NAIC NATIONAL MEETING
FALL 2022

Draft: 11/10/22

2022 Fall National Meeting
Tampa, Florida

MORTGAGE GUARANTY INSURANCE (E) WORKING GROUP
Tuesday, December 13, 2022
8:00 – 9:00 a.m.
JW Marriot—Ybor Ballroom IV & V—Level 2

ROLL CALL

Jackie Obusek, Chair	North Carolina	Margot Small	New York
Kurt Regner	Arizona	Melissa Greiner	Pennsylvania
Monica Macaluso/Joyce Zeng	California	Amy Garcia	Texas
Robert Ballard	Florida	Amy Malm/Levi Olson	Wisconsin
John Rehagen	Missouri		

NAIC Support Staff: Andy Daleo

AGENDA

1. Consider Adoption of its Oct. 6 Meeting Minutes — Attachment 1
   —*Jackie Obusek (NC)*

2. Discuss Comments Received on the Exposure Draft of the *Mortgage Guaranty Insurance Model Act* (#630)—*Jackie Obusek (NC)* — Attachments 2-4

3. Discuss Any Other Matters Brought Before the Working Group
   —*Jackie Obusek (NC)*

4. Adjournment

Date: 10/14/22

Mortgage Guaranty Insurance (E) Working Group
Virtual Meeting
October 6, 2022

The Mortgage Guaranty Insurance (E) Working Group of the Financial Condition (E) Committee met Oct. 6, 2022. The following Working Group members participated: Jackie Obusek, Chair (NC); Kurt Regner (AZ); Monica Macaluso (CA); Robert Ballard (FL); Debbie Doggett (MO); Michael Campanelli (NY); Melissa Greiner (PA); Chris Miller (TX); and Amy Malm (WI).

1. Discuss and Expose the Draft Model #630

Ms. Obusek summarized that much of the Working Group's time over the past couple of years was spent on the development and implementation of the Mortgage Guaranty Insurance Supplement to the financial statement and work on the mortgage guaranty capital model. She indicated that given that data is now being collected within the new Mortgage Guaranty Insurance Supplement, over the next couple years, the Working Group will continue to analyze that data in conjunction with further development of the capital model. She commented that references to the capital model have been eliminated from the draft *Mortgage Guaranty Insurance Model Act* (#630). She stated that to the extent that the Working Group becomes comfortable with the capital model, it will move forward with its implementation. Further, she stated that the Working Group's immediate goal will focus on the completion and adoption of Model #630 by the 2023 Spring National Meeting. She summarized that the draft Model #630 is the result of seven drafting group calls held over the last four months. She commented that the call materials include the latest redline draft Model #630, a clean version of Model #630, and the last adopted model from 2000 for comparison (Attachment __).

Ms. Obusek summarized that in addition to the elimination of references regarding the capital model, previous draft versions of Model #630 included references to the *Mortgage Guaranty Insurance Standards Manual* (Manual). She stated that the Working Group has tabled work on the Manual and will revisit it later. Further, she indicated that all references to the Manual have been removed from the draft Model #630. She stated that because of the removal of the capital model and Manual references, some of the unnecessary definitions within Section 2—Definitions have been removed. Further, she stated that some of the definitions have been updated to more modern terminology, given that the last adopted model is 22 years old. She stated that Section 3—Insurer's Authority to Transact Business and Section 4—Mortgage Guaranty Insurance as a Monoline include minor edits, keeping the intent of those sections intact. She indicated that Section 5—Risk Concentration is a new section that sets forth a restriction on real estate investment holdings to 10% of surplus. She stated that Section 6—Capital and Surplus includes updates to the capital and surplus requirements and any adjustments to those values. She stated that Section 7—Geographic Concentration did not change from the 2000 adopted language, and Section 8—Advertising was modernized to more up-to-date language, but it has kept the same intent. She stated that Section 9—Investment Limitations was updated to eliminate restrictions on any U.S. government-backed investments held by the mortgage insurer. Further, Section 10—Filing Requirements, Section 11—Reinsurance, Section 12—Sound Underwriting Practices, and Section 13—Quality Assurance are new to Model #630. She stated that Section 14—Policy Forms and Premium Rates Filed, Section 15—Outstanding Total Liability, Section 16—Conflict of Interest, and Section 17—Compensating Balances Prohibited were edited minimally, keeping the overall intent the same as what was adopted in 2000. She stated that Section 18—Rebates, Commissions, Charges, and Contractual Preferences integrates new contractual preferences language regarding the modification of business practices. Further, she stated that Section 19—Rescission is new and includes language on rescission rights and responsibilities, rescission relief provisions, and repricing provisions. She stated that Section 20—Records Retention is new to Model #630, and Section 21—Regulations was not amended. She asked if there are any questions regarding the summary of draft Model #630. Birny Birnbaum (Center for Economic

Justice—CEJ) asked how draft Model #630 interacts with the U.S. Federal Housing Finance Agency Private Mortgage Insurer Eligibility Requirements (PMIER). Ms. Obusek indicated that draft Model #630 capital requirements are very similar to what has been required for mortgage guaranty insurers, and the model does not relate to the PMIER requirements. Tony Shore (Essent Guaranty Inc.) inquired about the timeframe regarding adoption of Model #630. Ms. Obusek commented that the draft Model #630 will be exposed for a 30-day public comment period. Matthew Wulf (Swiss Re America Holdings Corporation) commented that Section 11B—Reinsurance appears to be missing words within the last sentence. He indicated that he recalls that the intent of this section was to not limit reinsurance to a monoline reinsurer, but to follow the credit for reinsurance laws and not require additional collateral. Ms. Obusek indicated that the drafting group will review this section, and it also welcomes comments. Following discussion, the draft Model #630 was exposed for a 30-day public comment period ending Nov. 7.

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

SharePoint/NAIC Support Staff Hub/Member Meetings/E CMTE/MGIWG/2022 Fall NM/MGIWG Minutes Oct 6 2022.docx

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 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;

(~~2~~b) 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.

