mortgages originated by the holding company system or an affiliate or on mortgages originated by any mortgage lender to which credit is extended, directly or indirectly, by the holding company system or an affiliate.

~~A. — B. — A mortgage guaranty insurance company, the holding company system of which it is a part, or any affiliate shall not as a condition of the mortgage guaranty insurance company's certificate of authority, pay any commissions, remuneration, rebates or engage in activities proscribed in Sections 13 and 14.~~

Section 16. — Reserves

~~A. — Unearned Premium Reserves~~

~~— A mortgage guaranty insurance company shall compute and maintain an unearned premium reserve as set forth by regulation adopted by the commissioner of insurance.~~

~~B. — Loss Reserve~~

~~— A mortgage guaranty insurance company shall compute and maintain adequate case basis and other loss reserves that accurately reflect loss frequency and loss severity and shall include components for claims reported and for claims incurred but not reported, including estimated losses on:~~

- ~~(1) — Insured loans that have resulted in the conveyance of property that remains unsold;~~

- ~~(2) Insured loans in the process of foreclosure;~~
- ~~(3) Insured loans in default for four (4) months or for any lesser period that is defined as default for such purposes in the policy provisions; and~~
- ~~(4) Insured leases in default for four (4) months or for any lesser period that is defined as default for such purposes in policy provisions.~~

~~C. Contingency Reserve~~

~~Each mortgage guaranty insurance company shall establish a contingency reserve out of net premium remaining (gross premiums less premiums returned to policyholders net of reinsurance) after establishment of the unearned premium reserve. The mortgage guaranty insurance company shall contribute to the contingency reserve an amount equal to fifty percent (50%) of the remaining unearned premiums. Contributions to the contingency reserve made during each calendar year shall be maintained for a period of 120 months, except that withdrawals may be made by the company in any year in which the actual incurred losses exceed thirty-five percent (35%) of the corresponding earned premiums, and no releases shall be made without prior approval by the commissioner of insurance of the insurance company's state of domicile.~~

~~If the coverage provided in this Act exceeds the limitations set forth herein, the commissioner of insurance shall establish a rate formula factor that will produce a contingency reserve adequate for the added risk assumed. The face amount of an insured mortgage shall be computed before any reduction by the mortgage guaranty insurance company's election to limit its coverage to a portion of the entire indebtedness.~~

~~D. Reinsurance~~

~~Whenever a mortgage guaranty insurance company obtains reinsurance from an insurance company that is properly licensed to provide reinsurance or from an appropriate governmental agency, the mortgage guaranty insurer and the reinsurer shall establish and maintain the reserves required in this Act in appropriate proportions in relation to the risk retained by the original insurer and ceded to the assuming reinsurer so that the total reserves established shall not be less than the reserves required by this Act.~~

~~E. Miscellaneous~~

- ~~(1) Whenever the laws of any other jurisdiction in which a mortgage guaranty insurance company subject to the requirement of this Act is also licensed to transact mortgage guaranty insurance require a larger unearned premium reserve or contingency reserve in the aggregate than that set forth herein, the establishment of the larger unearned premium reserve or contingency reserve in the aggregate shall be deemed to be in compliance with this Act.~~
- ~~(2) Unearned premium reserves and contingency reserves shall be computed and maintained on risks insured after the effective date of this Act as required by Subsections A and C. Unearned premium reserves and contingency reserves on risks insured before the effective date of this Act may be computed and maintained as required previously.~~

Section 1722. Regulations

The commissioner shall have the authority to promulgate rules and regulations deemed necessary to effectively implement the requirements of this Act.

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1976 Proc. II 15, 17, 647, 686, 747-753 (adopted).

1979 Proc. I 44, 47-48, 49, 719, 968-969 (corrected).

Draft: [May 11, 2023]

Adopted by Mortgage Guaranty Insurance (E) Working Group—[insert date]

Adopted by [insert parent committee]—[insert date]

MORTGAGE GUARANTY INSURANCE MODEL ACT

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Section 1. Title

This Act may be cited as the Mortgage Guaranty Insurance Act.

Section 2. Definitions

The definitions set forth in this Act shall govern the construction of the terms used in this Act but shall not affect any other provisions of the code.

A. "Authorized Real Estate Security" means:

- (1) An amortized note, bond or other instrument of indebtedness, except for reverse mortgage loans made pursuant to [insert citation of state law that authorizes reverse mortgages] of the real property law, evidencing a loan, not exceeding one hundred three percent (103%) of the fair market value of the real estate, secured by a mortgage, deed of trust, or other instrument that constitutes, or is equivalent to, a first lien or junior lien or charge on real estate, with any percentage in excess of one hundred percent (100%) being used to finance the fees and closing costs on such indebtedness; provided:
 - (a) The real estate loan secured in this manner is one of a type that a creditor, which is supervised and regulated by a department of any state or territory of the U.S or an agency of the federal government, is authorized to make, or would be authorized to make, disregarding any requirement applicable to such an institution that the amount of the loan not exceed a certain percentage of the value of the real estate;
 - (b) The loan is to finance the acquisition, initial construction or refinancing of real estate that is a:

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- (i) Residential building designed for occupancy by not more than four families, a one-family residential condominium or unit in a planned unit development, or any other one-family residential unit as to which title may be conveyed freely; or
 - (ii) Mixed-use building with only one non-residential use and one one-family dwelling unit; or
 - (iii) Building or buildings designed for occupancy by five (5) or more families or designed to be occupied for industrial or commercial purposes.
 - (c) The lien on the real estate may be subject to and subordinate to other liens, leases, rights, restrictions, easements, covenants, conditions or regulations of use that do not impair the use of the real estate for its intended purpose.
 - (2) Notwithstanding the foregoing, a loan referenced in Section 2A(1) of this Act may exceed 103% of the fair market value of the real estate in the event that the mortgage guaranty insurance company has approved for loss mitigation purposes a request to refinance a loan that constitutes an existing risk in force for the company.
 - (3) An amortized note, bond or other instrument of indebtedness evidencing a loan secured by an ownership interest in, and a proprietary lease from, a corporation or partnership formed for the purpose of the cooperative ownership of real estate and at the time the loan does not exceed one hundred three percent (103%) of the fair market value of the ownership interest and proprietary lease, if the loan is one of a type that meets the requirements of Section 2A(1)(a), unless the context clearly requires otherwise, any reference to a mortgagor shall include an owner of such an ownership interest as described in this paragraph and any reference to a lien or mortgage shall include the security interest held by a lender in such an ownership interest.
 - B. “Bulk Mortgage Guaranty Insurance” means mortgage guaranty insurance that provides coverage under a single transaction on each mortgage loan included in a defined portfolio of loans that have already been originated.
 - C. “Certificate of Insurance” means a document issued by a mortgage guaranty insurance company to the initial insured to evidence that it has insured a particular authorized real estate security under a master policy, identifying the terms, conditions and representations, in addition to those contained in the master policy and endorsements, applicable to such coverage.
 - D. “Commissioner.” The term “commissioner” shall mean the insurance commissioner, the commissioner’s deputies, or the Insurance Department, as appropriate.
- Drafting Note:** Insert the title of the chief insurance regulatory official wherever the word “commissioner” appears.
- E. “Contingency Reserve” means an additional premium reserve established to protect policyholders against the effect of adverse economic cycles.
 - F. “Domiciliary Commissioner” means the principal insurance supervisory official of the jurisdiction in which a mortgage guaranty insurance company is domiciled.
 - G. “Effective Guaranty” refers to the assumed backing of existing or future holders of securities by virtue of their issuer’s conservatorship or perceived access to credit from the U.S. Treasury, as opposed to the direct full faith and credit guarantee provided by the U.S. government.
 - H. “Loss” refers to losses and loss adjustment expenses.
 - I. “Master Policy” means a document issued by a mortgage guaranty insurance company that establishes the terms and conditions of mortgage guaranty insurance coverage provided thereunder, including any endorsements thereto.
 - J. “Mortgage Guaranty Insurance” is insurance against financial loss by reason of nonpayment of principal,

interest or other sums agreed to be paid under the terms of any authorized real estate security.

