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 Fall National Meeting Minutes —Jackie Obusek (NC)  Attachment A

2. Discuss Comments Received on the Exposure Draft of the Mortgage Guaranty Insurance Model Act (#630)—Jackie Obusek (NC)  Attachment B

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

4. Adjournment
Date: 12/20/22

Mortgage Guaranty Insurance (E) Working Group
Tampa, Florida
December 13, 2022

The Mortgage Guaranty Insurance (E) Working Group of the Financial Condition (E) Committee met Dec. 13, 2022. The following Working Group members participated: Jackie Obusek, Chair (NC); Kurt Regner (AZ); Monica Macaluso (CA); Robert Ballard (FL); John Rehagen (MO); Margot Small (NY); Melissa Greiner (PA); Amy Garcia (TX); and Amy Malm (WI). Also participating was: Levi Olson (WI).

1. **Adopted its Oct. 6 Minutes**

The Working Group met Oct. 6 to discuss and expose the draft *Mortgage Guaranty Insurance Model Act* (#630).

Malm made a motion, seconded by Greiner, to adopt the Working Group’s Oct. 6 minutes (Attachment __). The motion passed unanimously.

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

Obusek summarized that during the Oct. 6 meeting of the Working Group, draft revisions of Model #630 were discussed and exposed for a 30-day public comment period that ended Nov. 7. She stated that as a result of that comment period, a letter was received from the Mortgage Guaranty Consortium (MGC) (Attachment __). She indicated that the goal today is to hear a summary of those comments from the MGC and allow the Working Group members and others an opportunity to ask questions.

Tony Shore (Essent Guaranty Inc.) commented on Section 9—Investment Limitations. He stated that Model #630 has always contained a provision that prohibited the investment in mortgages with a carve-out for mortgages or property that the mortgage insurer (MI) may obtain from a settlement of a claim. He stated that an MI’s claims-paying ability should be independent of risks that might produce claims with a sound provision. He summarized that as written in the draft, an MI can invest in residential mortgage-backed securities (RMBS) issued by the Government National Mortgage Association (GNMA), which are backed by the full faith and credit of the U.S. Further, the Model #630 draft also allows for the investment in residential mortgages issued by the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), only with prior approval of the MI’s domestic regulator. Shore indicated that the draft language was a step in the right direction. He indicated that commercial mortgage-backed securities (CMBS), non-agency RMBS, and RMBS issued by the FHLMC should be permitted investments and not require prior approval. He indicated that these investments do not share the same risks as the mortgages that are insured by the MIs. He stated that the FNMA and the FHLMC market is deep, and liquid and portfolio managers often invest in these types of investments as an alternative to U.S. Treasury investments because they are sources of high-quality liquidity. Further, he indicated that RMBS compensate investors for pre-payment risk, not credit default risk as taken by the MIs. He continued by indicating that CMBS are different from RMBS in that several subsectors are unrelated to what the MIs insure. He commented that non-agency investment grade bonds would first move to noninvestment grade status prior to default, and if they became noninvestment grade, they would be nonadmitted. Overall, he indicated that these investments add diversification to the MI’s portfolio, making them stronger and more resilient by helping to reduce long-term volatility and enhancing risk-adjusted returns over a cycle. He proposed two other elements: 1) any mortgage-backed security other than those discussed here should not be prohibited or allowed to account for them as admitted assets; and 2) allow those investments to be grandfathered. Olson inquired about the Secondary Mortgage Market Enhancement Act of 1984 that preempts state law for states that did not opt out and
whether those states would continue to follow investment restrictions or be exempt if their domiciliary state did not opt out. Shore indicated that he believes the MGC proposal regarding FNMA and FHLMC investments would be consistent with the exemptions offered by the Secondary Mortgage Market Enhancement Act of 1984. Olson questioned whether those exemptions would be applicable for CMBS. Heidi Heyrman (MGIC) stated that the MGC comments are consistent with the exemption and are perhaps even broader, and she does not believe there is any inconsistency. She continued that for a state that does not have that model, the exemptions would allow for commercial investments. Greiner questioned whether there should be a consideration for a cap or percentage limitation on those types of investments. Ben Schmidt (Radian Guaranty Inc.) commented that there should not be any restriction beyond what is included in admitted assets. He commented that it would depend on the percentage the Working Group is considering. Further, he stated that if the percentage restriction is for a particular class, it should still be permitted if it is not included in admitted assets.

Schmidt summarized that regarding contingency reserves within Section 10—Filing Requirements, the MGC recognizes the Working Group’s efforts of early release of these reserves. He commented that the method used to establish contingency reserves appears to have been based on arbitrary metrics, as evidenced by the round numbers. He commented that Radian Guaranty Inc. holds $4.3 billion in contingency reserves, and this is excessive in relation to its risks. He stated that the contingency reserves have resulted in a multi-billion-dollar cushion under four frameworks: 1) Risk-to-Capital Rule; 2) Minimum Policyholders Position (MPP); 3) Private Mortgage Insurer Eligibility Requirements; and 4) State Regulatory Mortgage Insurance Capital Standard. He commented that since the financial crisis, the MI industry has gone through positive changes, such as: 1) stronger underwriting guidelines; 2) increased government-sponsored enterprise (GSE) supervision; 3) risk-based capital (RBC) frameworks; and 4) utilization of reinsurance. He stated that contingency reserves do not consider the risk-based characteristics of the MI insurance portfolio. He commented that the MGC is not seeking to eliminate contingency reserves, but further reform the process for releasing contingency reserves by adding a provision for discretionary early release. He recommended that when establishing contingency reserves, the following should be considered: 1) reinsurance; 2) discretion of early release being approved by the domiciliary commissioner rather than all commissioners; 3) completing the note within Section 10(B)(3) by cross-referencing the MPP references within the Wisconsin state law; and 4) permitting contingency reserve withdrawals without prior approval, provided the MPP is well in excess of the requirement. The MGC provided a suggestion of 110% above the MPP. Obusek asked how the MGC arrived at 110%. Schmidt responded that it was part of the discussion when developing the capital model, and the MGC is in favor of that percentage. Greiner asked if the MIs tested the 110% value within their own datasets. Schmidt replied that the MIs are far below the risk-to-capital cap and have billions of dollars in cushion, and the MIs did not test the 110% but have other regulatory requirements that preclude them from approaching 110%. Heyrman commented that the MGIC will pull together data on how 110% would factor in on the release of contingency reserves. Shore commented that Essent Guaranty Inc. will also put together statistics.

Schmidt summarized that regarding Section 11—Reinsurance, the MGC supports the prohibition of captive insurance and subterfuge. He commented that the title for Section 11(B), “Subterfuge in Reinsurance Prohibited” seems pejorative, and he asked that the Working Group consider re-titling the section to, “Effects of Reinsurance on Contingency Reserves.” He commented that contingency reserves should be based on net premiums if the reinsurer maintains a contingency reserve or segregated collateral. He commented that the MGC believes it is appropriate to evaluate unearned premium reserves, loss reserves, and contingency reserves against the combined resources of the direct insurer and the reinsurer. He continued that the MGC does not agree with the retroactive accounting for reinsurance transactions that are prospective, and he suggests removing the language on retroactive accounting.

Heyrman summarized that within Section 10, there was a drafting note that indicated that states may want to adhere to their own filing requirements for rates and forms, and the MGC believes this should continue. She commented that there are certain types of policies the MGC believes should be exempt from the filing
requirements, such as bulk policies, because it is a commercial transaction between the MI and the lender. She commented that there is a requirement in the draft that indicates that all underwriting guidelines must be filed with the state insurance regulators. She indicated that the underwriting guidelines are fully transparent and frequently change to respond to the market, and she believes the filing requirements should not extend to the underwriting guidelines. She commented that regarding the 25:1 total outstanding liability requirement and a hard stop, the MGC believes waivers should be part of Model #630. Rehagen asked if the MIs would contact the states its licensed in if a waiver were issued. Heyrman indicated that the current process is that the waiver would be granted on an individual state basis; however, the industry prefers to leave the decision with the domiciliary regulator.

Obusek asked about the provision in Section 2—Definitions, where the acquisition of the mortgage loan exceeds 103%, and she inquired as to the definition of mitigation efforts. Heyrman commented that during the financial crisis, many of the mortgage holders were allowed to refinance their loan to take advantage of the lower interest rates. However, because property values declined, there would be a requirement for mortgage insurance; and with the limits at 103%, the MIs would not be able to insure that loan. As a result, the MIs would insure the refinance transaction and treat it as a modification of coverage because the MI is already at risk, which is the mitigation strategy. Obusek stated that throughout the MGC comment letter, it indicates the use of MPP. She questioned the justification for the MPP references, and she asked if the MIs had done any comparison to the risk-to-capital provision. Schmidt commented that the reason MPP was included was due to the bracketed note in Section 10(B)(3), and he stated that the MIs evaluated the numbers compared to the 25:1, and they are similar. Obusek asked for the data regarding the comparison, and Schmidt indicated that he would provide the data. She asked for an explanation for the proposed addition of a new section entitled, “No Private Right of Action.” Schmidt commented that the MGC believes the insurance department and the attorney general’s office should be the parties that enforce the MI statute. He continued that there would be a concern that a private plaintiff lawyer misconstrues the intent behind some of the provisions in Model #630, thus the reason for the inclusion of the new section.

Obusek thanked the MGC for its comments and indicated that the drafting group will reconvene in the coming weeks to arrive at a second draft of Model #630. She indicated that the drafting group will work diligently to get that draft together by the end of January, with the intent of holding a Working Group call in early February. Further, she stated that the overall objective is to finalize a draft of Model #630 and adopt it during the 2023 Spring National Meeting.