(~~3~~2) 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.

(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" means a document issued by a mortgage guaranty insurance company to evidence that it has insured a particular Authorized Real Estate Security under a Master Policy and which describes the particular characteristics, terms and conditions 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.

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, 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~~(2) 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 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, resulting in an insured loan which does not meet acceptable risk tolerance requirements in accordance with the mortgage guaranty insurance company's underwriting standards.

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 $~~1~~10,000,000 and paid-in surplus of at least $~~1~~15,000,000, or if a mutual insurance company, a minimum initial surplus of $~~2~~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 $~~1,500~~20,000,000.

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 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 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 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 ~~5~~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 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 ~~6~~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 ~~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 ~~7~~9. Investment Limitation

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. or, with the approval of the Domiciliary Commissioner, to investments with the Effective Guaranty of the U.S.

~~**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

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.

(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, 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 the approval of the Commissioner, a mortgage guaranty insurer may withdraw from the Contingency Reserve any amounts which are in excess of the minimum policyholder's position 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.

(2) 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.** A mortgage guaranty insurer may, by written contract, reinsure any insurance that it transacts, except that no mortgage guaranty ~~f~~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, 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 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 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 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.** Mortgage Guaranty Insurance companies shall establish formal underwriting guidelines 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 shall be:

(1) Reviewed and approved by executive management;

(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:

(1) Minimum mortgage documentation standards;

(2) Loan program or type qualification requirements;

(3) Minimum borrower repayment qualification requirements; and

(4) Minimum property marketability qualifications.

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

(1) On or before March 1 of each year, a Mortgage Guaranty Insurance company shall file with the Commissioner an annual summary of material changes in underwriting guidelines implemented during the course of the immediately preceding year along with references to supporting hardcopy or website documentation.

(2) The annual summary of material underwriting guideline 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.

G. **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 Control Program.** A Mortgage Guaranty Insurance company shall establish a formal internal Mortgage Guaranty Quality Control 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 Control 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 program shall be delegated to designated risk management, quality control or internal audit personnel, who are technically trained and independent from activities related to loan origination, pricing, underwriting and operations.

(2) **Senior Management Oversight.** Quality control personnel shall provide periodic quality control reports to an enterprise risk management committee or other equivalent senior management level oversight body.

(3) **Board of Director Oversight.** Quality control personnel shall provide periodic quality 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 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 control review shall include an examination of underwriting risk including categorization of written unless and until the insurer's exposure and compliance with risk tolerance levels.

(6) **Lender Performance Reviews.** Quality control monitoring provisions shall include an assessment of lender performance expectations.

(7) **Underwriting Performance Reviews.** Quality control monitoring provisions shall assess compliance with underwriting guidelines.

(8) **Problem Loan Trend Reviews.** Quality 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 Control Program.

B. **Regulator Access and Review of Quality Assurance Program.** The Commissioner shall be provided access to an insurer's Mortgage Guaranty Quality 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 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 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, each Mortgage Guaranty Insurance company shall file with the department 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.** 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 this provision and insert their own rating law.~~

Section ~~12~~15. Outstanding Total Liability

A Mortgage Guaranty Insurance company shall not at any time have outstanding a total liability, 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 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 no longer exceeds twenty-five (25) times its capital, surplus and Contingency Reserve. Total outstanding liability shall be calculated on a consolidated basis for all mortgage guarantee insurance companies that are part of a holding company system.

Section 16. Conflict of Interest

A. 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 17~~14~~. 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. Rebates, Commissions, Charges and Contractual Preferences

A. **No Inducements.** 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.** 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 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:

(1) 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.

(2) 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.

(3) 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:

(a) Credible evidence of the existence of the above conditions; and

(b) 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:

(1) Rescission relief has not been granted based on Subsection 17B;

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

(3) 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.

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~~.~~

~~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 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).

November 18, 2022

Via email: adaleo@naic.org

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 Comments to the Exposure Draft *Mortgage Guaranty Insurance Model Act (#630)*

Dear Ms. Obusek:

The Private Mortgage Guaranty Insurance Industry Group[1] ("Industry Group") respectfully submits our comments to the Mortgage Guaranty Insurance (E) Working Group in response to the exposure on October 6, 2022 of the draft *Mortgage Guaranty Insurance Model Act* ("Model Act").

For convenience, we have included a brief summary of the comments related to matters of particular significance to our industry, followed by detailed comments presented with reference to matters in the order they appear in the Model Act.

Summary

While we believe that all of the matters addressed herein are appropriate, the Industry Group wants to highlight our comments to the following provisions of the Model Act as the most significant.

- Contingency Reserves – Our comments to Section 10 seek clarification concerning the establishment of contingency reserves and the provisions for withdrawals. First, we request revisions to clarify that contingency reserves are required to be established at 50% of earned premiums, net of reinsurance, rather than *direct earned premiums.* Second, we request that the contingency reserve withdrawal provisions that require approval be subject to approval by the Domiciliary Commissioner, as the primary regulatory authority most familiar with an insurer's overall financial condition and operations, rather than the Commissioner in each jurisdiction adopting the Model Act. We also seek to ensure that the Domiciliary Commissioner has the authority to use other reasonable approaches with regard to the basis for releases of Contingency Reserves in addition to a first-in first-out basis. Third, we suggest that releases tied to loss ratios and

[1] Arch Mortgage Insurance Company, Enact Mortgage Insurance Corporation, Essent Guaranty, Inc., Mortgage Guaranty Insurance Corporation, National Mortgage Insurance Corporation, and Radian Guaranty Inc.

withdrawals of contingency reserves exceeding 110% of required capital levels should not require prior regulatory approval because the bases for these calculations are clear cut and uncomplicated.