- K. “Mortgage Guaranty Quality Assurance Program” means an early detection warning system for potential underwriting compliance issues which could potentially impact solvency or operational risk within a mortgage guaranty insurance company.
- L. “NAIC” means the National Association of Insurance Commissioners.
- M. “Pool Mortgage Guaranty Insurance” means mortgage guaranty insurance that provides coverage under a single transaction or a defined series of transactions on a defined portfolio of loans for losses up to an aggregate limit.
- N. “Right of Rescission” represents a remedy available to a mortgage guaranty insurance company to void a certificate and restore parties to their original position, based on inaccurate, incomplete or misleading information provided to, or information omitted or concealed from, the mortgage guaranty insurance company in connection with the insurance application, resulting in an insured loan that did not meet the mortgage guaranty insurance company’s eligibility requirements in effect on the date of submission of the insurance application.
- O. “Risk in Force” means the mortgage guaranty insurance coverage percentage applied to the unpaid principal balance.

Section 3. Insurer’s Authority to Transact Business

A company may not transact the business of mortgage guaranty insurance until it has obtained a certificate of authority from the commissioner.

Section 4. Mortgage Guaranty Insurance as Monoline

A mortgage guaranty insurance company that anywhere transacts any class of insurance other than mortgage guaranty insurance is not eligible for the issuance of a certificate of authority to transact mortgage guaranty insurance in this state nor for the renewal thereof.

Section 5. Risk Concentration

A mortgage guaranty insurance company shall not expose itself to any loss on any one authorized real estate security risk in an amount exceeding ten percent (10%) of its surplus to policyholders. Any risk or portion of risk which has been reinsured shall be deducted in determining the limitation of risk.

Section 6. Capital and Surplus

- A. **Initial and Minimum Capital and Surplus Requirements.** A mortgage guaranty insurance company shall not transact the business of mortgage guaranty insurance unless, if a stock insurance company, it has paid-in capital of at least \$10,000,000 and paid-in surplus of at least \$15,000,000, or if a mutual insurance company, a minimum initial surplus of \$25,000,000. A stock insurance company or a mutual insurance company shall at all times thereafter maintain a minimum policyholders’ surplus of at least \$20,000,000.
- B. **Minimum Capital Requirements Applicability.** A mortgage guaranty insurance company formed prior to the passage of this Act may maintain the amount of capital and surplus or minimum policyholders’ surplus previously required by statute or administrative order for a period not to exceed twelve months following the effective date of the adoption of this Act.
- C. **Minimum Capital Requirements Adjustments.** The domiciliary commissioner may by order reduce the minimum amount of capital and surplus or minimum policyholders’ surplus required under Section 6A under the following circumstances:
 - (1) For an affiliated reinsurer that is a mortgage guaranty insurance company and that is or will be engaged solely in the assumption of risks from affiliated mortgage guaranty insurance companies, provided that the affiliated reinsurer is in run-off and, in the domiciliary commissioner’s opinion,

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the business plan and other relevant circumstances of the affiliated reinsurer justify the proposed reduction in requirements.

- (2) For mortgage guaranty insurance companies that are in run-off and not writing new business that is justified in a business plan, in the domiciliary commissioner's opinion.

Section 7. Geographic Concentration

- A. A mortgage guaranty insurance company shall not insure loans secured by a single risk in excess of ten percent (10%) of the company's aggregate capital, surplus and contingency reserve.
- B. No mortgage guaranty insurance company shall have more than twenty percent (20%) of its total insurance in force in any one Standard Metropolitan Statistical Area (SMSA), as defined by the U.S. Department of Commerce.
- C. The provisions of this section shall not apply to a mortgage guaranty insurance company until it has possessed a certificate of authority in this state for three (3) years.

Section 8. Advertising

No mortgage guaranty insurance company or an agent or representative of a mortgage guaranty insurance company shall prepare or distribute or assist in preparing or distributing any advertising media or communication to the effect that the real estate investments of any financial institution are "insured investments," unless the advertising media or communication clearly states that the loans are insured by mortgage guaranty insurance companies possessing a certificate of authority to transact mortgage guaranty insurance in this state or are insured by an agency of the federal government.

Section 9. Investment Limitation

Investments in notes or other evidence of indebtedness secured by a mortgage or other liens upon residential real property shall not be allowed as assets in any determination of the financial condition of a mortgage guaranty insurer. This section shall not apply to obligations secured by real property, or contracts for the sale of real property, which obligations or contract of sale are acquired in the course of good faith settlement of claims under policies of insurance issued by the mortgage guaranty insurance company, or in the good faith disposition of real property so acquired. This section shall not apply to investments backed by the full faith and credit of the U.S. Government or investments with the effective guaranty of the U.S. Government. This section shall not apply to investments held by a mortgage guaranty insurance company prior to the passage of this Act.

Section 10. Reserve Requirements

- A. **Unearned premium Reserves, Loss Reserves, and Premium Deficiency Reserves.** Financial reporting will be prepared in accordance with the Accounting Practices and Procedures Manual and Annual Financial Statement Instructions of the NAIC.
- B. **Contingency Reserve.** Each mortgage guaranty insurance company shall establish a contingency reserve subject to the following provisions:
 - (1) The mortgage guaranty insurance company shall make an annual contribution to the contingency reserve which in the aggregate shall be equal to fifty percent (50%) of the direct earned premiums reported in the annual statement or net earned premiums reported if the reinsurer maintains the contingency reserve.
 - (2) Except as provided within this Act, a mortgage guaranty insurance company's contributions to the contingency reserve made during each calendar year shall be maintained for a period of 120 months, to provide for reserve buildup. The portion of the contingency reserve established and maintained for more than 120 months shall be released and shall no longer constitute part of the contingency reserve.
 - (3) Withdrawals may be made from the contingency reserve on a first-in, first-out basis or such other basis, with the prior written approval of the domiciliary commissioner, based on the amount by which:

- (a) Incurred losses and loss adjustment expenses exceed 35% of the direct earned premium in any year. Provisional withdrawals may be made from the contingency reserve on a quarterly basis in an amount not to exceed 75% of the withdrawal as adjusted for the quarterly nature of the withdrawal; or
- (b) Upon the approval of the domiciliary commissioner and 30-day prior notification to non-domiciliary commissioners, a mortgage guaranty insurer may withdraw from the contingency reserve any amounts which are in excess of the requirements of Section 15 as required in [insert section of the mortgage guaranty Insurance model law requiring minimum policyholder's position] as filed with the most recently filed annual statement.
- (i) The mortgage guaranty insurance company's domiciliary commissioner may consider loss developments and trends in reviewing a request for withdrawal. If any portion of the contingency reserve for which withdrawal is requested is maintained by a reinsurer or in a segregated account or trust of a reinsurer, the domiciliary commissioner may also consider the financial condition of the reinsurer.