Matt Wulf (Swiss Re) indicated that he believes Section 11 is still in conflict with the Credit for Reinsurance Model Law (#785) and the Credit for Reinsurance Model Regulation (#786). Following a brief discussion, the parties agreed to submit a comment letter on the matter.

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. “Authorized real estate security,” for the purpose of this Act, means an amortized note, bond or other evidence of indebtedness, except for reverse mortgage loans made pursuant to state law that authorizes reverse mortgages of the real property law, evidencing a loan, not exceeding ninety-five percent (95%) of the fair market value of the real estate, secured by a mortgage, deed of trust, or other instrument that constitutes, or is equivalent to, a first lien or junior lien or charge on real estate, with any percentage in excess of one hundred percent (100%) being used to finance the fees and closing costs on such indebtedness; provided:

(a) The real estate loan secured in this manner is one of a type that a bank, savings and loan association, or an insurance company, which is supervised and regulated by a department of any state or territory of the U.S., or an agency of the federal government, is authorized to make, or would be authorized to make, disregarding any requirement applicable to such an institution that the amount of the loan not exceed a certain percentage of the value of the real estate;
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.

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.

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.

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.

“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.

“Certificate of Insurance” means a document issued by a mortgage guaranty insurance company to the initial insured to evidence that it has insured a particular Authorized Real Estate Security under a Master Policy, identifying the and which describes the particular characteristics, terms, and conditions and representations, in addition to those contained in the Master Policy and endorsements, applicable to such coverage of that insured Authorized Real Estate Security.

“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.

“Contingency Reserve” means an additional premium reserve established to protect policyholders against the effect of adverse economic cycles.
“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 based on
inaccurate, incomplete or misleading information provided to, or information omitted or concealed from, the
Mortgage Guaranty Insurance company in connection with the insurance application, resulting in an insured
loan that did not meet the Mortgage Guaranty Insurance company’s eligibility requirements in effect on the
date of submission of the insurance application, resulting in an insured loan which does not meet acceptable
risk tolerance requirements in accordance with the mortgage guaranty insurance company’s underwriting
standards.

O. “Risk in Force” mean the mortgage guaranty insurance coverage percentage applied to the unpaid principal
balance.
Section 3. Insurer's Authority to Transact Business

A company may not transact the business of Mortgage Guaranty Insurance until it has obtained a Certificate of authority from the Commissioner.

Section 4. Mortgage Guaranty Insurance as Monoline

A Mortgage Guaranty Insurance company that anywhere transacts any class of insurance other than Mortgage Guaranty Insurance is not eligible for the issuance of a Certificate of Authority to transact Mortgage Guaranty Insurance in this state nor for the renewal thereof.

Section 5. Risk Concentration

A Mortgage Guaranty Insurance company shall not expose itself to any Loss on any one Authorized Real Estate Security risk in an amount exceeding ten percent (10%) of its surplus to policyholders. Any risk or portion of risk which has been reinsured shall be deducted in determining the limitation of risk.

Section 6. Capital and Surplus

A. Initial and Minimum Capital and Surplus Requirements. A Mortgage Guaranty Insurance company shall not transact the business of Mortgage Guaranty Insurance unless, if a stock insurance company, it has paid-in capital of at least $110,000,000 and paid-in surplus of at least $115,000,000, or if a mutual insurance company, a minimum initial surplus of $225,000,000. A stock insurance company or a mutual insurance company shall at all times thereafter maintain a minimum policyholders’ surplus of at least $1,500,000,000.

B. Minimum Capital Requirements Applicability. A Mortgage Guaranty Insurance company formed prior to passage of this Act may maintain the amount of capital and surplus or minimum policyholders’ surplus previously required by statute or administrative order for a period not to exceed twelve months following the effective date of the adoption of this Act.

C. Minimum Capital Requirements Adjustments. The Domiciliary Commissioner may by order reduce the minimum amount of capital and surplus or minimum policyholders’ surplus required under Section 6A under the following circumstances:

(1) For an affiliated reinsurer that is a Mortgage Guaranty Insurance company and that is or will be engaged solely in the assumption of risks from affiliated Mortgage Guaranty Insurance companies, provided that the affiliated reinsurer is in run-off and, in the Domiciliary Commissioner’s opinion, the business plan and other relevant circumstances of the affiliated reinsurer justify the proposed reduction in requirements.

(2) For Mortgage Guaranty Insurance companies that are in run-off and not writing new business that is justified in a business plan, in the Domiciliary Commissioner's opinion.

Section 4. Insurer's Authority to Transact Business

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

Section 57. Geographic Concentration

A. A Mortgage Guaranty Insurance company shall not insure loans secured by a single risk in excess of ten percent (10%) of the company’s aggregate capital, surplus and Contingency Reserve.

B. No Mortgage Guaranty Insurance company shall have more than twenty percent (20%) of its total insurance in force in any one Standard Metropolitan Statistical Area (SMSA), as defined by the United States Department of Commerce.
C. The provisions of this section shall not apply to a Mortgage Guaranty Insurance company until it has possessed a Certificate of Authority in this state for three (3) years.

Section 68. Advertising

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

Section 79. Investment Limitation

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

Section 8. Coverage Limitation

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

Section 10. Filing Requirements

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 company shall establish a Contingency Reserve subject to the following provisions:

A. A mortgage guaranty insurance company shall make an annual contribution to the Contingency Reserve which in the aggregate shall be equal to fifty percent (50%) of the direct earned premiums reported in the annual statement or net earned premiums reported if the reinsurer maintains the contingency reserve.

B. 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.

C. Withdrawals may be made from the Contingency Reserve on a first-in, first-out basis or such other basis, with the prior written approval of the Domiciliary Commissioner, based on the amount by which:

(a) Incurred losses and loss adjustment expenses exceed 35% of the direct earned premium in any year. Provisional withdrawals may be made from the Contingency Reserve on a quarterly basis.
in an amount not to exceed 75% of the withdrawal as adjusted for the quarterly nature of the withdrawal, with prior written approval of the Domiciliary Commissioner; or

(b) Upon the approval of the Domiciliary Commissioner and 30-day prior notification to non-domiciliary commissioners, a mortgage guaranty insurer may withdraw from the Contingency Reserve any amounts which are in excess of the minimum policyholder’s position requirements of Section 15 as required in (insert section of the Mortgage Guaranty Insurance model law requiring minimum policyholder’s position) as filed with the most recently filed annual statement.

(i.) The Mortgage Guaranty Insurance company’s Domiciliary Commissioner may consider loss developments and trends in reviewing a request for withdrawal. If any portion of the Contingency Reserve for which withdrawal is requested is maintained by a reinsurer or in a segregated account or trust of a reinsurer, the Domiciliary Commissioner may also consider the financial condition of the reinsurer.

C. Miscellaneous.

(1) Whenever the laws of any jurisdiction in which a Mortgage Guaranty Insurance company subject to the requirement of this Act is also licensed to transact Mortgage Guaranty Insurance require a larger unearned premium reserve or Contingency Reserve in the aggregate than that set forth herein, the establishment of the larger unearned premium reserve or Contingency Reserve in the aggregate shall be deemed to be in compliance with this Act.

(1) Unearned premium reserves and Contingency Reserves on risks insured before the effective date of this Act may be computed and maintained as required previously.

Section 11. Reinsurance

A. Prohibition of Captive Reinsurance. A Mortgage Guaranty Insurance company shall not enter into captive reinsurance arrangements which involve the direct or indirect ceding of any portion of its insurance risks or obligations to a reinsurer owned or controlled by an insured; any subsidiary or affiliate of an insured; an officer, director or employee of an insured or any member of their immediate family; a corporation, partnership, trust, trade association in which an insured is a member, or other entity owned or controlled by an insured or an insured’s officer, director or employee or any member of their immediate family that has a financial interest; or any designee, trustee, nominee or other agent or representative of any of the foregoing.

B. Subterfuge in Reinsurance Prohibited Cessions. A mortgage guaranty insurer may, by written contract, reinsure any insurance that it transacts, except that no mortgage guaranty insurer may enter into reinsurance arrangements designed to circumvent the compensating control provisions of Section 17 or the Contingency Reserve requirement of Section 10. The unearned premium reserves and the loss reserves, and the Contingency Reserve required by Section 10 shall be established and maintained by the direct insurer or by the assuming reinsurer so that the aggregate reserves shall be equal to or greater than the reserves required by direct writer. A reinsurer that is not a Mortgage Guaranty Insurance company is not required to establish a Contingency Reserve provided the reinsurance obligations are not supported by a reserve maintained by the reinsurer will not be entitled to reinsurance credit unless the reinsurance obligations are supported by collateral complying with the requirements of [insert provisions defining acceptable collateral for non-admitted reinsurers] and 4The cession shall be accounted for as a retroactive reinsurance agreement as provided in the accounting practices and procedures prescribed or permitted by the applicable accounting practices and procedures manual of the National Association of Insurance Commissioners.

Section 12. Sound Underwriting Practices

A. Underwriting Review and Approval Required. All Certificates of Mortgage Guaranty Insurance, excluding policies of reinsurance, shall be written based on an assessment of evidence that prudent underwriting standards have been met by the originator of the mortgage. Delegated underwriting decisions shall be reviewed based on a reasonable method of sampling of post-closing loan documentation to ensure compliance with the Mortgage Guaranty Insurance company’s underwriting standards.
B. **Quality Control Reviews.** Quality control reviews for Bulk Mortgage Guaranty Insurance and Pool Mortgage Guaranty Insurance shall be based on a reasonable method of sampling of post-closing loan documentation for delegated underwriting decisions to ensure compliance with the representations and warranties of the creditors or creditors originating the loans and with the Mortgage Guaranty Insurance company’s underwriting standards.