- Investment Limitation – The Industry Group offers several reasons for revising Section 9 to eliminate the overly restrictive prohibition on certain investment types.
- Rescission Rights – We appreciate recognition of a mortgage insurer's rescission rights but recommend deletion of the specific provisions addressing rescission practices in Section 19 as too inflexible. We believe rescission rights and mitigation options are best detailed in insurance policies which may differ based on the type of insured risks and note that the exposure draft is inconsistent with current practices and policy forms.
- Filing requirements – We recommend that the filing requirements for premium rates and policy forms correspond to existing state requirements, and we respectfully object to the requirement for a mortgage insurer to file underwriting guidelines with the Commissioner's office, where applicable. Unlike other insurance lines, insureds are required to certify compliance with mortgage insurance underwriting guidelines and for that reason our guidelines are publicly available. The frequency of changes to such guidelines, often to correspond to the requirements of the government-sponsored enterprises, Fannie Mae and Freddie Mac, would unduly burden both the insurers and regulators if filing were required. Similarly, while we concur that an insurer's board of directors has oversight authority for the company's underwriting policy, we believe the guidelines and changes should not require review by the board of directors. We also note that rates and forms for certain unique policy types should be exempt from the filing requirements.
- Waivers – The Industry Group strongly recommends that the Model Act include provisions allowing a Commissioner to grant a temporary waiver of the requirement to cease writing new business when a company no longer meets the minimum policyholders position as addressed in Section 15. Such closely monitored waivers permitted for several legacy companies among the Industry Group during the financial crisis were key to the re-establishment of compliant capital and the companies' endurance.

Section 2 - Definitions

(A) - Authorized real estate security

There is a discrepancy in this definition regarding first and junior liens. Under Section 2(A)(2)[2] junior liens would be permitted while 2(A)(1) references only first liens. The Industry Group believes that subparagraph (1) should be revised to include a reference to junior liens, as was the case in the Working Group's 2019 draft of the Model Act, *i.e.*, "*An amortized note…secured by a mortgage, deed of trust, or other instrument that constitutes, or is equivalent to, a first or junior lien or charge on real estate….*"

The Industry Group also recommends a revision to the provision restricting the use of funds exceeding the 100% fair market value amount to the financing of fees and closing costs. To

[2] As a drafting note, Section 2(A)(2) should be 2(A)(c) and 2(A)(3) should be 2(A)(2).

promote flexibility in the loan origination process, we believe it would be useful to make clear that Mortgage Guaranty Insurance premiums are also permitted to be included in the above 100% LTV portion of the loan amount.

Additionally, a limited exception to the 103% LTV cap is warranted for loss mitigation purposes. Specifically, we recommend that it would be appropriate to have the flexibility to write insurance on streamlined refinance loans with LTV ratios in excess of 103% with regard to loans for which the mortgage insurer is already on risk. This scenario presented itself most recently with respect to streamlined refinances under the Home Affordable Refinance Program (HARP). Permitting such a limited exception is beneficial for both borrowers experiencing a temporary financial hardship from which they may recover as well as for the overall liquidity of the mortgage insurance industry. For these reasons, we recommend an additional subsection in Section 2(A) stating: *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.*

(C) – Certificate

We suggest that the defined term be revised to "Certificate of Insurance" to avoid ambiguity with the term certificate of authority where used in the Model Act. We request that the definition be revised to more accurately reflect that the information contained in the Certificate of Insurance identifies the specific coverage applicable to an insured Authorized Real Estate Security (*i.e.,* the loan) rather than the terms and conditions of the loan itself. While Certificates do contain information about the loan, their chief purpose is to state the specific coverage percentage, premium plan, and other details of the mortgage insurance coverage. We recommend the following change: "*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.*"

(E) – Contingency Reserve

We suggest deleting the reference to "*addition*" from the definition.

(H) – Loss

The reference to "*costs which have already been expensed*" is unclear. We recommend either deleting that portion of the definition or using a lowercase "*loss including loss adjustment expenses*" in the limited number of places the term Loss is intended to be used. We want to work

with NAIC to confirm that "*loss adjustment expenses*" are incorporated in appropriate places whether the term "Loss" or "loss" is used in the Model Act.

(I) – Master Policy

We propose deleting the phrase "*to a creditor or mortgage-holding entity*" as it is unnecessary to specify the named or type of insured to whom the Master Policy is issued in order to define the term.

(J) – Mortgage Guaranty Insurance

The definition of "Mortgage Guaranty Insurance" includes insurance for financial loss due to the non-payment of rent or lease payments. Although rent/lease payment coverage was included in the 2000 NAIC MI Model Act's definition of "mortgage guaranty insurance," we believe rent/lease payment coverage should be excluded from the definition because this type of coverage is provided by surety and credit insurers and traditionally has not been written by monoline mortgage guaranty insurers. A state adopting both (i) a definition of mortgage guaranty insurance that includes rent/lease payment coverage as proposed, and (ii) a monoline requirement may require those surety and credit insurers to convert their licenses from credit to mortgage guaranty insurance, which they may oppose in order to avoid a regulatory regime with 25:1 risk to capital ratio cap, contingency reserve requirements, SRMICS, etc. Moreover, those surety and credit insurers who currently write rent/lease payment coverage along with other P&C coverages in a single company could be required to operate two insurers going forward - one for rent/lease payment coverage as a form of mortgage guaranty insurance and one for P&C coverages.

(N) – Right of Rescission

The Industry Group believes that the phrase "*based on inaccurate information provided to, or information concealed from, the mortgage guaranty insurance company in the insurance application*" is too narrow in comparison with the rescission rights of insurers generally and the industry's current form of Master Policy. Therefore, we request to revise this definition in accordance with prevailing custom, practice, and usage in the industry (*see e.g.,* Section 12 – Representations by the Insured in the Master Policy Form USMI-001 (3/20)) with the phrase: "*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.*"

Section 6 – Capital and Surplus

This section requires a mortgage guaranty insurer to maintain a minimum policyholders' surplus of at least $20,000,000 after it has initially started to transact business. Some mortgage guaranty insurance holding companies have inactive shells with capital below that amount and no current desire to infuse more capital. We would like to see the "grandfather" clause in Section 6(B) made permanent by eliminating the twelve-month sunset clause.