- C. **Miscellaneous.** Unearned premium reserves and contingency reserves on risks insured before the effective date of this Act may be computed and maintained as required previously.

Section 11. Reinsurance

- A. **Prohibition of Captive Reinsurance.** A mortgage guaranty insurance company shall not enter into captive reinsurance arrangements which involve the direct or indirect ceding of any portion of its insurance risks or obligations to a reinsurer owned or controlled by an insured; any subsidiary or affiliate of an insured; an officer, director or employee of an insured or any member of their immediate family; a corporation, partnership, trust, trade association in which an insured is a member, or other entity owned or controlled by an insured or an insured's officer, director or employee or any member of their immediate family that has a financial interest; or any designee, trustee, nominee or other agent or representative of any of the foregoing.
- B. **Reinsurance Cessions.** A mortgage guaranty insurer may, by written contract, reinsure any insurance that it transacts, except that no mortgage guaranty insurer may enter into reinsurance arrangements designed to circumvent the compensating control provisions of Section 17 or the contingency reserve requirement of Section 10. The unearned premium reserve and the loss reserves required by Section 10 shall be established and maintained by the direct insurer or by the assuming reinsurer so that the aggregate reserves shall be equal to or greater than the reserves required by direct writer. The cession shall be accounted for as provided in the accounting practices and procedures prescribed or permitted by the applicable Accounting Practices and Procedures Manual of the NAIC.

Section 12. Sound Underwriting Practices

- A. **Underwriting Review and Approval Required.** All certificates of mortgage guaranty insurance, excluding policies of reinsurance, shall be written based on an assessment of evidence that prudent underwriting standards have been met by the originator of the mortgage. Delegated underwriting decisions shall be reviewed based on a reasonable method of sampling of post-closing loan documentation to ensure compliance with the mortgage guaranty insurance company's underwriting standards.
- B. **Quality Control Reviews.** Quality control reviews for bulk mortgage guaranty insurance and pool mortgage guaranty insurance shall be based on a reasonable method of sampling of post-closing loan documentation for delegated underwriting decisions to ensure compliance with the representations and warranties of the creditors or creditors originating the loans and with the mortgage guaranty insurance company's underwriting standards.
- C. **Minimum Underwriting Standards.** Mortgage guaranty insurance companies shall establish formal underwriting standards which set forth the basis for concluding that prudent underwriting standards have been met.

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- D. **Underwriting Review and Approval.** A mortgage guaranty insurance company's underwriting standards shall be:
- (1) Reviewed and approved by executive management, including, but not limited to the highest-ranking executive officer and financial officer; and
 - (2) Communicated across the organization to promote consistent business practices with respect to underwriting.
- E. **Notification of Changes in Underwriting Standards.** On or before March 1 of each year, a mortgage guaranty insurance company shall file with the domiciliary commissioner changes to its underwriting standards and an analysis of the changes implemented during the course of the immediately preceding year. The annual summary of material underwriting standards changes should include any change associated with loan to value ratios, debt to income ratios, borrower credit standing or maximum loan amount which has resulted in a material impact on net premium written of +/- 5% from prior year to date.
- F. **Nondiscrimination.** In extending or issuing mortgage guaranty insurance, a mortgage guaranty insurance company may not discriminate on the basis of the applicant's sex, marital status, race, color, creed, national origin, disability, or age or solely on the basis of the geographic location of the property to be insured unless the discrimination related to geographic location is for a business purpose that is not a mere pretext for unfair discrimination; or the refusal, cancellation, or limitation of the insurance is required by law or regulatory mandate.

Drafting Note: States and jurisdictions should consult their constitution or comparable governance documents and applicable civil rights legislation to determine if broader protections against unacceptable forms of discrimination should be included in Section 12F.

Section 13. Quality Assurance

- A. **Quality Assurance Program.** A mortgage guaranty insurance company shall establish a formal internal mortgage guaranty quality assurance program, which provides an early detection warning system as it relates to potential underwriting compliance issues which could potentially impact solvency or operational risk. This mortgage guaranty quality assurance program shall provide for the documentation, monitoring, evaluation and reporting on the integrity of the ongoing loan origination process based on indicators of potential underwriting inadequacies or non-compliance. This shall include, but not limited to:
- (1) **Segregation of Duties.** Administration of the quality assurance program shall be delegated to designated risk management, quality assurance or internal audit personnel, who are technically trained and independent from underwriting activities that they audit.
 - (2) **Senior Management Oversight.** Quality assurance personnel shall provide periodic quality assurance reports to an enterprise risk management committee or other equivalent senior management level oversight body.
 - (3) **Board of Director Oversight.** Quality assurance personnel shall provide periodic quality assurance reports to the board of directors or a designated committee of directors established to facilitate board of director oversight.
 - (4) **Policy and Procedures Documentation.** Mortgage guaranty quality assurance program, excluding policies and procedures of reinsurance, shall be formally established and documented to define scope, roles and responsibilities.
 - (5) **Underwriting Risk Review.** Quality assurance review shall include an examination of underwriting risks including classification of risk and compliance with risk tolerance levels.
 - (6) **Lender Performance Reviews.** Quality assurance monitoring provisions shall include an assessment of lender performance.

- (7) **Underwriting Performance Reviews.** Quality assurance monitoring provisions shall assess compliance with underwriting standard.
 - (8) **Problem Loan Trend Reviews.** Quality assurance monitoring provisions shall assess prospective risks associated with timely loan payment including delinquency, default inventory, foreclosure and persistency trends.
 - (9) **Underwriting System Change Oversight.** Underwriting system program changes shall be monitored to ensure the integrity of underwriting and pricing programs, which impact automated underwriting system decision making.
 - (10) **Pricing and Performance Oversight.** Pricing controls shall be monitored to ensure that business segment pricing supports applicable performance goals.
 - (11) **Internal Audit Validation.** Periodic internal audits shall be conducted to validate compliance with the mortgage guaranty quality assurance program.
- B. **Regulator Access and Review of Quality Assurance Program.** The commissioner shall be provided access to an insurer's mortgage guaranty quality assurance program for review at any reasonable time upon request and during any financial regulatory examination. Nothing herein shall be construed to limit a regulator's right to access any and all of the records of an insurer in an examination or as otherwise necessary to meet regulatory responsibilities.

Section 14. Policy Forms and Premium Rates Filed

- A. **Policy Forms.** Policy forms, endorsements, and modifications (excluding bulk mortgage guaranty insurance and pool mortgage guaranty insurance) shall be filed with and be subject to the approval of the commissioner. With respect to owner-occupied, single-family dwellings or a mixed-use building described in Section 2A(1)(b), which is owner-occupied at the time of loan origination and for at least 50% of the days within the twelve (12) consecutive months prior to borrower default, the borrower shall not be liable to the insurance company for any deficiency arising from a foreclosure sale.
- B. **Premium Rates.** Each mortgage guaranty insurance company (excluding bulk mortgage guaranty insurance and pool mortgage guaranty insurance) shall file with the commissioner the rate to be charged including all modifications.
- C. **Premium Charges.** Every mortgage guaranty insurance company shall make available to insureds the premium charges for mortgage guaranty insurance policies via a company website or an integration with a third-party system. The premium rate provided shall show the entire amount of premium charge for the type of mortgage guaranty insurance policy to be issued by the insurance company.