C. **Minimum Underwriting Guidelines Standards.** 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, including but not limited to the chief executive officer and the chief financial officer; and

2. Reviewed with either the board of directors or a board committee designated to provide oversight of underwriting policy and ratification of material changes under a written resolution of the board of directors setting forth the scope of review for such oversight and ratification; and

23. Communicated across the organization to promote consistent business practices with respect to underwriting.

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

- **Minimum mortgage documentation standards:**
- **Loan program or type qualification requirements:**
- **Minimum borrower repayment qualification requirements:** and
- **Minimum property marketability qualifications:**

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

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

The annual summary of material underwriting guideline changes should include any change associated with loan to value ratios, debt to income ratios, borrower credit standing or maximum loan amount which has resulted in a material impact on net premium written of +/- 5% from prior year to date.

F. **Nondiscrimination.** In extending or issuing Mortgage Guaranty Insurance, a Mortgage Guaranty Insurance company may not discriminate on the basis of the applicant’s sex, marital status, race, color, creed, national origin, disability, or age or solely on the basis of the geographic location of the property to be insured unless the discrimination related to geographic location is for a business purpose that is not a mere pretext for unfair discrimination; or the refusal, cancellation, or limitation of the insurance is required by law or regulatory mandate.

**Drafting Note:** States and jurisdictions should consult their constitution or comparable governance documents and applicable civil rights legislation to determine if broader protections against unacceptable forms of discrimination should be included in Section 12G.
Section 13. Quality Assurance

A. **Quality Control Assurance Program.** A Mortgage Guaranty Insurance company shall establish a formal internal Mortgage Guaranty Quality Control Assurance Program, which provides an early detection warning system as it relates to potential underwriting compliance issues which could potentially impact solvency or operational risk. This Mortgage Guaranty Quality Control Assurance Program shall provide for the documentation, monitoring, evaluation and reporting on the integrity of the ongoing loan origination process based on indicators of potential underwriting strategy and control inadequacies or non-compliance. This shall include, but not limited to:

1. **Segregation of Duties.** Administration of the quality control assurance program shall be delegated to designated risk management, quality control or internal audit personnel, who are technically trained and independent from underwriting activities that they audit related to loan origination, pricing, underwriting and operations.

2. **Senior Management Oversight.** Quality control 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 assurance control personnel shall provide periodic quality assurance control reports to the board of directors or a designated committee of directors established to facilitate board of director oversight.

4. **Policy and Procedures Documentation.** Mortgage Guaranty Quality Assurance Control Program, excluding policies and procedures of reinsurance, shall be formally established and documented to define scope, roles and responsibilities.

5. **Underwriting Risk Review.** Quality assurance control review shall include an examination of underwriting risks including categorization classification of risk written unless and until the insurer’s exposure and compliance with risk tolerance levels.

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

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

8. **Problem Loan Trend Reviews.** Quality assurance control monitoring provisions shall assess prospective risks associated with timely loan payment including delinquency, default inventory, foreclosure and persistency trends.

9. **Underwriting System Change Oversight.** Underwriting system program changes shall be monitored to ensure the integrity of underwriting and pricing programs, which impact automated underwriting system decision making.

10. **Pricing and Performance Oversight.** Pricing controls shall be monitored to ensure that business segment pricing supports applicable performance goals.

11. **Internal Audit Validation.** Periodic internal audits shall have conducted to validate compliance with the Mortgage Guaranty Quality Assurance Control Program.

B. **Regulator Access and Review of Quality Assurance Program.** The Commissioner shall be provided access to an insurer’s Mortgage Guaranty Quality Assurance Control Program for review at any reasonable time upon request and during any financial regulatory examination. Nothing herein shall be construed to limit a regulator’s right to access any and all of the records of an insurer in an examination or as otherwise necessary to meet regulatory responsibilities.

Section 14. Section 11. Policy Forms and Premium Rates Filed
A. **Policy Forms.**

All policy forms, endorsements, and modifications (excluding Bulk Mortgage Guaranty Insurance and Pool Mortgage Guaranty Insurance) shall be filed with and be subject to the approval of the commissioner. With respect to owner-occupied, single-family dwellings, 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 (excluding Bulk Mortgage Guaranty Insurance and Pool Mortgage Guaranty Insurance) shall file with the commissioner the rate to be charged and the premium, including all modifications of rates and premiums to be paid by the policyholder.

C. **Schedule of Premium Charges.** Every Mortgage Guaranty Insurance company shall make available to insureds the premium charges for Mortgage Guaranty Insurance policies via a company website or an integration with a third-party system. The premium rate provided shall show the entire amount of premium charge for the type of Mortgage Guaranty Insurance policy to be issued by the insurance company. Every Mortgage Guaranty Insurance company shall adopt, print and make available a schedule of premium charges for Mortgage Guaranty Insurance policies. Premium charges made in conformity with the provisions of this Act shall not be deemed to be interest or other charges under any other provision of law limiting interest or other charges in connection with mortgage loans. The schedule shall show the entire amount of premium charge for each type of Mortgage Guaranty Insurance policy issued by the insurance company.

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

**Section 1215. Outstanding Total Liability Risk in Force and Waivers**

A. **Risk in Force.** A Mortgage Guaranty Insurance company shall not at any time have outstanding a liability exceeding twenty-five (25) times its capital, surplus and Contingency Reserve. In the event that any Mortgage Guaranty Insurance company has outstanding 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 liability no longer exceeds twenty-five (25) times its capital, surplus and Contingency Reserve. Total outstanding liability shall be calculated on a consolidated individual entity basis for all mortgage guaranty insurance companies that are part of a holding company system.

B. **Waiver.** The Commissioner may waive the requirement found in subsection (a) of this section at the written request of a mortgage guaranty insurer upon a finding that the mortgage guaranty insurer's policyholders position is reasonable in relationship to the mortgage guaranty insurer's aggregate insured Risk in Force and adequate to its financial needs. The request must be made in writing at least 90 days in advance of the date that the mortgage guaranty insurer expects to exceed the requirement of subsection (a) of this section and shall, at a minimum, address the factors specified in subsection (j) of this section.

C. **Waiver Criteria.** In determining whether a mortgage guaranty insurer's policyholders position is reasonable in relation to the mortgage guaranty insurer's aggregate insured Risk in Force and adequate to its financial needs, all of the following factors, among others, may be considered:

1. The size of the mortgage guaranty insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.

2. The extent to which the mortgage guaranty insurer's business is diversified across time, geography, credit quality, origination, and distribution channels.

3. The nature and extent of the mortgage guaranty insurer's reinsurance program.
The quality, diversification, and liquidity of the mortgage guaranty insurer's assets and its investment portfolio.

The historical and forecasted trend in the size of the mortgage guaranty insurer's policyholders position.

The policyholders position maintained by other comparable mortgage guaranty insurers in relation to the nature of their respective insured risks.

The adequacy of the mortgage guaranty insurer's reserves.

The quality and liquidity of investments in affiliates. The Commissioner may treat any such investment as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders.

The quality of the mortgage guaranty insurer's earnings and the extent to which the reported earnings of the mortgage guaranty insurer include extraordinary items.

An independent actuary's opinion as to the reasonableness and adequacy of the mortgage guaranty insurer's historical and projected policyholders position.

The capital contributions which have been infused or are available for future infusion into the mortgage guaranty insurer.

The historical and projected trends in the components of the mortgage guaranty insurer's aggregate insured risk, including, but not limited to, the quality and type of the risks included in the aggregate insured risk.

D. Authority to Retain Experts. The Commissioner may retain accountants, actuaries, or other experts to assist the Commissioner in the review of the mortgage guaranty insurer's request submitted pursuant to subsection (i) of this section. The mortgage guaranty insurer shall bear the Commissioner's cost of retaining those persons.

E. Specified Duration. Any waiver shall be (i) for a specified period of time not to exceed two years and (ii) subject to any terms and conditions that the Commissioner shall deem best suited to restoring the mortgage guaranty insurer's minimum policyholders position required by subsection (a) of this section.

Section 16. Conflict of Interest

A. A mortgage guaranty insurer may underwrite mortgage guaranty insurance on mortgages originated by the holding company system or affiliate or on mortgages originated by any mortgage lender to which credit is extended, directly or indirectly by the holding company system or affiliate only if the insurance is underwritten on the same basis, for the same consideration and subject to the same insurability requirements as insurance provided to nonaffiliated lenders. Mortgage guaranty insurance underwritten on mortgages originated by the holding company system or affiliate or on mortgages originated by any mortgage lender to which credit is extended, directly or indirectly by the holding company system or affiliate shall be limited to 50% of the insurer's direct premium written in any calendar year, or such higher percentage established in writing for the insurer in the 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.

A. A Mortgage Guaranty Insurance company licensed to transact business in this state shall not, as a condition of its Certificate of Authority, knowingly underwrite Mortgage Guaranty Insurance on mortgages originated by the holding company system or an affiliate or on mortgages originated by any mortgage lender to which credit is extended, directly or indirectly, by the holding company system or an affiliate.

B. A Mortgage Guaranty Insurance company, the holding company system of which it is a part, or any affiliate shall not, as a condition of the Mortgage Guaranty Insurance company’s Certificate of Authority, engage in activities proscribed in Sections 17 and 18.
Section 1714. Compensating Balances Prohibited

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

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

A. No Inducements. Unless set force in the policy and subject to the [state equivalent of the Unfair Trade Practices Act (Model #880)], a Mortgage Guaranty Insurance company shall not pay or cause to be paid either directly or indirectly, to any owner, purchaser, lessor, lessee, mortgagee or prospective mortgagee of the real property that secures the Authorized Real Estate Security or that is the fee of an insured lease, or any interest therein, or to any person who is acting as an agent, representative, attorney or employee of such owner, purchaser, 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.