In addition, we believe the reference to "*Commissioner*" used in Sections 6(C)(1) and (2) should be revised to "*Domiciliary Commissioner*" as the primary regulator for a mortgage guaranty insurer and to avoid inconsistent orders from multiple jurisdictions.

Section 9 – Investment Limitation

Section 9 of the Model Act prohibits investments in mortgage-backed securities (MBS) except for those that have explicit U.S. government backing (*e.g.*, Ginnie Mae) or, with the Domiciliary Commissioner's approval, those that have the Effective Guaranty of the U.S. government (*e.g.*, Freddie Mac and Fannie Mae). We believe that the prohibition is overly restrictive in several respects with little if any prudential value, and therefore we respectfully recommend the following revisions:

- *First*, the provision should not prohibit classes of investments; rather investments of certain types could be excluded in whole or in part from a mortgage insurer's admitted assets, as indicated in the recommended Section 9 provision below.
- *Second*, investments in residential mortgage-backed securities ("RMBS") which have the Effective Guaranty of the U.S. government (*e.g.*, those issued by Freddie Mac and Fannie Mae), should be exempted from restrictions without the necessity of obtaining the Domiciliary Commissioner's approval. These agency RMBS present some measure of interest rate and convexity risk as are present in other permissible investments; however they do not represent credit risk subject to economic stress correlated to mortgage insurance portfolios as they are backed with GSE guarantees. Also, we note that the Secondary Mortgage Market Enhancement Act of 1984 ("SMME") preempted investment limitations of agency-backed RMBS.
- *Third*, leading investment managers making data-driven decisions have recommended that, based upon a 20-year time series of returns across multiple indexed asset classes, commercial mortgage-backed securities ("CMBS") investments are not highly correlated to other investment classes including, but not limited to, RMBS. We believe that CMBS investments provide valuable portfolio diversification benefits to mortgage guaranty insurers and note that certain CMBS

also are exempt from limitation under SMME. CMBS investments should therefore be exempted from restrictions.

- *Fourth*, this section would also impose an absolute prohibition on other categories of MBS investments, including non-agency RMBS rated with investment grade designations based on guidance from the NAIC Securities Valuation Office (SVO), rather than either permit such investments without restriction or permit but not count them towards admitted assets. Insofar as RMBS investments having the designation of NAIC 1 or NAIC 2 are investment grade securities that the NAIC should view as presenting an acceptable level of risk, we believe they should be exempt from restrictions.
- *Fifth*, the absolute prohibition on investments in MBS that do not have either the explicit backing or effective guaranty of the U.S. Government is overly restrictive in that it would remove the flexibility of the Domiciliary Commissioner to approve such investments for mortgage insurers domiciled in their jurisdiction even when the Domiciliary Commissioner deems such investments to be prudent. Therefore, we recommend restoring flexibility to the Domiciliary Commissioner to grant approval to investments that the Domiciliary Commissioner deems to be prudent.
- *Finally*, if the investment prohibitions are applied to currently compliant securities that become non-compliant as a result of the passage of enabling legislation, mortgage insurers may be required to divest these securities, potentially incurring realized gains and losses that would not otherwise be incurred, tax consequences, and other unwarranted expenses including from bid/ask spreads. Therefore, we suggest language be added to this section providing that: "*This section shall not apply to investments held by a Mortgage Guaranty Insurance company prior to the passage of this Act.*"

Accordingly, our recommendation is for Section 9 to read as follows:

> **Investment Limitation.** *A Mortgage Guaranty Insurance company shall not include as admitted assets investments 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 contracts 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 held by a Mortgage Guaranty Insurance company prior to the passage of this Act, to investments in commercial mortgage-backed securities, to investments having the designation of NAIC 1 or NAIC 2, to investments that have explicit U.S. government backing or are backed by the effective guaranty of the*

United States of America, or, with the approval of the Domiciliary Commissioner, to any other investments.

Section 10 – Filing Requirements

We appreciate the Working Group's provision for the discretionary early release of contingency reserves unrelated to exceeding the 35% loss ratio. However, we strongly support the use of the term "Domiciliary Commissioner" in Section 10(B)(3)(b) which addresses such a release. In every other part of Section 10 the term "Domiciliary Commissioner" is used, and the overarching structure of Section 10 is geared towards the release prerogative being vested exclusively in the Domiciliary Commissioner. Notably, the current version of the Model Act approved by the NAIC in July 2000 similarly had directed in Section 16(C) relating to Contingency Reserves that "*no releases shall be made without prior approval by the commissioner of insurance of the insurance company's state of domicile*." That construct is logical because the home state regulator will invariably have better insight into the finances, risks, operations, and management of its domestic companies than will non-domiciliary regulators. Consequently, we believe the term "Domiciliary Commissioner" should be used throughout the entirety of Section 10.

Section 10(B)(1) references establishing a contingency reserve at 50% of "*direct earned premiums*" but fails to clarify that such premiums are net of reinsurance premiums as did the 2000 Model Act. We request the term "*earned premiums net of reinsurance*" be substituted in lieu of "*direct earned premiums.*"

With regard to Section 10(B)(3)(a), we request deletion of the requirement for prior approval of the Domiciliary Commissioner. The withdrawals are formulaic and there is no indication of any basis for disapproval.

We request that the Working Group please revise the first line of Section 10(B)(3) by modifying the phrase "*on a first-in, first-out basis*, . . . " to "*on a first-in, first-out basis or such other basis that the Domiciliary Commissioner permits*,. . .". The FIFO specification in the current exposure draft, which does not appear in the analogous Section 16(C) of the July 2000 Model Act, would take away the flexibility to approve a release from the Contingency Reserves on another basis, such as vintage-specific or pro-rata across all vintages, to the extent that it may be appropriate to do so in the discretion of the Domiciliary Commissioner. While FIFO would continue to remain the default basis under the new proposed text compared to the July 2000 Model Act, the Domiciliary Commissioner should retain the discretion to utilize other reasonable approaches.

