

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 (~~95~~ 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) ~~(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 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.~~

~~(c32)~~ 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 that do not impair the use of the real property under which rents or profits are reserved to the owner thereof estate for its intended purpose.~~

~~(2)~~ Notwithstanding the foregoing, a loan referenced in Section 2(A)(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 which 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) In this Act, 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.D.~~ “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 ~~and which describes the particular characteristics, terms, and conditions~~ and representations, in addition to those contained in the Master Policy and endorsements, applicable to such coverage ~~of that insured Authorized Real Estate Security.~~

~~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.

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

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- “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, ~~excluding costs which have already been expensed.~~
- I. “Master Policy” means a document issued by a mortgage guaranty insurance company ~~to a creditor or mortgage holding entity~~ that establishes the terms and conditions of mortgage guaranty insurance coverage provided thereunder, including any endorsements thereto.
- J. “Mortgage Guaranty Insurance” is:
- (1) ~~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.; ~~and~~
 - (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 **Control 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 information provided to, or information concealed from, the mortgage guaranty insurance company in the insurance application~~ 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, resulting in an insured loan which does not meet acceptable risk tolerance requirements in accordance with the mortgage guaranty insurance company’s underwriting standards.
- O. “Risk in Force” mean 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 \$225,000,000. A stock insurance company or a mutual insurance company shall at all times thereafter maintain a minimum policyholders' surplus of at least \$1,50020,000,000.
- B. Minimum Capital Requirements Applicability. A Mortgage Guaranty Insurance company formed prior to 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 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.~~

Section 57. 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 States~~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 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~~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

~~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. A Mortgage Guaranty Insurance company shall not invest in notes or other evidence of indebtedness secured by a mortgage or other lien upon real property.~~ 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 ~~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, with the approval of the Domiciliary Commissioner, to 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~~

~~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 10. Filing Requirements 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 National Association of Insurance Commissioners.~~

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

~~A. A mortgage guaranty insurance~~

~~(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, with prior written approval of the Domiciliary Commissioner; or~~

(b) ~~With~~ 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 ~~minimum policyholder's position~~ 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.

~~(1) Whenever the laws of any 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.~~

(1) 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. Subterfuge in Reinsurance Prohibited 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, ~~and the Contingency Reserve~~ 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. ~~A reinsurer that is not a Mortgage Guaranty Insurance company is not required to establish a Contingency Reserve provided the reinsurance obligations are not supported by a reserve maintained by the reinsurer will not be entitled to reinsurance credit unless the reinsurance obligations are supported by collateral complying with the requirements of [insert provisions defining acceptable collateral for non-admitted reinsurers] and t[~~The cession shall be accounted for ~~as a retroactive reinsurance agreement~~ as provided in the accounting practices and procedures prescribed or permitted by the applicable accounting practices and procedures manual of the National Association of Insurance Commissioners.

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 and~~ 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 Guidelines Standards. Mortgage Guaranty Insurance companies shall establish formal underwriting guidelines standards which set forth the basis for concluding that prudent underwriting standards have been met.

D. Underwriting Guideline Review and Approval. A Mortgage Guaranty Insurance company's underwriting guidelines 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) Reviewed with either the board of directors or a board committee designated to provide oversight of underwriting policy and ratification of material changes under a written resolution of the board of directors setting forth the scope of review for such oversight and ratification; and

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

—E. **Maintenance of Minimum Underwriting Standards and Documentation Generally.** Underwriting standards, including but not limited to review and approval procedures, minimum underwriting guidelines, and the collection and retention of underwriting documentation shall be in accordance with:

Minimum mortgage documentation standards;

Loan program or type qualification requirements;

Minimum borrower repayment qualification requirements; and

Minimum property marketability qualifications.

— **Notification of Changes in Underwriting Guidelines Standards.** ~~OA Mortgage Guaranty Insurance company shall provide notice to the Commissioner of changes to its underwriting guidelines as follows:~~

— ~~On or before March 1 of each year, a Mortgage Guaranty Insurance company shall file with the Domiciliary Commissioner an annual summary of material changes into its underwriting standards and an analysis of the changes guidelines implemented during the course of the immediately preceding year along with references to supporting hardcopy or website documentation.~~

The annual summary of material underwriting guideline 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 12G.