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

D. No Undue Contractual Preferences.

(1) Any contract, letter agreement, or other arrangement used to modify or clarify any terms, conditions, or interpretations of a Master Policy or Certificate shall be documented in writing.

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

(a) Underwriting standards
(b) Quality assurance
(c) Rescission

E. Sanctions. The Commissioner may, after notice and hearing, suspend or revoke the Certificate of Authority of a Mortgage Guaranty Insurance company, or in his or her discretion, issue a cease and desist order to a Mortgage Guaranty Insurance company that pays a commission, rebate, or makes any unlawful conveyance of value under this section in willful violation of the provisions of this Act. In the event of the issuance of a
cease and desist order, the Commissioner may, after notice and hearing, suspend or revoke the Certificate of Authority of a Mortgage Guaranty Insurance company that does not comply with the terms thereof.

F. **Educational Efforts and Promotional Materials Permitted.** A Mortgage Guaranty Insurance company may engage in any educational effort with borrowers, members of the general public, and officers, directors, employees, contractors and agents of insured lenders that may reasonably be expected to reduce its risk of Loss or promote its operational efficiency and may distribute promotional materials of minor value.

Section 19. **Rescission**

The Right of Rescission shall be governed by the following:

A. **Rescission Rights and Responsibilities.** All Mortgage Guaranty Insurance company master policies shall include a detailed description of provisions governing rescissions, re-pricing, and cancellations, which specify the insurer’s and insured’s rights, obligations and eligibility terms under which those actions may occur to ensure transparency.

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

- A Mortgage Guaranty Insurance Master Policy may provide for mandatory rescission relief based on evidence of compliance with payment history and loan status eligibility requirements.
- A Mortgage Guaranty Insurance Master Policy may offer an earlier rescission relief option based on evidence of compliance with underwriting and payment history eligibility requirements.
- A Mortgage Guaranty Insurance company shall retain the Right of Rescission in instances in which a creditor or the officers, directors, employees, contractors, and agents of a creditor engage in misstatements, misrepresentations, omissions, data inaccuracies or active efforts to deceive through submission of forged or fictitious information in connection with loan origination or closing for a period of at least 10 years, based on:
  - Credible evidence of the existence of the above conditions; and
  - Credible evidence of the materiality of the above conditions to the Mortgage Guaranty Insurance company’s acceptance of risk.

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

- Recession relief has not been granted based on Subsection 17B.
- The loan would have been eligible for coverage with alternative pricing under the underwriting standards in effect at origination; and
- Misstatements, misrepresentations, omissions or inaccuracies by the creditor or the officers, directors, employees, contractors, and agents of a creditor are not considered material based on reasonable verification of appraisal value and borrower income by the Mortgage Guaranty Insurance company.

Section 20. **Records Retention**

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

Recordkeeping requirements shall relate to:
(1) Policy records to clearly document the application, underwriting, issuance and servicing of each policy and Certificate; and

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

B. **Retention Period.** Policy and claim records shall be retained for the period during which the Certificate or claim is active plus five (5) years, unless otherwise specified by the Insurance Commissioner.

Recordkeeping requirements shall relate to:

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

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

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

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

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

If the coverage provided in this Act exceeds the limitations set forth herein, the commissioner of insurance shall establish a rate formula factor that will produce a contingency reserve adequate for the added risk assumed. The face amount of an insured mortgage shall be computed before any reduction by the mortgage guaranty insurance company’s election to limit its coverage to a portion of the entire indebtedness. Insurer maintenance responsibilities shall provide for record storage in a location that will allow the records to be reasonably produced for examination within the time period required.

(21) Third-Party maintenance related responsibilities shall be set forth in a written agreement, a copy of which shall be maintained by the insurer and available for purposes of examination.

Section 21. **No Private Right of Action**

No Private Right of Action. Nothing in this Act is intended to, or does, create a private right of action based upon compliance or noncompliance with any of the Act’s provisions. Authority to enforce compliance with this Act is vested exclusively in the Commissioner.

**Section 22.**

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).

MORTGAGE GUARANTY INSURANCE MODEL ACT

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Section 1. Title

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

Section 2. Definitions

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

A. “Authorized Real Estate Security” means:

1. An amortized note, bond or other instrument of indebtedness, except for reverse mortgage loans made pursuant to [insert citation of state law that authorizes reverse mortgages] of the real property law, evidencing a loan, not exceeding one hundred three percent (103%) of the fair market value of the real estate, secured by a mortgage, deed of trust, or other instrument that constitutes, or is equivalent to, a first lien or junior lien or charge on real estate, with any percentage in excess of one hundred percent (100%) being used to finance the fees and closing costs on such indebtedness; provided:

a. The real estate loan secured in this manner is one of a type that a creditor, which is supervised and regulated by a department of any state or territory of the U.S or an agency of the federal government, is authorized to make, or would be authorized to make, disregarding any requirement applicable to such an institution that the amount of the loan not exceed a certain percentage of the value of the real estate;

b. The loan is to finance the acquisition, initial construction or refinancing of real estate that is a:

i. Residential building designed for occupancy by not more than four families, a one-family residential condominium or unit in a planned unit development, or any other one-family residential unit as to which title may be conveyed freely; or

ii. Mixed-use building with only one non-residential use and one one-family dwelling unit; or
(iii) Building or buildings designed for occupancy by five (5) or more families or designed to be occupied for industrial or commercial purposes.

(c) The lien on the real estate may be subject to and subordinate to other liens, leases, rights, restrictions, easements, covenants, conditions or regulations of use that do not impair the use of the real estate for its intended purpose.

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

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

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

C. “Certificate of Insurance” means a document issued by a mortgage guaranty insurance company to the initial insured to evidence that it has insured a particular Authorized Real Estate Security under a Master Policy, identifying the terms, conditions and representations, in addition to those contained in the Master Policy and endorsements, applicable to such coverage.

D. “Commissioner” means [insert the title of the principal insurance supervisory official] of this state, or the [insert the title of the principal insurance supervisory official]’s deputies or assistants, or any employee of the [insert name of the principal insurance regulatory agency] of this state acting in the [insert the title of the principal insurance supervisory official]’s name and by the [insert the title of the principal insurance supervisory official]’s delegated authority.

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.

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

J. “Mortgage Guaranty Insurance” is insurance against financial loss by reason of nonpayment of principal, interest or other sums agreed to be paid under the terms of any Authorized Real Estate Security.
K. “Mortgage Guaranty Quality 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, incomplete or misleading information provided to, or information omitted or concealed from, the Mortgage Guaranty Insurance company in connection with the insurance application, resulting in an insured loan that did not meet the Mortgage Guaranty Insurance company’s eligibility requirements in effect on the date of submission of the insurance application.

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

Section 3. Insurer’s Authority to Transact Business

A company may not transact the business of Mortgage Guaranty Insurance until it has obtained a Certificate of authority from the Commissioner.

Section 4. Mortgage Guaranty Insurance as Monoline

A Mortgage Guaranty Insurance company that anywhere transacts any class of insurance other than Mortgage Guaranty Insurance is not eligible for the issuance of a Certificate of Authority to transact Mortgage Guaranty Insurance in this state nor for the renewal thereof.

Section 5. Risk Concentration

A Mortgage Guaranty Insurance company shall not expose itself to any Loss on any one Authorized Real Estate Security risk in an amount exceeding ten percent (10%) of its surplus to policyholders. Any risk or portion of risk which has been reinsured shall be deducted in determining the limitation of risk.

Section 6. Capital and Surplus

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

B. Minimum Capital Requirements Applicability. A Mortgage Guaranty Insurance company formed prior to passage of this Act may maintain the amount of capital and surplus or minimum policyholders’ surplus previously required by statute or administrative order for a period not to exceed twelve months following the effective date of the adoption of this Act.

C. Minimum Capital Requirements Adjustments. The Domiciliary Commissioner may by order reduce the minimum amount of capital and surplus or minimum policyholders’ surplus required under Section 6A under the following circumstances:

(1) For an affiliated reinsurer that is a Mortgage Guaranty Insurance company and that is or will be engaged solely in the assumption of risks from affiliated Mortgage Guaranty Insurance companies, provided that the affiliated reinsurer is in run-off and, in the Domiciliary Commissioner’s opinion,
the business plan and other relevant circumstances of the affiliated reinsurer justify the proposed reduction in requirements.

(2) For Mortgage Guaranty Insurance companies that are in run-off and not writing new business that is justified in a business plan, in the Domiciliary Commissioner's opinion.

Section 7. Geographic Concentration

A. A Mortgage Guaranty Insurance company shall not insure loans secured by a single risk in excess of ten percent (10%) of the company’s aggregate capital, surplus and Contingency Reserve.

B. No Mortgage Guaranty Insurance company shall have more than twenty percent (20%) of its total insurance in force in any one Standard Metropolitan Statistical Area (SMSA), as defined by the U.S. Department of Commerce.

C. The provisions of this section shall not apply to a Mortgage Guaranty Insurance company until it has possessed a Certificate of Authority in this state for three (3) years.

Section 8. Advertising

No Mortgage Guaranty Insurance company or an agent or representative of a Mortgage Guaranty Insurance company shall prepare or distribute or assist in preparing or distributing any advertising media or communication to the effect that the real estate investments of any financial institution are “insured investments,” unless the advertising media or communication clearly states that the loans are insured by Mortgage Guaranty Insurance companies possessing a Certificate of Authority to transact Mortgage Guaranty Insurance in this state or are insured by an agency of the federal government.