Thank you for offering the bracketed note in Section 10(B)(3)(b) stating: "(*insert section of the Mortgage Guaranty Insurance model law requiring minimum policyholder's position*)." Specifying the minimum policyholders position calculation in the exposure draft would promote the consistency goals of a model law. However, we note that there is not presently a corresponding section of the exposure draft. Therefore, our recommended approach to

completing this portion of Section 10(B)(3)(b) is to restate the minimum policyholders position requirements currently included in the Wisconsin mortgage guaranty insurance regulations[3] within Section 15 of the exposure draft (which should then be retitled "Minimum Policyholders Position"), and to cross-reference Section 15 in place of the bracketed note in Section 10(b)(3)(b). We recommend that Wisconsin's minimum policyholders position requirements be utilized rather than the risk-to-capital ratio requirements currently set forth in Section 15 because the formula specified under the Wisconsin mortgage guaranty insurance regulations, among other things, differentiates between policies of mortgage guaranty insurance insuring individual loans and groups of loans subject to an aggregate loss limit, and would be less of a blunt tool than the 25:1 risk-to-capital ratio. If the Working Group does not, however, accept this recommendation, then the Industry Group alternatively recommends that Section 10(B)(3)(b) not refer to the "*section of the Mortgage Guaranty Insurance model law requiring minimum policyholder's position*" and instead cross-reference the existing Section 15 of the exposure draft entitled "Total Outstanding Liability."

We recommend an addition to Section 10(B) to provide that a Mortgage Guaranty Insurance company may make withdrawals from the contingency reserve upon written notice to (but not approval by) the Domiciliary Commissioner based on the amount by which the total statutory capital exceeds one-hundred-ten percent (110%) of the dollar equivalent of its minimum policyholders' position, and that a Mortgage Guaranty Insurance company may make withdrawals from the contingency reserve *with* the prior approval of the Domiciliary Commissioner based on the amount by which the total statutory capital exceeds the dollar equivalent of the minimum policyholders' position. These recommendations are consistent with similar provisions included in the prior Model Act draft exposed in November 2019.

The Industry Group believes the provision at Section 10(C)(1) is unnecessary as it essentially states that compliance with more restrictive reserve requirements of other jurisdictions will be deemed in compliance with the Model Act. In general, we believe that referring to potentially differing requirements in other jurisdictions may undermine the NAIC's purpose for having a Model Act, which is to promote uniformity in insurance laws. Therefore, we request that this subsection be deleted.

(As a drafting note, the main header for Section 10 is "Filing Requirements" and it may be more appropriate to retitle the section "Reserves").

Section 11 – Reinsurance

We request that Section 11(B), second sentence, be revised to clarify that the Contingency Reserve required to be established and maintained by the direct insurer is net of reinsurance ceded but shall include reinsurance assumed. As a practical matter, only the Mortgage Guaranty

[3] *See* Wis. Admin. Code Ins §3.09(5) (Minimum Policyholders Position).

Insurance company can hold contingency reserves and as a conceptual matter, contingency reserves are a mortgage insurer entity-level requirement, not a risk-level requirement.

We propose the following:

> *A mortgage guaranty insurer may, by written contract, reinsure any insurance that it transacts, except that no Mortgage Guaranty Insurance company 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, 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 unearned premium reserve, loss reserves and Contingency Reserve shall be equal to or greater than the corresponding reserves required by the direct writer as if such reinsurance were not in place. If a reinsurer is not a Mortgage Guaranty Insurance company and is therefore not required to establish a Contingency Reserve as recorded in its statutory financial statements, the direct insurer shall still be entitled to reinsurance credit provided that the reinsurance obligations that are not supported by a reserve maintained by the reinsurer are supported by collateral complying with the requirements of [insert provisions defining acceptable collateral for non-admitted reinsurer]or by funds held under the reinsurance treaty by the direct insurer.*

We agree with the provision that a reinsurer other than a Mortgage Guaranty Insurance company need not establish a Contingency Reserve; however, we object to the imposition of retroactive accounting for reinsurance transactions in which the assuming company does not establish a Contingency Reserve. Inherently, our reinsurance is prospective – reinsurers are agreeing to reimburse us for losses that may be incurred as a result of future insurable events. In retroactive reinsurance, the reinsurer agrees to reimburse a ceding entity for liabilities incurred as a result of past insurable events. Retroactive insurance accounting is significantly different than how we account for our reinsurance today (prospective) in which we recognize a reduction of premiums and losses for amounts ceded to reinsurers. Retroactive reinsurance is accounted for as a financing of existing obligations and as a result, most cash flows associated with the contract are recognized as deposits on the balance sheet. The income statement benefits are recognized ratably over the life of the contract in contrast to matching any accounting for covered direct policies.

Section 12 – Sound Underwriting Practices

There are multiple references to "*underwriting standards*" and "*underwriting guidelines*;" however, it is not clear what the distinction is between the two terms. We suggest using "*underwriting guidelines*" throughout as that term reflects the terminology generally used in the industry.

In 12(A), there appears to be text missing.

We request to make the following clarifications to Section 12(A), including clarifying that automated underwriting tools (such as those that the GSEs mandate mortgage guaranty insurance companies use) satisfy prudent underwriting standards: "*All Certificates of 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, including through the use of automated underwriting tools*."

We recommend conforming Sections 12(A) and 12(B), such that only delegated underwriting decisions need to be reviewed based on a reasonable method of sampling post-closing loan documentation. Proposed revision of Section 12(B): "*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 originating the loans and with the Mortgage Guaranty Insurance company's underwriting guidelines*."

While we agree that a company's underwriting guidelines should be subject to general oversight by the board of directors or a board committee, we note that underwriting guidelines may change frequently and rapidly, making review of such changes by the board or a committee impractical. Under Section 12(D)(1), underwriting guidelines are required to be reviewed and approved by executive management. Board responsibilities and interaction with executive management are addressed in governance framework disclosures and the board has other ways to monitor and oversee credit policy without the level of granular and prescriptive participation required by the proposed Section 12(D)(2).