Drafting Note: Open rating states may delete a portion or all of Section 14 and insert their own rating law.

Section 15. Risk in Force and Waivers

- A. **Risk in Force.** A mortgage guaranty insurance company shall not at any time have outstanding risk in force, net of reinsurance, under its aggregate mortgage guaranty insurance policies exceeding twenty-five (25) times its capital, surplus and contingency reserve. In the event that any mortgage guaranty insurance company has outstanding total risk in force exceeding twenty-five (25) times its capital, surplus and contingency reserve, it shall cease transacting new mortgage guaranty business until such time as its total risk in force no longer exceeds twenty-five (25) times its capital, surplus and contingency reserve. Total risk in force shall be calculated on an individual entity basis.
- B. **Waiver.** The commissioner may waive the requirement found in Section 15A at the written request of a mortgage guaranty insurer upon a finding that the mortgage guaranty insurer's policyholders position is reasonable in relationship to the mortgage guaranty insurer's aggregate insured risk in force and adequate to its financial needs. The request must be made in writing at least 90 days in advance of the date that the mortgage guaranty insurer expects to exceed the requirement of Section 15A and shall, at a minimum, address the factors specified in Section 15C.

Mortgage Guaranty Insurance Model Act

- C. **Waiver Criteria.** In determining whether a mortgage guaranty insurer's policyholders position is reasonable in relation to the mortgage guaranty insurer's aggregate insured risk in force and adequate to its financial needs, all of the following factors, among others, may be considered:
- (1) The size of the mortgage guaranty insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.
 - (2) The extent to which the mortgage guaranty insurer's business is diversified across time, geography, credit quality, origination, and distribution channels.
 - (3) The nature and extent of the mortgage guaranty insurer's reinsurance program.
 - (4) The quality, diversification, and liquidity of the mortgage guaranty insurer's assets and its investment portfolio.
 - (5) The historical and forecasted trend in the size of the mortgage guaranty insurer's policyholders position.
 - (6) The policyholders position maintained by other comparable mortgage guaranty insurers in relation to the nature of their respective insured risks.
 - (7) The adequacy of the mortgage guaranty insurer's reserves.
 - (8) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders.
 - (9) The quality of the mortgage guaranty insurer's earnings and the extent to which the reported earnings of the mortgage guaranty insurer include extraordinary items.
 - (10) An independent actuary's opinion as to the reasonableness and adequacy of the mortgage guaranty insurer's historical and projected policyholders position.
 - (11) The capital contributions which have been infused or are available for future infusion into the mortgage guaranty insurer.
 - (12) The historical and projected trends in the components of the mortgage guaranty insurer's aggregate insured risk, including, but not limited to, the quality and type of the risks included in the aggregate insured risk.
- D. **Authority to Retain Experts.** The commissioner may retain accountants, actuaries, or other experts to assist in the review of the mortgage guaranty insurer's request submitted pursuant to Section 15B. The mortgage guaranty insurer shall bear the commissioner's cost of retaining those persons.
- E. **Specified Duration.** Any waiver shall be:
- (1) For a specified period of time not to exceed two years; and
 - (2) Subject to any terms and conditions that the commissioner shall deem best suited to restoring the mortgage guaranty insurer's minimum policyholders position required by Section 15A.

Section 16. Conflict of Interest

A mortgage guaranty insurer may underwrite mortgage guaranty insurance on mortgages originated by the holding company system or affiliate or on mortgages originated by any mortgage lender to which credit is extended, directly or indirectly by the holding company system or affiliate only if the insurance is underwritten on the same basis, for the same consideration and subject to the same insurability requirements as insurance provided to nonaffiliated lenders. Mortgage guaranty insurance

underwritten on mortgages originated by the holding company system or affiliate or on mortgages originated by any mortgage lender to which credit is extended, directly or indirectly by the holding company system or affiliate shall be limited to 50% of the insurer's direct premium written in any calendar year, or such higher percentage established in writing for the insurer in the domiciliary commissioner's discretion, based on the domiciliary commissioner's determination that a higher percentage is not likely to adversely affect the financial condition of the insurer.

Section 17. Compensating Balances Prohibited

Except for commercial checking accounts and normal deposits in support of an active bank line of credit, a mortgage guaranty insurance company, holding company or any affiliate thereof is prohibited from maintaining funds on deposit with the lender for which the mortgage guaranty insurance company has insured loans. Any deposit account bearing interest at rates less than what is currently being paid other depositors on similar deposits or any deposit in excess of amounts insured by an agency of the federal government shall be presumed to be an account in violation of this section. Furthermore, a mortgage guaranty insurance company shall not use compensating balances, special deposit accounts or engage in any practice that unduly delays its receipt of monies due or that involves the use of its financial resources for the benefit of any owner, mortgagee of the real property or any interest therein or any person who is acting as agent, representative, attorney or employee of the owner, purchaser or mortgagee as a means of circumventing any part of this section.

Section 18. Limitations on Rebates, Commissions, Charges and Contractual Preferences

- A. **Inducements.** Unless set forth in the policy and subject to the [state equivalent of the Unfair Trade Practices Act #880], a mortgage guaranty insurance company shall not pay or cause to be paid either directly or indirectly, to any owner, purchaser, lessor, lessee, mortgagee or prospective mortgagee of the real property that secures the authorized real estate security or that is the fee of an insured lease, or any interest therein, or to any person who is acting as an agent, representative, attorney or employee of such owner, purchaser, lessor, lessee or mortgagee, any commission, or any part of its premium charges or any other consideration as an inducement for or as compensation on any mortgage guaranty insurance business.
- B. **Compensation for Placement.** In connection with the placement of any mortgage guaranty insurance, a mortgage guaranty insurance company shall not cause or permit the conveyance of anything of value, including but not limited to any commission, fee, premium adjustment, remuneration or other form of compensation of any kind whatsoever to be paid to, or received by an insured lender or lessor; any subsidiary or affiliate of an insured; an officer, director or employee of an insured or any member of their immediate family; a corporation, partnership, trust, trade association in which an insured is a member, or other entity in which an insured or an officer, director or employee or any member of their immediate family has a financial interest; or any designee, trustee, nominee or other agent or representative of any of the foregoing, except for the value of the insurance itself or claim payments thereon as provided by contract or settlement.
- C. **Rebates.** Unless set forth in the policy and subject to the [state equivalent of the Unfair Trade Practices Act #880], a mortgage guaranty insurance company shall not make a rebate of any portion of the premium charge, as shown by the schedule required by Section 14C. No mortgage guaranty insurance company shall not quote any rate or premium charge to a person that is different than that currently available to others for the same type of coverage. The amount by which a premium charge is less than that called for by the current schedule of premium charges is an unlawful rebate.
- D. **Undue Contractual Preferences.**
 - (1) Any contract, letter agreement, or other arrangement used to clarify any terms, conditions, or interpretations of a master policy or certificate shall be documented in writing.
 - (2) Any contractual or letter agreements used to modify or clarify general business practices and administrative, underwriting, claim submission or other information exchange processes shall not contain provisions which override or significantly undermine the intent of key provisions of the mortgage guaranty insurance model act, including mortgage insurer discretion, rights and responsibilities related to:
 - (a) Underwriting standards.
 - (b) Quality assurance.

Mortgage Guaranty Insurance Model Act

(c) Rescission.