Section 9. Investment Limitation

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

Section 10. Reserve Requirements

A. Unearned premium Reserves, Loss Reserves, and Premium Deficiency Reserves. Financial reporting will be prepared in accordance with the Accounting Practices and Procedures Manual and Annual Financial Statement Instructions of the National Association of Insurance Commissioners.

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

(1) The Mortgage Guaranty Insurance company shall make an annual contribution to the Contingency Reserve which in the aggregate shall be equal to fifty percent (50%) of the direct earned premiums reported in the annual statement or net earned premiums reported if the reinsurer maintains the contingency reserve.

(2) Except as provided within this Act, a Mortgage Guaranty Insurance company’s contributions to the Contingency Reserve made during each calendar year shall be maintained for a period of 120 months, to provide for reserve buildup. The portion of the Contingency Reserve established and maintained for more than 120 months shall be released and shall no longer constitute part of the Contingency Reserve.

(3) Withdrawals may be made from the Contingency Reserve on a first-in, first-out basis or such other basis, with the prior written approval of the Domiciliary Commissioner, based on the amount by which:
(a) Incurred losses and loss adjustment expenses exceed 35% of the direct earned premium in any year. Provisional withdrawals may be made from the Contingency Reserve on a quarterly basis in an amount not to exceed 75% of the withdrawal as adjusted for the quarterly nature of the withdrawal; or

(b) Upon the approval of the Domiciliary Commissioner and 30-day prior notification to non-domiciliary commissioners, a mortgage guaranty insurer may withdraw from the Contingency Reserve any amounts which are in excess of the requirements of Section 15 as required in (insert section of the Mortgage Guaranty Insurance model law requiring minimum policyholder’s position) as filed with the most recently filed annual statement.

(i.) The Mortgage Guaranty Insurance company’s Domiciliary Commissioner may consider loss developments and trends in reviewing a request for withdrawal. If any portion of the Contingency Reserve for which withdrawal is requested is maintained by a reinsurer or in a segregated account or trust of a reinsurer, the Domiciliary Commissioner may also consider the financial condition of the reinsurer.

C. Miscellaneous.

(1) Unearned premium reserves and Contingency Reserves on risks insured before the effective date of this Act may be computed and maintained as required previously.

Section 11. Reinsurance

A. Prohibition of Captive Reinsurance. A Mortgage Guaranty Insurance company shall not enter into captive reinsurance arrangements which involve the direct or indirect ceding of any portion of its insurance risks or obligations to a reinsurer owned or controlled by an insured; any subsidiary or affiliate of an insured; an officer, director or employee of an insured or any member of their immediate family; a corporation, partnership, trust, trade association in which an insured is a member, or other entity owned or controlled by an insured or an insured’s officer, director or employee or any member of their immediate family that has a financial interest; or any designee, trustee, nominee or other agent or representative of any of the foregoing.

B. Reinsurance Cessions. A mortgage guaranty insurer may, by written contract, reinsure any insurance that it transacts, except that no mortgage guaranty insurer may enter into reinsurance arrangements designed to circumvent the compensating control provisions of Section 17 or the Contingency Reserve requirement of Section 10. The unearned premium reserve and the loss reserves required by Section 10 shall be established and maintained by the direct insurer or by the assuming reinsurer so that the aggregate reserves shall be equal to or greater than the reserves required by direct writer. The cession shall be accounted for as provided in the accounting practices and procedures prescribed or permitted by the applicable accounting practices and procedures manual of the National Association of Insurance Commissioners.

Section 12. Sound Underwriting Practices

A. Underwriting Review and Approval Required. All Certificates of Mortgage Guaranty Insurance, excluding policies of reinsurance, shall be written based on an assessment of evidence that prudent underwriting standards have been met by the originator of the mortgage. Delegated underwriting decisions shall be reviewed based on a reasonable method of sampling of post-closing loan documentation to ensure compliance with the Mortgage Guaranty Insurance company’s underwriting standards.

B. Quality Control Reviews. Quality control reviews for Private 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 representation and warranties of the creditors or creditors originating the loans and with the Mortgage Guaranty Insurance company’s underwriting standards.

C. Minimum Underwriting Standards. Mortgage Guaranty Insurance companies shall establish formal underwriting standards which set forth the basis for concluding that prudent underwriting standards have been met.
D. Underwriting Review and Approval. A Mortgage Guaranty Insurance company’s underwriting standards shall be:

(1) Reviewed and approved by executive management, including but not limited to the chief executive officer and the chief financial officer; and

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

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

F. Nondiscrimination. In extending or issuing Mortgage Guaranty Insurance, a Mortgage Guaranty Insurance company may not discriminate on the basis of the applicant’s sex, marital status, race, color, creed, national origin, disability, or age or solely on the basis of the geographic location of the property to be insured unless the discrimination related to geographic location is for a business purpose that is not a mere pretext for unfair discrimination; or the refusal, cancellation, or limitation of the insurance is required by law or regulatory mandate.

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

Section 13. Quality Assurance

A. Quality Assurance Program. A Mortgage Guaranty Insurance company shall establish a formal internal Mortgage Guaranty Quality Assurance Program, which provides an early detection warning system as it relates to potential underwriting compliance issues which could potentially impact solvency or operational risk. This Mortgage Guaranty Quality Assurance Program shall provide for the documentation, monitoring, evaluation and reporting on the integrity of the ongoing loan origination process based on indicators of potential underwriting inadequacies or non-compliance. This shall include, but not limited to:

(1) Segregation of Duties. Administration of the quality assurance program shall be delegated to designated risk management, quality assurance or internal audit personnel, who are technically trained and independent from underwriting activities that they audit.

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

(3) Board of Director Oversight. Quality assurance personnel shall provide periodic quality assurance reports to the board of directors or a designated committee of directors established to facilitate board of director oversight.

(4) Policy and Procedures Documentation. Mortgage Guaranty Quality Assurance Program, excluding policies and procedures of reinsurance, shall be formally established and documented to define scope, roles and responsibilities.

(5) Underwriting Risk Review. Quality assurance review shall include an examination of underwriting risks including classification of risk and compliance with risk tolerance levels.

(6) Lender Performance Reviews. Quality assurance monitoring provisions shall include an assessment of lender performance.
(7) **Underwriting Performance Reviews.** Quality assurance monitoring provisions shall assess compliance with underwriting standard.

(8) **Problem Loan Trend Reviews.** Quality assurance monitoring provisions shall assess prospective risks associated with timely loan payment including delinquency, default inventory, foreclosure and persistency trends.

(9) **Underwriting System Change Oversight.** Underwriting system program changes shall be monitored to ensure the integrity of underwriting and pricing programs, which impact automated underwriting system decision making.

(10) **Pricing and Performance Oversight.** Pricing controls shall be monitored to ensure that business segment pricing supports applicable performance goals.

(11) **Internal Audit Validation.** Periodic internal audits shall be conducted to validate compliance with the Mortgage Guaranty Quality Assurance Program.

B. **Regulator Access and Review of Quality Assurance Program.** The Commissioner shall be provided access to an insurer’s Mortgage Guaranty Quality Assurance Program for review at any reasonable time upon request and during any financial regulatory examination. Nothing herein shall be construed to limit a regulator’s right to access any and all of the records of an insurer in an examination or as otherwise necessary to meet regulatory responsibilities.

**Section 14. Policy Forms and Premium Rates Filed**

A. **Policy Forms.** Policy forms, endorsements, and modifications (excluding Bulk Mortgage Guaranty Insurance and Pool Mortgage Guaranty Insurance) shall be filed with and be subject to the approval of the commissioner. With respect to owner-occupied, single-family dwellings or a mixed-use building described in Section 2A(1)(b), which is owner-occupied at the time of loan origination and for at least 50% of the days within the twelve (12) consecutive months prior to borrower default.

B. **Premium Rates.** Each Mortgage Guaranty Insurance company (excluding Bulk Mortgage Guaranty Insurance and Pool Mortgage Guaranty Insurance) shall file with the commissioner the rate to be charged including all modifications of rates and premiums to be paid by the policyholder.

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.

**Section 15. Risk in Force and Waivers**

A. **Risk in Force.** A Mortgage Guaranty Insurance company shall not at any time have outstanding Risk in Force, net of reinsurance, under its aggregate Mortgage Guaranty Insurance policies exceeding twenty-five (25) times its capital, surplus and Contingency Reserve. In the event that any Mortgage Guaranty Insurance company has outstanding total Risk in Force exceeding twenty-five (25) times its capital, surplus and Contingency Reserve, it shall cease transacting new mortgage guaranty business until such time as its total Risk in Force no longer exceeds twenty-five (25) times its capital, surplus and Contingency Reserve. Total Risk in Force shall be calculated on an individual entity basis.

B. **Waiver.** The Commissioner may waive the requirement found in subsection (a) of this section at the written request of a mortgage guaranty insurer upon a finding that the mortgage guaranty insurer's policyholders position is reasonable in relationship to the mortgage guaranty insurer's aggregate insured Risk in Force and adequate to its financial needs. The request must be made in writing at least 90 days in advance of the date that the mortgage guaranty insurer expects to exceed the requirement of subsection (a) of this section and shall, at a minimum, address the factors specified in subsection (j) of this section.
C. **Waiver Criteria.** In determining whether a mortgage guaranty insurer's policyholders position is reasonable in relation to the mortgage guaranty insurer's aggregate insured Risk in Force and adequate to its financial needs, all of the following factors, among others, may be considered:

1. The size of the mortgage guaranty insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.

2. The extent to which the mortgage guaranty insurer's business is diversified across time, geography, credit quality, origination, and distribution channels.