We request that Section 12(E) be deleted in its entirety as unnecessary, particularly in light of the other requirements in Section 12.

Section 12(F) requires that a Mortgage Guaranty Insurance company annually file with each state in which it is licensed a summary of material underwriting guideline changes, with an analysis of certain factors that cause net premiums to change by more than 5%. This requirement seems overly burdensome, particularly when, unlike other insurance lines, mortgage guaranty insurance guidelines are transparent and publicly available. We suggest that Section 12(F) be changed to require that guidelines be publicly available and that an analysis of changes will be made available to the Commissioner upon request.

Section 13 – Quality Assurance

The Model Act draft includes repeated use of both the terms "*quality control*" and "*quality assurance*." It is not always clear what the difference is intended to be between these two terms. We would like to see clarification from the NAIC regarding its intent and whether one term may be sufficient.

We request deletion of the words "*strategy and control*" in the second sentence of Section 13(A). These words insert ambiguity and the primary purpose of the provision appears to remain without them.

Section 13(A)(1) is an overbroad restriction on QC personnel who do, at times, perform roles relating to loan origination, pricing, underwriting and operations. We recommend a change to focus more on the anticipated intent of the drafters, namely prohibiting QC personnel from auditing loans that they underwrite: "*Administration of the quality control program shall be delegated to designated risk management, quality control or internal audit personnel, who are technically trained and independent from the underwriting activities that they themselves audit*."

Section 13(A)(5) appears to be missing text and is unclear; we would appreciate it being refined to make the drafters' intent clear.

In Section 13(A)(6) we suggest deleting "*expectations*" as its purpose is unclear.

We believe the provisions of Sections 13(A)(8) and (10) represent risk management concerns, rather than QC functions, and should be deleted.

Section 13 (A)(11) requires an edit, *i.e.*, deletion of "*insurer has*" to read correctly: "*Periodic internal audits shall be conducted to validate compliance with the Mortgage Guaranty Quality Control Program*."

Section 14 – Policy Forms and Premium Rates Filed

Sections 14(A) and (B) require filing of all forms and premium rates for prior approval. We believe the Model Act generally should preserve the current state filing regime for both forms and rates. Also, the reference is to the "*department*" rather than Commissioner and provides for filing the "*rate to be charged and the premium*." We file premium rates, but not premium amounts. The amount of premium is calculated by applying the rate to the insured loan amount.

We request that rates and forms for Bulk Mortgage Guaranty Insurance and Pool Mortgage Guaranty Insurance be exempt from the filing requirements. These types of policies are qualified and rated individually, for unique portfolios, based on the risk and expense characteristics of the loans, the lender characteristics, and the coverage requested. The uniqueness and individualized nature of bulk and pool coverage, which often have short timeframes for placement, do not correspond with the purpose of rate and form filing requirements and associated timing involved with the approval of such filings.

We also request that the anti-deficiency judgment provision in Section 14(A) be conformed to current state law. During the great financial crisis, we observed certain borrowers strategically defaulting and mailing in their keys to properties although the borrowers had the financial wherewithal to make their mortgage payments and/or pay the mortgage deficiency. In some cases, the borrowers had benefitted from cash-out refinances. In these circumstances it may be

appropriate for Mortgage Guaranty Insurance companies to evaluate subrogation/deficiency actions either directly against the borrower or in concert with the loan servicer, as presently permitted by prevailing Master Policy forms. The ability to evaluate this action on a case by case basis supports the overall solvency of the mortgage guaranty insurance industry. Additionally, if the Model Act were adopted by states as presently drafted with the language prohibiting mortgage insurers from pursuing a borrower for the deficiency, then in the many states throughout the country that have not passed a general anti-deficiency judgment law, there could be scenarios where the loan servicer is allowed to pursue the borrower for a deficiency even while the Mortgage Guaranty Insurance company could not participate in the same action despite the rights granted to the company by the Master Policy. Where states have anti-deficiency judgment acts, the Master Policy already acknowledges the limitations on the Mortgage Guaranty Insurance companies' subrogation rights and rights to pursue deficiencies. Therefore, we request to remove this line from the Model Act.

With regard to Section 14(C), we do not believe the language works in the current environment because the industry has migrated away from rate cards to granular rate engine pricing. We do however believe that it is essential for lenders to know exactly what price they are being charged and note that today, the availability of third-party pricing comparison tools provides transparency among mortgage insurers' rates and enables insurance customers to review pricing from multiple insurers simultaneously without having to compare individual rate cards.

The language regarding premiums not being counted as interest or charges under other laws conflicts with federal law - under the federal Qualified Mortgage rules single premium borrower paid mortgage guaranty insurance premium due prior to or at closing is included in the points and fees. To address these concerns we propose striking the current language and substituting the following:

> *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.*

We also suggest reinserting the prior Drafting Note that stated: "*Open rating states may delete a portion or all of this provision and insert their own rating law*."

Section 15 – Total Outstanding Liability

Preliminarily, we respectfully refer the Working Group to our comments regarding Section 15 set forth under the comments to Section 10, above, related to replacing the 25:1 risk-to-capital ratio requirements with a minimum policyholders position based upon Wisconsin's insurance regulations. In addition, whether Section 15 is replaced by a minimum policyholders position

section as recommended or remains a 25:1 risk-to-capital ratio requirement, we believe that the two concepts discussed below are worthy of being incorporated into the final version of Section 15.

This section does not provide for a state to grant a waiver of a breach of the 25:1 risk-to-capital ratio and we urge the Working Group to include such language. Waivers from various states in the aftermath of the financial crisis were critical to the survival of certain companies. While the industry hopes never to be in that situation again, we believe it is extremely important to arm states with the ability to use their expertise and judgment to grant a waiver if the facts warrant it. The comprehensive waiver authority and review criteria of N.C.G.S. 58-10-125(i),(j),(k), and (l) or similar language from other states should be added to Section 15.