- E. **Sanctions.** The commissioner may, after notice and hearing, suspend or revoke the certificate of authority of a mortgage guaranty insurance company, or in his or her discretion, issue a cease and desist order to a mortgage guaranty insurance company that pays a commission, rebate, or makes any unlawful conveyance of value under this section in willful violation of the provisions of this Act. In the event of the issuance of a cease and desist order, the commissioner may, after notice and hearing, suspend or revoke the certificate of authority of a mortgage guaranty insurance company that does not comply with the terms thereof.
- F. **Educational Efforts and Promotional Materials Permitted.** A mortgage guaranty insurance company may engage in any educational effort with borrowers, members of the general public, and officers, directors, employees, contractors and agents of insured lenders that may reasonably be expected to reduce its risk of Loss or promote its operational efficiency and may distribute promotional materials of minor value.

Section 19. Rescission

All mortgage guaranty insurance company master policies shall include a detailed description of provisions governing rescissions, re-pricing, and cancellations, which specify the insurer's and insured's rights, obligations and eligibility terms under which those actions may occur to ensure transparency.

Section 20. Records Retention

- A. **Record Files.** A licensed mortgage guaranty insurance company shall maintain its records in a manner which allows the commissioner to readily ascertain the insurer's compliance with state insurance laws and rules during an examination including, but not limited to, records regarding the insurer's management, operations, policy issuance and servicing, marketing, underwriting, rating and claims practices.
- B. **Retention Period.** Policy and claim records shall be retained for the period during which the certificate or claim is active plus five (5) years, unless otherwise specified by the insurance commissioner. Recordkeeping requirements shall relate to:
 - (1) Records to clearly document the application, underwriting, and issuance of each master policy and certificate of insurance; and
 - (2) Claim records to clearly document the inception, handling, and disposition.
- C. **Record Format.** Any record required to be maintained by a mortgage insurer may be created and stored in the form of paper, photograph, magnetic, mechanical or electronic medium.
- D. **Record Maintenance.** Record maintenance under this Act shall comply with the following requirements:
 - (1) Insurer maintenance responsibilities shall provide for record storage in a location that will allow the records to be reasonably produced for examination within the time period required.
 - (2) Third-Party maintenance related responsibilities shall be set forth in a written agreement, a copy of which shall be maintained by the insurer and available for purposes of examination.

Section 21. No Private Right of Action

This Act may not be construed to create or imply a private cause of action for violation of its provisions nor may it be construed to curtail a private cause of action which would otherwise exist in the absence of this Act.

Section 22. Regulations

The commissioner shall have the authority to promulgate rules and regulations deemed necessary to effectively implement the requirements of this Act.

Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

1976 Proc. II 15, 17, 647, 686, 747-753 (adopted).

1979 Proc. I 44, 47-48, 49, 719, 968-969 (corrected).

PROJECT HISTORY – 2023

MORTGAGE GUARANTY INSURANCE MODEL ACT (#630)

1. Description of the Project, Issues Addressed, etc.

The current NAIC *Mortgage Guaranty Insurance Model Act* (#630) was first adopted in 1976 and amended in 1979. Model #630 was created to provide effective regulation and supervision of mortgage guaranty insurers. Model #630 defines mortgage guaranty insurance as insurance against financial loss by reason of nonpayment of principal, interest, or other sums agreed to be paid on any note secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate. Mortgage guaranty insurance may also cover against financial loss by reason of nonpayment of rent under the terms of a written lease. As of April 2012, eight states had adopted the most recent version of the model in a substantially similar manner. An additional 12 states have adopted an older version of the model, legislation, or regulation derived from other sources such as bulletins and administrative rulings.

The Mortgage Guaranty Insurance (E) Working Group was formed in November 2012. By early 2013, the Working Group developed a list of potential regulatory changes to Model #630 to address changes in mortgage lending and mortgage finance since the model's original approval in the 1970s and to respond to the lessons learned during the 2008 national recession and housing market downturn. As a result, a Request for NAIC Model Law Development was made and approved by the Executive (EX) Committee at the 2013 Summer National Meeting.

Development of the modernized model has a long history dating back to the fall of 2012. At that time, development of a capital model to accompany Model #630 was the key focus of attention. During 2013, mortgage guaranty insurers engaged Oliver Wyman to begin working on a Mortgage Guaranty Capital Model. Over the next several years, the Mortgage Guaranty Capital Model was developed. It was determined in December 2016 that a secondary contractor would need to be hired to further assess the reliability of the Mortgage Guaranty Capital Model. In September 2017, Milliman began its work to review and validate the Mortgage Guaranty Capital Model.

In March 2018, Milliman provided its assessment of the capital model to the Working Group. It indicated that inconsistencies and errors were found in the data preparation steps used to: 1) estimate the capital model coefficients and the application of the same capital model coefficients; and 2) forecast future loan performance. Milliman stated that these inconsistencies and errors were material to the capital model and would need to be addressed before the Mortgage Guaranty Capital Model could be implemented.

As a result, Milliman continued its work on the Mortgage Guaranty Capital Model, and in December 2019, it was exposed for public comment. The comments regarding the exposure were expected to be discussed during the 2020 Spring National Meeting. However, due to the COVID-19 pandemic, this meeting was cancelled. The Working Group also began working on an annual statement exhibit to begin collecting data for the capital model. In April 2021, the Mortgage Guaranty Insurance (E) Working Group referred the exhibit proposal to the Blanks (E) Working Group. The exhibit was finalized and implemented into the blank effective year-end 2021. In May 2022, the Mortgage Guaranty Insurance (E) Working Group decided to pause the development of the capital model and continue collecting data for further analysis in the future. As a result, the Working Group focused on finalizing the model.

Mortgage Guaranty Insurance Model Act (#630)**Project History**

2. Name of Group Responsible for Drafting the Model and States Participating

The Mortgage Guaranty Insurance (E) Working Group comprised the drafting Group and consisted of the following states during 2023: North Carolina (chair); Arizona; California; Florida, Missouri, New York, Pennsylvania; Texas; and Wisconsin.

3. Project Authorized by What Charge and Date First Given to the Group

The Executive (EX) Committee approved the Request for NAIC Model Law Development during the 2013 Summer National Meeting. Throughout the course of model development, the Financial Condition (E) Committee chair approved extensions due to extenuating circumstances.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated.

The Working Group formed a drafting group, which consisted of: Jackie Obusek (NC–Chair); Kurt Regner (AZ); Monica Macaluso (CA); Robert Ballard (FL); John Rehagen (MO); Margot Small (NY); Melissa Greiner (PA); Amy Garcia (TX); and Amy Malm (WI). Following the lengthy hiatus from the development of the model, due to work being completed on the Mortgage Guaranty Capital Model, the drafting group began finalization of model in May 2022 without consideration of the capital model. During its May meeting, the drafting group discussed the overall approach to finalizing the model and a rather aggressive timeline for completion.

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)

The Working Group met in open session on Oct. 6 and Dec. 13, 2022, and March 22, 2023. During these sessions, interested regulators and parties submitted comment letters to the Working Group. The drafting group held nine regulator-only discussion and planning calls between May 2022 and March 2023. The Working Group exposed the model for public comment on Oct. 7, 2022, and again on Feb. 27, 2023, and May 11, 2023. Comments were received from: the California Department of Insurance (DOI); the Center for Economic Justice (CEJ); and the Mortgage Guaranty Consortium (Arch Mortgage Insurance Company, Enact Mortgage Insurance Corporation, Essent Guaranty Inc., Mortgage Guaranty Insurance Corporation, National Mortgage Insurance Corporation, and Radian Guaranty Inc.).