3. The nature and extent of the mortgage guaranty insurer's reinsurance program.

4. The quality, diversification, and liquidity of the mortgage guaranty insurer's assets and its investment portfolio.

5. The historical and forecasted trend in the size of the mortgage guaranty insurer's policyholders position.

6. The policyholders position maintained by other comparable mortgage guaranty insurers in relation to the nature of their respective insured risks.

7. The adequacy of the mortgage guaranty insurer's reserves.

8. The quality and liquidity of investments in affiliates. The Commissioner may treat any such investment as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders.

9. The quality of the mortgage guaranty insurer's earnings and the extent to which the reported earnings of the mortgage guaranty insurer include extraordinary items.

10. An independent actuary's opinion as to the reasonableness and adequacy of the mortgage guaranty insurer's historical and projected policyholders position.

11. The capital contributions which have been infused or are available for future infusion into the mortgage guaranty insurer.

12. The historical and projected trends in the components of the mortgage guaranty insurer's aggregate insured risk, including, but not limited to, the quality and type of the risks included in the aggregate insured risk.

D. **Authority to Retain Experts.** The Commissioner may retain accountants, actuaries, or other experts to assist the Commissioner in the review of the mortgage guaranty insurer's request submitted pursuant to subsection (i) of this section. The mortgage guaranty insurer shall bear the Commissioner's cost of retaining those persons.

E. **Specified Duration.** Any waiver shall be (i) for a specified period of time not to exceed two years and (ii) subject to any terms and conditions that the Commissioner shall deem best suited to restoring the mortgage guaranty insurer's minimum policyholders position required by subsection (a) of this section.

**Section 16. Conflict of Interest**

A 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 17. Compensating Balances Prohibited

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

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

A. Inducements. Unless set force in the policy and subject to the [state equivalent of the Unfair Trade Practices Act (Model #880)], a Mortgage Guaranty Insurance company shall not pay or cause to be paid either directly or indirectly, to any owner, purchaser, lessor, lessee, mortgagee or prospective mortgagee of the real property that secures the Authorized Real Estate Security or that is the fee of an insured lease, or any interest therein, or to any person who is acting as an agent, representative, attorney or employee of such owner, purchaser, lessor, lessee or mortgagee, any commission, or any part of its premium charges or any other consideration as an inducement for or as compensation on any Mortgage Guaranty Insurance business.

B. Compensation for Placement. In connection with the placement of any Mortgage Guaranty Insurance, a Mortgage Guaranty Insurance company shall not cause or permit the conveyance of anything of value, including but not limited to any commission, fee, premium adjustment, remuneration or other form of compensation of any kind whatsoever to be paid to, or received by an insured lender or lessor, any subsidiary or affiliate of an insured; an officer, director or employee of an insured or any member of their immediate family; a corporation, partnership, trust, trade association in which an insured is a member, or other entity in which an insured or an officer, director or employee or any member of their immediate family has a financial interest; or any designee, trustee, nominee or other agent or representative of any of the foregoing, except for the value of the insurance itself or claim payments thereon as provided by contract or settlement.

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

D. Undue Contractual Preferences.

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

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

(a) Underwriting standards
(b) Quality assurance
(c) Rescission
E. **Sanctions.** The Commissioner may, after notice and hearing, suspend or revoke the Certificate of Authority of a Mortgage Guaranty Insurance company, or in his or her discretion, issue a cease and desist order to a Mortgage Guaranty Insurance company that pays a commission, rebate, or makes any unlawful conveyance of value under this section in willful violation of the provisions of this Act. In the event of the issuance of a cease and desist order, the Commissioner may, after notice and hearing, suspend or revoke the Certificate of Authority of a Mortgage Guaranty Insurance company that does not comply with the terms thereof.

F. **Educational Efforts and Promotional Materials Permitted.** A Mortgage Guaranty Insurance company may engage in any educational effort with borrowers, members of the general public, and officers, directors, employees, contractors and agents of insured lenders that may reasonably be expected to reduce its risk of Loss or promote its operational efficiency and may distribute promotional materials of minor value.

Section 19. **Rescission**

The Right of Rescission shall be governed by the following:

A. **Rescission Rights and Responsibilities.** All Mortgage Guaranty Insurance company master policies shall include a detailed description of provisions governing rescissions, re-pricing, and cancellations, which specify the insurer’s and insured’s rights, obligations and eligibility terms under which those actions may occur to ensure transparency.

Section 20. **Records Retention**

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

B. **Retention Period.** Policy and claim records shall be retained for the period during which the Certificate or claim is active plus five (5) years, unless otherwise specified by the Insurance Commissioner.

Recordkeeping requirements shall relate to:

1. Records to clearly document the application, underwriting, and issuance of each Master Policy and Certificate of Insurance; and

2. Claim records to clearly document the inception, handling and disposition

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

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

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.

1. Third-Party maintenance related responsibilities shall be set forth in a written agreement, a copy of which shall be maintained by the insurer and available for purposes of examination.

Section 21. **No Private Right of Action**

No Private Right of Action. Nothing in this Act is intended to, or does, create a private right of action based upon compliance or noncompliance with any of the Act’s provisions. Authority to enforce compliance with this Act is vested exclusively in the Commissioner.

Section 22. **Regulations**

The Commissioner shall have the authority to promulgate rules and regulations deemed necessary to effectively implement the requirements of this Act.
Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

March 14, 2023

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

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

Dear Ms. Obusek:

The Private Mortgage Guaranty Insurance Industry Group (“Industry Group”) submits the following comments to the Mortgage Guaranty Insurance Model Act exposed on February 28, 2023 (“Model Act”). Also attached for your convenience is proposed clarifying language regarding the topics addressed below.

Section 10(B)(1) – Contingency Reserve

In Section 10(B)(1), the Industry Group seeks to clarify the language in one sentence regarding the interaction between the contingency reserve requirement and reinsurance by stating that the reinsurer’s establishment of the contingency reserve includes maintaining separately held collateral in a trust or segregated account to support the reinsurer’s obligation. We believe that this concept comports with the intent of the Working Group in redrafting Section 10(B)(1)\(^1\), but seek added clarity in the Model Act as it is vital to the reinsurance market for mortgage guaranty insurance given that many reinsurers do not file a statutory financial statement that shows a contingency reserve liability.

Specifically, insurance-linked notes (“ILNs”) are special purposes entities that do not file statutory financial statements, and certain quota share and excess of loss reinsurance (“QSR/XOL”) counterparties are Bermuda-based reinsurers that do not file statutory financial statements. However, in both the cases of ILNs and QSR/XOL reinsurance transactions, our counterparties generally are required to maintain assets isolated in trust or segregated accounts to support their reinsurance obligation.

Similarly, the requirement that the direct insurer record a liability for funds held under the reinsurance treaty serves the same function because “funds held” is reported as a liability on the insurer’s balance sheet just like the contingency reserve. Therefore we also respectfully request to address this reinsurance treaty practice in the Model Act.

\(^1\) An alternative approach similar to that used in the July 2000 Mortgage Guaranty Insurance Model Act also could be used here in addressing the effect of reinsurance on the contingency reserve requirement. See Industry Group Comment Letter dated November 18, 2022, at p. 7 (recommending the substitution of the term “earned premiums net of reinsurance” for “direct earned premiums”).

Attachment B
Section 12(D) – Underwriting Review and Approval

We respectfully request that the Model Act use the generic term “highest ranking” in front of “executive officer” and “financial officer” in Section 12(D) instead of “chief”. Many mortgage insurers do not have an officer with the title of chief executive officer or chief financial officer as these titles are more commonly reserved for use at the publicly traded holding company level rather than at the subsidiary level. The highest ranking executive officer of most mortgage insurers typically is the president, although this could vary by company.

Section 14 – Policy Forms and Premium Rates Filed

We respectfully request to retain a note similar to the Drafting Note that is part of the equivalent subsections of the July 2000 Mortgage Guaranty Insurance Model Act stating: “Drafting Note: Open rating states may delete a portion or all of [this provision] and insert their own rating law.” States that do not require companies writing other insurance lines to file rates or modifications of rates should be advised that the Model Act contemplates the flexibility to treat mortgage guaranty insurance the same as other types of insurance in that regard.

Other Recommendations and Corrections to the Model Act

Finally, we also include in the attachment recommendations to conform certain defined terms and phrases to the Working Group’s chosen terminology, along with a few other corrections of a minor nature to Sections 2(K), 12(E), 13(A)(2), 14(A), 14(B), and 16.

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

Respectfully submitted on behalf of the Industry Group companies below,

Arch Mortgage Insurance Company,
Enact Mortgage Insurance Corporation,
Essent Guaranty, Inc.,
Mortgage Guaranty Insurance Corporation,
National Mortgage Insurance Corporation, and
Radian Guaranty Inc.
MORTGAGE GUARANTY INSURANCE MODEL ACT

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Section 1. Title

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

Section 2. Definitions

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

A. “Authorized Real Estate Security” means:

(1) An amortized note, bond or other instrument of indebtedness, except for reverse mortgage loans made pursuant to [insert citation of state law that authorizes reverse mortgages] of the real property law, evidencing a loan, not exceeding one hundred three percent (103%) of the fair market value of the real estate, secured by a mortgage, deed of trust, or other instrument that constitutes, or is equivalent to, a first lien or junior lien or charge on real estate, with any percentage in excess of one hundred percent (100%) being used to finance the fees and closing costs on such indebtedness; provided:

(a) The real estate loan secured in this manner is one of a type that a creditor, which is supervised and regulated by a department of any state or territory of the U.S or an agency of the federal government, is authorized to make, or would be authorized to make, disregarding any requirement applicable to such an institution that the amount of the loan not exceed a certain percentage of the value of the real estate;

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

(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
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(iii) Building or buildings designed for occupancy by five (5) or more families or designed to be occupied for industrial or commercial purposes.