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 ~~strategy and control~~ inadequacies or non-compliance. This shall include, but not limited to:
- (1) **Segregation of Duties.** Administration of the quality ~~control~~assurance program shall be delegated to designated risk management, quality ~~control~~assurance or internal audit personnel, who are technically trained and independent from underwriting activities ~~that they audit-related to loan origination, pricing, underwriting and operations.~~
 - (2) **Senior Management Oversight.** Quality ~~control~~assurance personnel shall provide periodic quality assurance ~~control~~reports to an enterprise risk management committee or other equivalent senior management level oversight body.
 - (3) **Board of Director Oversight.** Quality assurance ~~control~~personnel shall provide periodic quality assurance ~~control~~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 ~~Control~~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 ~~control~~review shall include an examination of underwriting risks including ~~categorization~~classification of risk ~~written unless~~ and ~~until the insurer's exposure and~~ compliance with risk tolerance levels.
 - (6) **Lender Performance Reviews.** Quality assurance ~~control~~monitoring provisions shall include an assessment of lender performance ~~expectations.~~
 - (7) **Underwriting Performance Reviews.** Quality assurance ~~control~~monitoring provisions shall assess compliance with underwriting ~~guidelines~~standard.
 - (8) **Problem Loan Trend Reviews.** Quality assurance ~~control~~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 ~~insurer has~~conducted to validate compliance with the Mortgage Guaranty Quality Assurance ~~Control~~Program.
- B. **Regulator Access and Review of Quality Assurance Program.** The Commissioner shall be provided access to an insurer's Mortgage Guaranty Quality Assurance ~~Control~~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.

Section 11. Policy Forms and Premium Rates Filed

A. Policy Forms.

- ~~A. 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 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. the Mortgage Guaranty Insurance policy shall provide that the borrower shall not be liable to the insurance company for any deficiency arising from a foreclosure sale.~~
- B. **Premiums and Rates.** ~~In addition, e~~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. ~~**Schedule of Premium Charges.**~~ **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. ~~Every Mortgage Guaranty Insurance company shall adopt, print and make available a schedule of premium charges for Mortgage Guaranty Insurance policies. Premium charges made in conformity 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. The schedule shall show the entire amount of premium charge for each type of Mortgage Guaranty Insurance policy issued by the insurance company.~~

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

Section ~~1215~~. Outstanding Total LiabilityRisk in Force and Waivers

- A. **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 an ~~consolidated individual entity~~ basis ~~for all mortgage guarantee insurance companies that are part of a holding company system.~~
- B. **Waiver.** The Commissioner may waive the requirement found in subsection (a) of this section 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 subsection (a) of this section and shall, at a minimum, address the factors specified in subsection (j) of this section.
- 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 the Commissioner in the review of the mortgage guaranty insurer's request submitted pursuant to subsection (i) of this section. The mortgage guaranty insurer shall bear the Commissioner's cost of retaining those persons.

E. **Specified Duration.** Any waiver shall be (i) for a specified period of time not to exceed two years and (ii) 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 subsection (a) of this section.

Section 16. Conflict of Interest

A. — 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. ~~If a member of a holding company system, a~~

A. — ~~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.~~

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, engage in activities proscribed in~~

[Sections 17 and 18.](#)**Section 1714. 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. **[No Inducements.](#)** [Unless set force in the policy and subject to the \[state equivalent of the Unfair Trade Practices Act \(Model #880\)\],](#) 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. **[No 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.
- A.C. **[No Rebates.](#)** [Unless set force in the policy and subject to the \[state equivalent of the Unfair Trade Practices Act \(Model #880\)\],](#) 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. **[No Undue Contractual Preferences.](#)**
- (1) [Any contract, letter agreement, or other arrangement used to modify or 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 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

The Right of Rescission shall be governed by the following:

- A. Rescission Rights and Responsibilities.** 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.

- B. Rescission Relief Provisions.** Mortgage Guaranty Insurance company rescission relief practices shall be in accordance with the following:

— A Mortgage Guaranty Insurance Master Policy may provide for mandatory rescission relief based on evidence of compliance with payment history and loan status eligibility requirements.

— A Mortgage Guaranty Insurance Master Policy may offer an earlier rescission relief option based on evidence of compliance with underwriting and payment history eligibility requirements.

— A Mortgage Guaranty Insurance company shall retain the Right of Rescission in instances in which a creditor or the officers, directors, employees, contractors, and agents of a creditor engage in misstatements, misrepresentations, omissions, data inaccuracies or active efforts to deceive through submission of forged or fictitious information in connection with loan origination or closing for a period of at least 10 years, based on:

— Credible evidence of the existence of the above conditions; and

— Credible evidence of the materiality of the above conditions to the Mortgage Guaranty Insurance company's acceptance of risk.

- C. Re-pricing Provisions.** A Mortgage Guaranty Insurance company shall have the option to re-price the insurance premium for coverage upon a loan, when prudent, in lieu of rescinding coverage based on the following:

— Rescission relief has not been granted based on Subsection 17B;

— The loan would have been eligible for coverage with alternative pricing under the underwriting standards in effect at origination; and

— Misstatements, misrepresentations, omissions or inaccuracies by the creditor or the officers, directors, employees, contractors, and agents of a creditor are not considered material based on reasonable verification of appraisal value and borrower income by the Mortgage Guaranty Insurance company.

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.

~~Recordkeeping requirements shall relate to:~~

~~(1) Policy records to clearly document the application, underwriting, issuance and servicing of each policy and Certificate; and~~

~~(2) Claim records to clearly document the inception, handling and disposition~~

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) Policy Records to clearly document the application, underwriting, and issuance and servicing 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:

~~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. 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

~~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.~~

~~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.~~

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~~D. Reinsurantee~~

~~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 17. 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).