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response)**Section 10, Reserve Requirements – Contingency Reserve**

The most significant issue raised during development was related to the recording of the contingency reserves when reinsurance is used. The specific provision is: “The Mortgage Guaranty Insurance company shall make an annual contribution to the Contingency Reserve which in the aggregate shall be equal to fifty percent (50%) of the direct earned premiums reported in the annual statement or net earned premiums reported if the reinsurer maintains the contingency reserve.” The mortgage insurers indicated that many reinsurers do not complete a statutory financial statement and would not have the ability to record the contingency reserve. The drafting group members discussed the topic and agreed to leave the provision as stated.

Mortgage Guaranty Insurance Model Act (#630)**Project History**

Section 21, No Private Right of Action Provision

The mortgage guaranty insurers proposed the following provision for inclusion in the model: “No Private Right of Action. Nothing in this Act is intended to, or does, create a private right of action based upon compliance or noncompliance with any of the Act’s provisions. Authority to enforce compliance with this Act is vested exclusively in the Commissioner.” Following discussion by the drafting group, the provision was added to the model and included in the Feb. 27, 2023, exposure. The drafting group received several comments on the provision.

7. List the Key Provisions of the Model (sections considered most essential to state adoption)**Section 10. Reserve Requirements**

- A. **Unearned premium Reserves, Loss Reserves, and Premium Deficiency Reserves.** Financial reporting will be prepared in accordance with the Accounting Practices and Procedures Manual and Annual Financial Statement Instructions of the NAIC.
- B. **Contingency Reserve.** Each mortgage guaranty insurance company shall establish a contingency reserve subject to the following provisions:
 - (1) The mortgage guaranty insurance company shall make an annual contribution to the contingency reserve which in the aggregate shall be equal to fifty percent (50%) of the direct earned premiums reported in the annual statement or net earned premiums reported if the reinsurer maintains the contingency reserve.
 - (2) Except as provided within this Act, a mortgage guaranty insurance company’s contributions to the contingency reserve made during each calendar year shall be maintained for a period of 120 months, to provide for reserve buildup. The portion of the contingency reserve established and maintained for more than 120 months shall be released and shall no longer constitute part of the contingency reserve.
 - (3) Withdrawals may be made from the contingency reserve on a first-in, first-out basis or such other basis, with the prior written approval of the domiciliary commissioner, based on the amount by which:
 - (a) Incurred losses and loss adjustment expenses exceed 35% of the direct earned premium in any year. Provisional withdrawals may be made from the contingency reserve on a quarterly basis in an amount not to exceed 75% of the withdrawal as adjusted for the quarterly nature of the withdrawal; or
 - (b) Upon the approval of the domiciliary commissioner and 30-day prior notification to non-domiciliary commissioners, a mortgage guaranty insurer may withdraw from the contingency reserve any amounts which are in excess of the requirements of Section 15 as required in [insert section of the mortgage guaranty Insurance model law requiring minimum policyholder’s position] as filed with the most recently filed annual statement.

Mortgage Guaranty Insurance Model Act (#630)

Project History

- (i.) The mortgage guaranty insurance company's domiciliary commissioner may consider loss developments and trends in reviewing a request for withdrawal. If any portion of the contingency reserve for which withdrawal is requested is maintained by a reinsurer or in a segregated account or trust of a reinsurer, the domiciliary commissioner may also consider the financial condition of the reinsurer.

- C. **Miscellaneous.** Unearned premium reserves and contingency reserves on risks insured before the effective date of this Act may be computed and maintained as required previously.

Section 15. Risk in Force and Waivers

- A. **Risk in Force.** A mortgage guaranty insurance company shall not at any time have outstanding risk in force, net of reinsurance, under its aggregate mortgage guaranty insurance policies exceeding twenty-five (25) times its capital, surplus and contingency reserve. In the event that any mortgage guaranty insurance company has outstanding total risk in force exceeding twenty-five (25) times its capital, surplus and contingency reserve, it shall cease transacting new mortgage guaranty business until such time as its total risk in force no longer exceeds twenty-five (25) times its capital, surplus and contingency reserve. Total risk in force shall be calculated on an individual entity basis.
- B. **Waiver.** The commissioner may waive the requirement found in Section 15A at the written request of a mortgage guaranty insurer upon a finding that the mortgage guaranty insurer's policyholders position is reasonable in relationship to the mortgage guaranty insurer's aggregate insured risk in force and adequate to its financial needs. The request must be made in writing at least 90 days in advance of the date that the mortgage guaranty insurer expects to exceed the requirement of Section 15A and shall, at a minimum, address the factors specified in Section 15C.
- C. **Waiver Criteria.** In determining whether a mortgage guaranty insurer's policyholders position is reasonable in relation to the mortgage guaranty insurer's aggregate insured risk in force and adequate to its financial needs, all of the following factors, among others, may be considered:
 - (1) The size of the mortgage guaranty insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.
 - (2) The extent to which the mortgage guaranty insurer's business is diversified across time, geography, credit quality, origination, and distribution channels.
 - (3) The nature and extent of the mortgage guaranty insurer's reinsurance program.
 - (4) The quality, diversification, and liquidity of the mortgage guaranty insurer's assets and its investment portfolio.

Mortgage Guaranty Insurance Model Act (#630)**Project History**

- (5) The historical and forecasted trend in the size of the mortgage guaranty insurer's policyholders position.
 - (6) The policyholders position maintained by other comparable mortgage guaranty insurers in relation to the nature of their respective insured risks.
 - (7) The adequacy of the mortgage guaranty insurer's reserves.
 - (8) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders.
 - (9) The quality of the mortgage guaranty insurer's earnings and the extent to which the reported earnings of the mortgage guaranty insurer include extraordinary items.
 - (10) An independent actuary's opinion as to the reasonableness and adequacy of the mortgage guaranty insurer's historical and projected policyholders position.
 - (11) The capital contributions which have been infused or are available for future infusion into the mortgage guaranty insurer.
 - (12) The historical and projected trends in the components of the mortgage guaranty insurer's aggregate insured risk, including, but not limited to, the quality and type of the risks included in the aggregate insured risk.
- D. **Authority to Retain Experts.** The commissioner may retain accountants, actuaries, or other experts to assist in the review of the mortgage guaranty insurer's request submitted pursuant to Section 15B. The mortgage guaranty insurer shall bear the commissioner's cost of retaining those persons.
- E. **Specified Duration.** Any waiver shall be:
- (1) For a specified period of time not to exceed two years; and
 - (2) Subject to any terms and conditions that the commissioner shall deem best suited to restoring the mortgage guaranty insurer's minimum policyholders position required by Section 15A.

8. Any Other Important Information (e.g., amending an accreditation standard)

None. It is not an accreditation standard, and the Working Group is not making a recommendation that it be considered as an accreditation standard.

**Consumer Organizations’ and NAIC Consumer Representatives’ Comments to the
NAIC Mortgage Guaranty Insurance (E) Working Group
On the May 11, 2023 Exposure Draft of the Mortgage Guaranty Insurance Model Act
May 26, 2023**

The undersigned NAIC consumer representatives and consumer organizations strenuously oppose the new provision eliminating a private right of action for violations of the act. While different from the “no private right of action” provision in the prior draft of the model law, the latest version of “no private right of action” in the May 11, 2023 exposure draft remains unwarranted and profoundly anti-consumer.