(c) The lien on the real estate may be subject to and subordinate to other liens, leases, rights, restrictions, easements, covenants, conditions or regulations of use that do not impair the use of the real estate for its intended purpose.

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

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

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

C. “Certificate of Insurance” means a document issued by a mortgage guaranty insurance company to the initial insured to evidence that it has insured a particular Authorized Real Estate Security under a Master Policy, identifying the terms, conditions and representations, in addition to those contained in the Master Policy and endorsements, applicable to such coverage.

D. “Commissioner” means [insert the title of the principal insurance supervisory official] of this state, or the [insert the title of the principal insurance supervisory official]’s deputies or assistants, or any employee of the [insert name of the principal insurance regulatory agency] of this state acting in the [insert title of the principal insurance supervisory official]’s name and by the [insert 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.

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

J. “Mortgage Guaranty Insurance” is insurance against financial loss by reason of nonpayment of principal, interest or other sums agreed to be paid under the terms of any Authorized Real Estate Security.
K. “Mortgage Guaranty Quality Control Assured Program” means an early detection warning system for potential underwriting compliance issues which could potentially impact solvency or operational risk within a mortgage guaranty insurance company.

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

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

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

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

Section 3. Insurer’s Authority to Transact Business

A company may not transact the business of Mortgage Guaranty Insurance until it has obtained a Certificate of authority from the Commissioner.

Section 4. Mortgage Guaranty Insurance as Monoline

A Mortgage Guaranty Insurance company that anywhere transacts any class of insurance other than Mortgage Guaranty Insurance is not eligible for the issuance of a Certificate of Authority to transact Mortgage Guaranty Insurance in this state nor for the renewal thereof.

Section 5. Risk Concentration

A Mortgage Guaranty Insurance company shall not expose itself to any Loss on any one Authorized Real Estate Security risk in an amount exceeding ten percent (10%) of its surplus to policyholders. Any risk or portion of risk which has been reinsured shall be deducted in determining the limitation of risk.

Section 6. Capital and Surplus

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

B. Minimum Capital Requirements Applicability. A Mortgage Guaranty Insurance company formed prior to passage of this Act may maintain the amount of capital and surplus or minimum policyholders’ surplus previously required by statute or administrative order for a period not to exceed twelve months following the effective date of the adoption of this Act.

C. Minimum Capital Requirements Adjustments. The Domiciliary Commissioner may by order reduce the minimum amount of capital and surplus or minimum policyholders’ surplus required under Section 6A under the following circumstances:

(1) For an affiliated reinsurer that is a Mortgage Guaranty Insurance company and that is or will be engaged solely in the assumption of risks from affiliated Mortgage Guaranty Insurance companies, provided that the affiliated reinsurer is in run-off and, in the Domiciliary Commissioner’s opinion,
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the business plan and other relevant circumstances of the affiliated reinsurer justify the proposed reduction in requirements.

(2) For Mortgage Guaranty Insurance companies that are in run-off and not writing new business that is justified in a business plan, in the Domiciliary Commissioner's opinion.

Section 7. Geographic Concentration

A. A Mortgage Guaranty Insurance company shall not insure loans secured by a single risk in excess of ten percent (10%) of the company’s aggregate capital, surplus and Contingency Reserve.

B. No Mortgage Guaranty Insurance company shall have more than twenty percent (20%) of its total insurance in force in any one Standard Metropolitan Statistical Area (SMSA), as defined by the U.S Department of Commerce.

C. The provisions of this section shall not apply to a Mortgage Guaranty Insurance company until it has possessed a Certificate of Authority in this state for three (3) years.

Section 8. Advertising

No Mortgage Guaranty Insurance company or an agent or representative of a Mortgage Guaranty Insurance company shall prepare or distribute or assist in preparing or distributing any advertising media or communication to the effect that the real estate investments of any financial institution are “insured investments,” unless the advertising media or communication clearly states that the loans are insured by Mortgage Guaranty Insurance companies possessing a Certificate of Authority to transact Mortgage Guaranty Insurance in this state or are insured by an agency of the federal government.

Section 9. Investment Limitation

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

Section 10. Reserve Requirements

A. Unearned premium Reserves, Loss Reserves, and Premium Deficiency Reserves. Financial reporting will be prepared in accordance with the Accounting Practices and Procedures Manual and Annual Financial Statement Instructions of the National Association of Insurance Commissioners.

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

(1) The Mortgage Guaranty Insurance company shall make an annual contribution to the Contingency Reserve which in the aggregate shall be equal to fifty percent (50%) of the direct earned premiums reported in the annual statement or net earned premiums reported if reinsurer establishes maintains the contingency reserve, including by maintaining collateral in a trust or segregated account to support the reinsurer’s obligation, or the direct insurer records a liability for funds held under the reinsurance treaty.

(2) Except as provided within this Act, a Mortgage Guaranty Insurance company’s contributions to the Contingency Reserve made during each calendar year shall be maintained for a period of 120 months, to provide for reserve buildup. The portion of the Contingency Reserve established and maintained for more than 120 months shall be released and shall no longer constitute part of the Contingency Reserve.

(3) Withdrawals may be made from the Contingency Reserve on a first-in, first-out basis or such other

Commented [BMS2]: Insurance-linked notes ("ILNs") are special purposes entities that do not issue financials, and certain quota share and excess of loss reinsurance ("QSR/XOL") counterparties are Bermuda-based reinsurers that do not file statutory financial statements. However, in both cases of ILNs and QSR/XOL reinsurance transactions, our counterparties are generally required to maintain assets isolated in trust or segregated accounts to support their reinsurance obligation.

Commented [BMS3]: Similarly, the requirement that the direct insurer record a liability for funds held under the reinsurance treaty serves the same function because “funds held” is reported as a liability on the insurer’s balance sheet just like the contingency reserve.
basis, with the prior written approval of the Domiciliary Commissioner, based on the amount by which:
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(a) Incurred losses and loss adjustment expenses exceed 35% of the direct earned premium in any year. Provisional withdrawals may be made from the Contingency Reserve on a quarterly basis in an amount not to exceed 75% of the withdrawal as adjusted for the quarterly nature of the withdrawal; or

(b) Upon the approval of the Domiciliary Commissioner and 30-day prior notification to non-domiciliary commissioners, a mortgage guaranty insurer may withdraw from the Contingency Reserve any amounts which are in excess of the requirements of Section 15 as required in (insert section of the Mortgage Guaranty Insurance model law requiring minimum policyholder’s position) as filed with the most recently filed annual statement.

(i.) The Mortgage Guaranty Insurance company’s Domiciliary Commissioner may consider loss developments and trends in reviewing a request for withdrawal. If any portion of the Contingency Reserve for which withdrawal is requested is maintained by a reinsurer or in a segregated account or trust of a reinsurer, the Domiciliary Commissioner may also consider the financial condition of the reinsurer.

C. Miscellaneous.

(1) Unearned premium reserves and Contingency Reserves on risks insured before the effective date of this Act may be computed and maintained as required previously.

Section 11. Reinsurance

A. Prohibition of Captive Reinsurance. A Mortgage Guaranty Insurance company shall not enter into captive reinsurance arrangements which involve the direct or indirect ceding of any portion of its insurance risks or obligations to a reinsurer owned or controlled by an insured; any subsidiary or affiliate of an insured; an officer, director or employee of an insured or any member of their immediate family; a corporation, partnership, trust, trade association in which an insured is a member, or other entity owned or controlled by an insured or an insured’s officer, director or employee or any member of their immediate family that has a financial interest; or any designee, trustee, nominee or other agent or representative of any of the foregoing.

B. Reinsurance Cessions. A mortgage guaranty insurer may, by written contract, reinsure any insurance that it transacts, except that no mortgage guaranty insurer may enter into reinsurance arrangements designed to circumvent the compensating control provisions of Section 17 or the Contingency Reserve requirement of Section 10. The unearned premium reserve and the loss reserves required by Section 10 shall be established and maintained by the direct insurer or by the assuming reinsurer so that the aggregate reserves shall be equal to or greater than the reserves required by direct writer. The cession shall be accounted for as provided in the accounting practices and procedures prescribed or permitted by the applicable accounting practices and procedures manual of the National Association of Insurance Commissioners.

Section 12. Sound Underwriting Practices

A. Underwriting Review and Approval Required. All Certificates of Mortgage Guaranty Insurance, excluding policies of reinsurance, shall be written based on an assessment of evidence that prudent underwriting standards have been met by the originator of the mortgage. Delegated underwriting decisions shall be reviewed based on a reasonable method of sampling of post-closing loan documentation to ensure compliance with the Mortgage Guaranty Insurance company’s underwriting standards

B. Quality Control Reviews. Quality control reviews for Bulk Mortgage Guaranty Insurance and Pool Mortgage Guaranty Insurance shall be based on a reasonable method of sampling of post-closing loan documentation for delegated underwriting decisions to ensure compliance with the representations and warranties of the creditors or creditors originating the loans and with the Mortgage Guaranty Insurance company’s underwriting standards.

C. Minimum Underwriting Standards. Mortgage Guaranty Insurance companies shall establish formal underwriting standards which set forth the basis for concluding that prudent underwriting standards have been met.
D. **Underwriting Review and Approval.** A Mortgage Guaranty Insurance company’s underwriting standards shall be:

1. Reviewed and approved by executive management, including but not limited to the highest ranking executive officer and the chief financial officer and
2. Communicated across the organization to promote consistent business practices with respect to underwriting.