Section 15 also requires the calculation of the 25:1 risk-to-capital ratio on a consolidated basis for all mortgage guaranty insurers within an insurance holding company system. Although such language is found in the 2000 NAIC MI Model Act it was not adopted by any domiciliary state and we suggest that it be deleted here. More specifically, when several flagship mortgage guaranty insurers exceeded the 25:1 risk-to-capital ratio in certain states in which they could not obtain waivers, they were able to continue to offer customers 51-state coverage by writing business in those states through smaller affiliates which had not breached the 25:1 risk-to-capital ratio. Had this not been the case those insurers possibly would have gone out of business. Given the relative size of such flagships to smaller affiliates, if a flagship suffers a breach then the consolidated treatment would unfairly punish well capitalized affiliates.

Section 16 – Conflict of Interest

Section 16(A)'s blanket prohibition on insuring loans originated by an affiliate or loans originated by a lender to which an affiliate has extended a line of credit is contrary to the existing mortgage guaranty insurance laws of certain states. There are states that have adopted all or portions of the July 2000 Model Act or have implemented their own Mortgage Guaranty Insurance statutes that have not included this blanket prohibition. *See, e.g.*, Cal Ins. Code § 12640.01, et seq.; Idaho Code Ann. § 41-2650, et seq.; N.J. Stat. Ann. § 17:46A-1, et seq.; N.Y. Ins. § 6501, et seq. Furthermore, Arizona, Ohio, and Wisconsin adopted conflict of interest provisions but included an exception to the blanket prohibition for when 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." Ariz. Rev. Stat. Ann. § 20-1541; Ohio Ann. Code § 3901-1-13(F)(2); & Wis. Admin. Code Ins. § 3.09(19)(c)(1).

We recommend a change to Section 16(A) to incorporate the exception found in the Wisconsin mortgage insurance regulation, Wis. Admin. Code Ins § 3.09 19(c)(1):

> *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 commissioner's discretion, based on the commissioner's determination that a higher percentage is not likely to adversely affect the financial condition of the insurer.

Section 18 – Rebates, Commissions, Charges and Contractual Preferences

Sections 18(A) and (C) prohibit inducements and rebates of any sort in the mortgage guaranty insurance context. As previously noted by the Industry Group, these provisions are more stringent than the anti-rebating/anti-inducement provisions of Section 4.H(1) of the NAIC Unfair Trade Practices Act of 2004 ("UTPA") as well as the laws of many states modeled on UTPA, including those in North Carolina, North Dakota, and Pennsylvania. More specifically, UTPA and a number of states permit inducements and rebates as long as the same are set out in the policy of insurance. These "in the policy" exceptions were born of a recognition that inducements and rebates can benefit insureds and other consumers, and that by placing them in the policy the three problems associated with them can be avoided: (i) lack of enforceability by the insured; (ii) unfair discrimination as between insureds; and (iii) lack of transparency to other market participants as to the nature of the thing of value being given. We believe that Sections 18(A) and 14(C) should be revised to comport with UTPA and the laws of those states.

In Section 18(D)(1), we suggest deleting the reference to "*modify*" as modifications of coverage or a Master Policy would constitute an endorsement, covered by Section 14.

Section 19 – Rescissions

The Industry Group appreciates the recognition of rescission rights, but we believe the provisions of Sections 19(B) and (C) should be deleted because they do not provide sufficient flexibility for an insurer to address changing industry practices, including GSE requirements, in the future. We believe that rescission rights and limitations are best addressed in the insurance policy.

In addition, even if the rescission rights sections were not removed from the Model Act, the use of the term "*creditor*" in Sections 19(B)(3) and 19(C)(3) could be construed as too narrow and contrary to the rescission rights of Mortgage Guaranty Insurance companies, which extend to persons or entities on a much broader basis. For instance, historically and under the current Master Policy forms of the mortgage insurers, rescission is permitted for, among other reasons, a "knowing misstatement, misrepresentation, or omission by *any Person* in connection with the origination or closing of a loan, or the Application …." The term "Person" is defined broadly

and could include the borrower, the mortgage broker, the loan originator, the appraiser, etc. The term "*creditor*" is narrower and implies an entity currently eligible to collect debt, but mortgage loans change hands and the loan originator may not always be the creditor. Furthermore, mortgage originations involve complicated roles where the creditor is not always the same entity that underwrites and/or funds the loan. Yet, it is those persons and entities involved in the underwriting and/or originating of the loan that are most important in evaluating insurers' rescission rights.

Section 20 – Records Retention

For clarity purposes, we recommend moving the sentence "*recordkeeping requirements shall relate to*:" and the subsections (1) and (2) that follow into Section 20(B). We understand Section 20(A) to be a broad requirement that an insurer must have a records retention program. On the other hand, Section 20(B) is the actual NAIC Model Act retention period requirement which applies only to policy records and claim records (which are not defined terms). Therefore, subsections (1) and (2) that discuss "*Policy records*" and "*Claim records*" should be moved to Section 20(B).

In current Section 20(A)(1) (which we propose moving to Section 20(B)), we recommend revising it to read: "*Records to clearly document the application, underwriting, and issuance of each Master Policy and Certificate of Insurance*." We have deleted servicing because this is a very broad term that could mean any minor request relating to a Certificate of Insurance, many of which would not warrant a life of Certificate of Insurance + 5 years retention period.

New Section – No Private Right of Action

The Industry Group recommends adding a section clarifying that the Model Act does not provide a private right of action for any persons or entities claiming their rights have been violated under the law or regulation, as enacted by individual jurisdictions. We believe that the complete statutory scheme addressed by the Model Act is intended to be enforced exclusively by the respective commissioners who have the expertise to administer the act. Adding the section as recommended below is consistent with other statutory schemes that, like this Model Act, are designed for enforcement solely by the governmental department, agency, or commission with supervisory authority for a given industry. See, for example, the NAIC Model Unfair Trade Practices Act.[4] We are concerned that absent an express "no private right of action" provision, there is a risk that an aggressive and creative plaintiff's bar that has no regulatory expertise in understanding the Model Act may attempt to pursue actions that are frivolous yet costly and time-consuming to resolve. Such pursuit of private actions would both undercut the interest of the Commissioner in maintaining the financial stability of insurance companies as well as

[4] The NAIC Model Unfair Trade Practices Act provides that "Nothing herein shall be construed to create or imply a private cause of action for a violation of this Act."

encroach upon the enforcement domain of the Commissioner. Therefore, the Industry Group recommends adding the following section:

> *Section [#]. 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*.