We also object to the watering-down of essential consumer protections.

A Private Right of Action is Necessary and Justified for Violations of Sections 8 (Advertising), 11A (Prohibition of Captive Reinsurance), 12 F (Nondiscrimination), 16 (Conflict of Interest), 18A (Inducements), 18B (Compensation for Placement), 18C (Rebates), 18F (Educational Materials) and 19 (Rescission)

The current NAIC mortgage guaranty insurance model act – adopted many years prior to the 2008 financial crisis – contains no provision limiting any consumer’s right of action against the insurance company for violations of the act. It is unclear what rationale or basis or changes in the market exist to support the new “no private right of action” provision.

The current model includes, in Section 13, anti-rebating and anti-kickback provisions to protect consumers from collusion among mortgage insurers and lenders – practices that harm consumers. Despite these anti-kickback provisions in the model law, some insurance regulators not only failed to stop kickback schemes, such as captive reinsurance, but approved these anti-consumer schemes. Private rights of action garnered some relief for consumers who suffered losses because of the prohibited kickback schemes.

Historical experience demonstrates that regulatory oversight alone failed to protect mortgage guaranty insurance consumers and private rights of action helped address regulatory and market failures to provide some redress for harmed consumers. It is illogical that regulators would now insert a provision eliminating a private right of action for consumer redress in the revised model.

Industry’s sole argument for the “no private right of action” is the ephemeral chestnut of “potential frivolous litigation.” While we have pointed to justified litigation, industry has offered no examples of “frivolous litigation.” We have previously pointed out that while industry wants to prevent consumers from going to court for protection against and redress from

abusive mortgage guaranty insurer practices, the insurers themselves have no qualms about going to court against consumers. It would be an unfair double standard for regulators to endorse a “no private right of action” by consumers while leaving insurers’ access to the courts untouched.

The addition of the “no private right of action” provision is unprecedented. There is no other personal line of insurance with such an anti-consumer provision. There is certainly no such provision in any of the NAIC model laws for lines of insurance that, like mortgage guaranty insurance, are subject to reverse competition – not for consumer credit insurance and not for title insurance.¹ Lines of insurance subject to reverse competition demand greater consumer protection tools, not fewer.

It would not be objectionable to limit the private right of action to only those provisions of the model for which consumer harm can be directly demonstrated and which avoid any provisions that would interfere with regulatory oversight of mortgage guaranty insurer solvency. A private right of action for violations of Sections 8, 11A, 12F, 16, 18A, 18B, 18C, 18F and 19 will not interfere with regulatory oversight of mortgage guaranty financial condition or market conduct – just as private rights of action for any other personal line of insurance complement regulatory oversight of insurers’ market conduct in those other lines of insurance.

The revised “no private right of action” language – “neither creates a private right of action for violation of its provisions nor may it be construed to curtail a private right of action which would otherwise exist in the absence of the Act” – is very broad and could be interpreted to have the same effect as simply stating no private right of action. For example, the revised model now includes “limitations” on rebates, commissions and inducements instead of outright prohibitions. It is unclear what or how any other state laws specifically reference any of these prohibited practices and, consequently, how a private right of action would otherwise exist in the absence of the law. If a private right of action otherwise exists, it is likely because there is a federal law governing the behavior of mortgage insurers and state law will not usurp those private rights of action regardless of whether the new mortgage guaranty insurance model mentions “otherwise existing” private rights of action.

¹ “Reverse competition means competition among insurers that regularly takes the form of insurers vying with each other for the favor of persons who control, or may control, the placement of the insurance with insurers. Reverse competition tends to increase insurance premiums or prevent the lowering of premiums in order that greater compensation may be paid to persons for such business as a means of obtaining the placement of business. In these situations, the competitive pressure to obtain business by paying higher compensation to these persons overwhelms any downward pressures consumers may exert on the price of insurance, thus causing prices to rise or remain higher than they would otherwise.” NAIC Credit Personal Property Model Act, 3X.

Watering Down of Important Consumer Protections

Section 18A is significantly weakened from a consumer protection standpoint. The model upends a fundamental anti-competitive practice – no inducements by insurers for the steering of business to the insurer – and makes such inducements permissible if included in the policy and subject to the Unfair Trade Practices Act. This is precisely the wrong way to regulate a line of business subject to reverse competition in which the insurers compete not for individual consumers, but for the lenders who select the mortgage guaranty insurer and steer the borrowers to those insurers. It was reverse competition in mortgage guaranty insurance markets that motivated a variety of inducement mechanisms to secure business from lenders leading up to the financial crisis of 2008. It was reverse competition that compromised mortgage guaranty insurers' risk management practices.

The recent revisions to the UFTA model act attempt to encourage risk mitigation efforts by insurers without conflicting with anti-rebate concerns. There is no risk mitigation associated with an inducement. Section 18A should be revised to delete the proposed addition at the beginning of the paragraph to clearly prohibit inducements.

The change to Section 18C – permitting rebates if set forth in the policy and subject to the UTPA – is also bewildering. The draft section states:

Rebates: Unless set force (sic) in the policy and subject to the [state equivalent of the Unfair Trade Practice Act (Model #880)], a Mortgage Guaranty Insurance company shall not quote any rate or premium charge to a person that is different than that currently available to others for the same type of coverage. The amount by which a premium charge is less than that called for by the current schedule of premium charges is an unlawful rebate.

There is simply no way for a “rebate” as set out in the first phrase (set forth in the policy and subject the UTPA) to comply with the remaining portion of the paragraph. If the “rebate” is set forth in the filed rates, it is not a “rebate,” but a rate discount. If the “rebate” is available to all for the same type of coverage, it is not a “rebate,” but a rate discount. Further, reaching to the recent revisions of the NAIC UTPA model does not help; those recent revisions were intend to promote loss prevention and loss mitigation efforts without conflicting with anti-rebating prohibitions. If the “rebate” is set out in the policy form, then the UTPA is inapplicable because rebates are not policy form provisions approved by the regulator.

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Private mortgage insurers do not engage in risk mitigation with borrowers – lenders and mortgage services are the entities that do such activities. While private mortgage insurers may engage in risk mitigation with lenders and servicers – because the mortgage insurance is for the benefit of the mortgage owner – there is no rationale for providing a “rebate” to lenders or services and such activity would clearly be a prohibited inducement or rebate.

Please contact Birny Birnbaum at birny@cej-online.org if you have any questions or would like additional information.

Center for Economic Justice
 Consumer Federation of America
 National Consumer Law Center (on behalf of its low-income clients)
 United Policyholders
 Amy Bach, NAIC Consumer Representative
 Birny Birnbaum, NAIC Consumer Representative
 Brendan Bridgeland, NAIC Consumer Representative
 Bonnie Burns, NAIC Consumer Representative
 Brenda Cude, NAIC Consumer Representative
 Deborah Darcy, NAIC Consumer Representative
 Yosha Dotson, NAIC Consumer Representative
 Erica Eversman, NAIC Consumer Representative
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 Matthew J. Smith, NAIC Consumer Representative
 Harry Ting, NAIC Consumer Representative
 Richard M. Weber, NAIC Consumer Representative
 Jackson Williams, NAIC Consumer Representative
 Silvia Yee, NAIC Consumer Representative

June 2, 2023

Ms. Jackie Obusek, Chair
Mortgage Guaranty Insurance (E) Working Group
National Association of Insurance Commissioners
1100 Walnut Street
Kansas City, MO 64106-2197
c/o Andy Daleo,
Senior Manager – Financial Regulatory Services

RE: MI Industry Group Comment Letter – May 2023 Model Act Exposure Draft

Dear Ms. Obusek:

The Private Mortgage Guaranty Insurance Industry Group (“Industry Group”) submits the following comments with regard to Sections 10(B)(1) and 14(A) of the *Mortgage Guaranty Insurance Model Act* exposed on May 11, 2023 (“May 2023 Model Act”).

Section 10(B)(1) – Contingency Reserve

The Industry Group recommends the following revision to draft Section 10(b)(1) and accompanying drafting notes for the Working Group’s consideration. This proposal is meant to avoid adoption of a Model Act that would discourage the use of reinsurance by requiring the same amount of annual contribution to the Contingency Reserve irrespective of whether premiums are being ceded pursuant to a reinsurance agreement or treaty. Both a Contingency Reserve requirement and collateralized or otherwise specifically segregated assets required to be maintained pursuant to a reinsurance agreement or treaty serve the same function of providing assurance of claims paying ability. Form should not be elevated over function by granting credit towards the Contingency Reserve requirement only where the dedicated funding is able to be formally accounted for as a Contingency Reserve on a statutory financial statement, particularly since collateral held in a segregated trust could be considered to provide even more certain access to such funds for the cedent than assets commingled within a reinsurer’s general investment portfolio to support a recorded Contingency Reserve entry.

The current exposure draft requires an annual contribution to the Contingency Reserve “*which in the aggregate shall be equal to fifty percent (50%) of the direct earned premiums reported in the annual statement or net earned premiums reported if the reinsurer maintains the contingency reserve.*” The Working Group addressed the interaction of reinsurance with the Contingency Reserve by adding the language “*or net earned premiums reported if the reinsurer maintains the contingency reserve.*” However, except in the case where the reinsurer is another mortgage guaranty insurance company, the impact of this language would unfortunately be illusory because reinsurers that are not mortgage guaranty insurance companies do not file a statutory financial statement that shows a contingency reserve entry.

The suggested drafting approach below would clarify that the Contingency Reserve requirement is deemed to be achieved based on the maintenance by the reinsurer of equivalent collateralized or otherwise specifically segregated assets supporting the reinsurance obligations, in trust or

otherwise, even if the reinsurer does not file a statutory financial statement that shows a contingency reserve entry.

B. Contingency Reserve. *Each Mortgage Guaranty Insurance company shall establish a Contingency Reserve subject to the following provisions:*

- (1) The Mortgage Guaranty Insurance company shall make an annual contribution to the Contingency Reserve which in the aggregate shall be equal to fifty percent (50%) of (a) the direct earned premiums reported in the annual statement or (b) earned premiums net of reinsurance reported if the reinsurer maintains the Contingency Reserve or equivalent assets that support its reinsurance obligation. Credit for maintenance of the Contingency Reserve or equivalent assets in connection with reinsurance shall apply to the extent of and during the period that such amounts are maintained. In the event of a release of such amounts before the 120 month period in subpart (B)(2) of this Section for any reason other than as approved under subpart (B)(3) of this Section, the Mortgage Guaranty Insurance company shall reestablish such amounts in its Contingency Reserve effective as of the date of the next annual contribution to the Contingency Reserve.*

In conjunction with this version of Section 10(B)(1), we also propose adding the following drafting note:

Drafting Note: *As used in this section, the term “reinsurance” includes traditional forms of insurance as well as other similar mechanisms or constructs, such as insurance linked notes with a reinsurance feature, that permit the primary direct insurer to transfer risk in a manner that allows that insurer to record such risk transfer and any capital support attendant thereto either as an asset or a reduction from liability on its statutory financial statements in accordance with statutory accounting principles. As used in this section, the phrase “equivalent assets” includes the maintenance by the reinsurer of collateral in a trust or segregated account to support the reinsurer’s obligation, or the direct insurer recording a liability for funds held under the reinsurance treaty.*

Finally, we also offer an optional drafting note that may accompany Section 10 to the extent that the Working Group deems it to be helpful. While the Industry Group does not view it to be essential, the optional drafting note is intended to memorialize, for the avoidance of any doubt, that the contingency reserve provision in this model law that is unique to the mortgage guaranty insurance line should not be construed as being in conflict with the provisions of either the Covered Agreement or the NAIC’s separate model law relating to credit for reinsurance.

Drafting Note: *In accordance with The Bilateral Agreement Between the United States of America and the European Union on Prudential Measures Regarding Insurance and Reinsurance (“Covered Agreement”), states should not interpret this section in a manner that would violate or contravene the Covered Agreement. Nothing in this section is intended to be in conflict with NAIC Model 785 Credit for Reinsurance Law or NAIC Model 786 Credit for Reinsurance Regulation.*

Section 14(A) – Policy Forms

The Industry Group continues to recommend the deletion in its entirety of the second sentence in Section 14(A) relating to deficiencies arising from a foreclosure sale.

Citing experiences from the great financial crisis involving moral hazards such as the temptation of a borrower to strategically default on a mortgage loan notwithstanding having the financial wherewithal to repay amounts due, the Industry Group previously commented that the ability to evaluate loans for pursuit of deficiency actions on a case by case basis supports the overall solvency of the mortgage guaranty insurance industry.¹ There is a divergence among states with regard to the pursuit of deficiency judgments -- many states permit such actions while some states have passed an anti-deficiency judgment law of general effect that applies to both loan servicers and mortgage guaranty insurers alike. We commented that it would be an anomalous result if scenarios were to arise in certain states where the loan servicer is allowed to pursue the borrower for a deficiency arising from a foreclosure sale while the mortgage insurer is restricted from doing so.² Finally, we offered reassurance to the Working Group that in those states that do have anti-deficiency judgment acts, the Master Policy form already acknowledges the limitations on the mortgage guaranty insurer to pursue deficiencies arising from a foreclosure sale in those particular jurisdictions.³ Therefore, we requested to remove this sentence from the Model Act draft exposed in October 2022.

Following the submission of the November 18, 2022 Comment Letter, the Working Group did, in fact, remove the language referring to deficiency actions from the February 2023 Model Act exposure draft, but appeared to have inadvertently retained a fragment of the sentence. Believing this to be a typographical error in need of correction, we flagged this sentence fragment in the attachment to our March 14, 2023 Comment Letter. However, the May 2023 Model Act corrected the typographical error by restoring the original draft prohibition on pursuit of deficiency actions, rather than by deleting the sentence fragment. Therefore, we again raise this matter to the Working Group's attention and request to remove the second sentence of Section 14(A) in its entirety for the reasons in our prior comment letter and summarized above.

Conclusion

The Industry Group supports the Working Group's efforts to update the Model Act, and we would be pleased to make representatives of each company available for a telephonic conference to discuss the comments in this letter if that would be of assistance to you.

Respectfully submitted on behalf of the Industry Group companies below,

**Arch Mortgage Insurance Company,
Enact Mortgage Insurance Corporation,
Essent Guaranty, Inc.,
Mortgage Guaranty Insurance Corporation,
National Mortgage Insurance Corporation, and
Radian Guaranty Inc.**

¹ See Industry Group Comment Letter dated November 18, 2022, at 11.

² See *id.* at 12.

³ See *id.*