The Industry Group continues to be encouraged by the Working Group's efforts to update the Mortgage Guaranty Insurance Model Act, and we look forward to an opportunity to discuss the comments in this letter at the fall NAIC meeting or as otherwise preferred by the Working Group.

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

Radian Guaranty Inc.

From: Kolbe, Peter A (Enact MI, Attorney) <Peter.Kolbe@enactmi.com>
Sent: Monday, October 3, 2022 10:04 AM
To: Obusek, Jackie <Jackie.Obusek@ncdoi.gov>
Cc: Green, Jeannie B. (Enact MI) <Jeannie.B.Green@enactmi.com>; Clifton, Kyle K (Enact MI) <Steven.Clifton@enactmi.com>
Subject: [External] Enact Comments on MI Model Act 10 3 22

Hi Jackie – I hope this finds you well. Enact appreciates the NAIC MI Working Group's efforts in turning a new draft of the MI Model Act which was circulated last week, and we are looking forward to the regulator/industry call on October 6. The new draft contained a host of beneficial changes, and all industry members voiced that view on a call we held this past Wednesday. I think we are rapidly closing the remaining gaps between regulator and industry viewpoints, and to that end I would like to provide you with Enact's initial comments on the clean version of the new draft (Attachment #2 in Andy Daleo's packet) in order of importance to us.

Section 10(B)(3)(b) – Contingency Reserves
We really appreciate the Working Group's provision for the discretionary early release of contingency reserves unrelated to exceeding the 35% loss ratio. However, we are confused by the use of the word "Commissioner" as opposed to "Domiciliary Commissioner" in Section 10(B)(3)(b) which addresses such a release. In every other part of Section 10 the term "Domiciliary Commissioner" is used, and the overarching structure of Section 10 is geared towards the release prerogative being vested exclusively in the "Domiciliary Commissioner". That construct is logical because the home state regulator will invariably have better insight into the finances, risks, operations, and management of its domestic companies than will non-domiciliary regulators. Consequently, we believe the term "Domiciliary Commissioner" should be used throughout the entirety of Section 10. (As a drafting note, the main header for Section 10 is "Reporting Requirements", and it seems odd to put the CR provisions in that section).

Section 15 – Outstanding Total Liability
This section does not provide for a state to grant a waiver of a breach of the 25:1 risk-to-capital ratio, and we urge the Working Group to include such language. As you know, obtaining such waivers from NCDOI and other states in the aftermath of the Financial Crisis was critical to our survival, and I believe this was the case with some of our competitors as well. While we hope never to be in that situation again, we believe it is extremely important to arm states with the ability to use their expertise and judgement to grant a waiver if the facts warrant it. The comprehensive waiver authority and review criteria of N.C.G.S. 58-10-125(i),(j),(k), and (l) should be added to Section 15.

Section 6 – Capital and Surplus
Section 6 requires a mortgage guaranty insurer to maintain $20,000,000 of capital and surplus. Enact has two inactive shells that do not meet that threshold. Neither company has any risk on its books, but it is important for us to keep them licensed in case we develop plans for them. However, we are not anxious to place more capital in inactive shells. We would like to see the "grandfather" clause in Section 6(B) made permanent by eliminating the 12 month sunset clause. Alternatively, we would request that the waiver provision in Section 6(C)(1) and (2) be changed to give just the Domiciliary Commission the authority to grant a waiver.

Section 14(C) – Schedule of Premium Charges
The current language would have worked for our industry a decade and a half ago when all mortgage guaranty insurers used rate cards. However, the migration of the industry to granular rate engine pricing and third-party pricing comparison tools has created a very different environment. We do however believe that it is essential for lenders to know exactly what price they are being charged. Moreover, the language regarding premiums not

being counted as interest or charges under other laws conflicts with federal law - under the federal Qualified Mortgage rules single premium borrower paid mortgage guaranty insurance premium due prior to or at closing is included in the points and fees. To address these concerns we propose striking the current language and substituting the following:

C. Premium Charges. Every Mortgage Guaranty Insurance company shall make available the premium charges for Mortgage Guaranty Insurance policies via a company website or an integration with a 3rd party system. The premium rates provided shall show the entire amount of premium charge for each type of Mortgage Guaranty Insurance policy issued by the insurance company.

Section 9 – Investment Limitation

This section permits unlimited investment in mortgage backed securities ("MBS") issued by GNM, Fannie Mae, and Freddie Mac. Enact does not believe that it is prudent for a mortgage guaranty insurer to invest in any type of MBS, and we question whether the governmental backing referenced in this section actually applies the MBS security itself as opposed to the issuer of that security; in a technical sense the former may not be true. Investments n MBS are better suited to the investment account of the holding company, not its mortgage guaranty insurer subsidiaries.

Section 12 (F) - Notification of Changes in Underwriting Guidelines

This section requires that a mortgage guaranty insurer annually file with each state in which it is licensed a summary of material underwriting guideline changes, with an analysis of certain factors that cause net premiums to change by more than 5%. This requirement seems overly burdensome, and we question whether most of the states that receive this annual report will even read it. We suggest that Section 12(F) be changed to say that guidelines should be publicly available and an analysis of changes will be made available to the commissioner upon request.

Thank you again for the opportunity to provide these initial comments, and both Jeannie and I look forward to the call on October 6. Please don't hesitate to reach out if you have any questions or would like to speak before then.

Very best regards,

Peter

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