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

F. **Nondiscrimination.** In extending or issuing Mortgage Guaranty Insurance, a Mortgage Guaranty Insurance company may not discriminate on the basis of the applicant’s sex, marital status, race, color, creed, national origin, disability, or age or solely on the basis of the geographic location of the property to be insured unless the discrimination related to geographic location is for a business purpose that is not a mere pretext for unfair discrimination; or the refusal, cancellation, or limitation of the insurance is required by law or regulatory mandate.

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

**Section 13: Quality Assurance**

A. **Quality Assurance Program.** A Mortgage Guaranty Insurance company shall establish a formal internal Mortgage Guaranty Quality Assurance Program, which provides an early detection warning system as it relates to potential underwriting compliance issues which could potentially impact solvency or operational risk. This Mortgage Guaranty Quality Assurance Program shall provide for the documentation, monitoring, evaluation and reporting on the integrity of the ongoing loan origination process based on indicators of potential underwriting inadequacies or non-compliance. This shall include, but not limited to:

1. **Segregation of Duties.** Administration of the quality assurance program shall be delegated to designated risk management, quality assurance or internal audit personnel, who are technically trained and independent from underwriting activities that they audit.
2. **Senior Management Oversight.** Quality assurance personnel shall provide periodic quality assurance reports to an enterprise risk management committee or other equivalent senior management level oversight body.
3. **Board of Director Oversight.** Quality assurance personnel shall provide periodic quality assurance reports to the board of directors or a designated committee of directors established to facilitate board of director oversight.
4. **Policy and Procedures Documentation.** Mortgage Guaranty Quality Assurance Program, excluding policies and procedures of reinsurance, shall be formally established and documented to define scope, roles and responsibilities.
5. **Underwriting Risk Review.** Quality assurance review shall include an examination of underwriting risks including classification of risk and compliance with risk tolerance levels.
6. **Lender Performance Reviews.** Quality assurance monitoring provisions shall include an assessment of lender performance.

**Commented [BMS4]:** We respectfully request to use the more generic term “highest ranking” in front of “executive officer” and “financial officer” in lieu of “chief”. Many mortgage insurers do not have an officer with the title of “CEO” or “CFO” as these titles are more commonly reserved for use at the publicly traded holding company level rather than at the subsidiary level. The highest ranking executive officer of most mortgage insurers typically is the president, although this could vary by company.

**Commented [BMS5]:** Underwriting standards with an “s”.

**Commented [BMS6]:** Conformed to chosen terminology used throughout this section.
Mortgage Guaranty Insurance Model Act

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

(8) **Problem Loan Trend Reviews.** Quality assurance monitoring provisions shall assess prospective risks associated with timely loan payment including delinquency, default inventory, foreclosure and persistency trends.

(9) **Underwriting System Change Oversight.** Underwriting system program changes shall be monitored to ensure the integrity of underwriting and pricing programs, which impact automated underwriting system decision making.

(10) **Pricing and Performance Oversight.** Pricing controls shall be monitored to ensure that business segment pricing supports applicable performance goals.

(11) **Internal Audit Validation.** Periodic internal audits shall be conducted to validate compliance with the Mortgage Guaranty Quality Assurance Program.

B. **Regulator Access and Review of Quality Assurance Program.** The Commissioner shall be provided access to an insurer’s Mortgage Guaranty Quality Assurance Program for review at any reasonable time upon request and during any financial regulatory examination. Nothing herein shall be construed to limit a regulator’s right to access any and all of the records of an insurer in an examination or as otherwise necessary to meet regulatory responsibilities.

Section 14. Policy Forms and Premium Rates Filed

A. **Policy Forms.** Policy forms, endorsements, and modifications (excluding Bulk Mortgage Guaranty Insurance and Pool Mortgage Guaranty Insurance) shall be filed with and be subject to the approval of the commissioner. With respect to owner-occupied, single family dwellings or a mixed-use building described in Section 2A(1)(b), which is owner-occupied at the time of loan origination and for at least 30% of the days within the twelve (12) consecutive months prior to borrower default.

B. **Premium Rates.** Each Mortgage Guaranty Insurance company (excluding Bulk Mortgage Guaranty Insurance and Pool Mortgage Guaranty Insurance) shall file with the commissioner the rate to be charged including all modifications of rates and premiums to be paid by the policyholder.

C. **Premium Charges.** Every Mortgage Guaranty Insurance company shall make available to insureds the premium charges for Mortgage Guaranty Insurance policies via a company website or an integration with a third-party system. The premium rate provided shall show the entire amount of premium charge for the type of Mortgage Guaranty Insurance policy to be issued by the insurance company.

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

Section 15. Risk in Force and Waivers

A. **Risk in Force.** A Mortgage Guaranty Insurance company shall not at any time have outstanding Risk in Force, net of reinsurance, under its aggregate Mortgage Guaranty Insurance policies exceeding twenty-five (25) times its capital, surplus and Contingency Reserve. In the event that any Mortgage Guaranty Insurance company has outstanding total Risk in Force exceeding twenty-five (25) times its capital, surplus and Contingency Reserve, it shall cease transacting new mortgage guaranty business until such time as its total Risk in Force no longer exceeds twenty-five (25) times its capital, surplus and Contingency Reserve. Total Risk in Force shall be calculated on an individual entity basis.

B. **Waiver.** The Commissioner may waive the requirement found in subsection (a) of this section at the written request of a mortgage guaranty insurer upon a finding that the mortgage guaranty insurer's policyholders position is reasonable in relationship to the mortgage guaranty insurer's aggregate insured Risk in Force and adequate to its financial needs. The request must be made in writing at least 90 days in advance of the date that the mortgage guaranty insurer expects to exceed the requirement of subsection (a).
of this section and shall, at a minimum, address the factors specified in subsection (j) of this section.
C. Waiver Criteria. In determining whether a mortgage guaranty insurer's policyholders position is reasonable in relation to the mortgage guaranty insurer's aggregate insured Risk in Force and adequate to its financial needs, all of the following factors, among others, may be considered:

1. The size of the mortgage guaranty insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.

2. The extent to which the mortgage guaranty insurer's business is diversified across time, geography, credit quality, origination, and distribution channels.

3. The nature and extent of the mortgage guaranty insurer's reinsurance program.

4. The quality, diversification, and liquidity of the mortgage guaranty insurer's assets and its investment portfolio.

5. The historical and forecasted trend in the size of the mortgage guaranty insurer's policyholders position.

6. The policyholders position maintained by other comparable mortgage guaranty insurers in relation to the nature of their respective insured risks.

7. The adequacy of the mortgage guaranty insurer's reserves.

8. The quality and liquidity of investments in affiliates. The Commissioner may treat any such investment as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders.

9. The quality of the mortgage guaranty insurer's earnings and the extent to which the reported earnings of the mortgage guaranty insurer include extraordinary items.

10. An independent actuary's opinion as to the reasonableness and adequacy of the mortgage guaranty insurer's historical and projected policyholders position.

11. The capital contributions which have been infused or are available for future infusion into the mortgage guaranty insurer.

12. The historical and projected trends in the components of the mortgage guaranty insurer's aggregate insured risk, including, but not limited to, the quality and type of the risks included in the aggregate insured risk.

D. Authority to Retain Experts. The Commissioner may retain accountants, actuaries, or other experts to assist the Commissioner in the review of the mortgage guaranty insurer's request submitted pursuant to subsection (i) of this section. The mortgage guaranty insurer shall bear the Commissioner's cost of retaining those persons.

E. Specified Duration. Any waiver shall be (i) for a specified period of time not to exceed two years and (ii) subject to any terms and conditions that the Commissioner shall deem best suited to restoring the mortgage guaranty insurer's minimum policyholders position required by subsection (a) of this section.

Section 16. Conflict of Interest

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

Section 17. Compensating Balances Prohibited

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

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

A. **Inducements.** Unless set force in the policy and subject to the [state equivalent of the Unfair Trade Practices Act (Model #880)], a Mortgage Guaranty Insurance company shall not pay or cause to be paid either directly or indirectly, to any owner, purchaser, lessor, lessee, mortgagee or prospective mortgagee of the real property that secures the Authorized Real Estate Security or that is the fee of an insured lease, or any interest therein, or to any person who is acting as an agent, representative, attorney or employee of such owner, purchaser, lessor, lessee or mortgagee, any commission, or any part of its premium charges or any other consideration as an inducement for or as compensation on any Mortgage Guaranty Insurance business.

B. **Compensation for Placement.** In connection with the placement of any Mortgage Guaranty Insurance, a Mortgage Guaranty Insurance company shall not cause or permit the conveyance of anything of value, including but not limited to any commission, fee, premium adjustment, remuneration or other form of compensation of any kind whatsoever to be paid to, or received by an insured lender or lessor; any subsidiary or affiliate of an insured; an officer, director or employee of an insured or any member of their immediate family; a corporation, partnership, trust, trade association in which an insured is a member, or other entity in which an insured or an officer, director or employee or any member of their immediate family has a financial interest; or any designee, trustee, nominee or other agent or representative of any of the foregoing, except for the value of the insurance itself or claim payments thereon as provided by contract or settlement.

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

D. **Undue Contractual Preferences.**

1. Any contract, letter agreement, or other arrangement used to clarify any terms, conditions, or interpretations of a Master Policy or Certificate shall be documented in writing.

2. Any contractual or letter agreements used to modify or clarify general business practices and administrative, underwriting, claim submission or other information exchange processes shall not contain provisions which override or significantly undermine the intent of key provisions of the Mortgage Guaranty Insurance Model Act, including mortgage insurer discretion, rights and responsibilities related to:
   
   a. Underwriting standards
   
   b. Quality assurance
   
   c. Rescission
E. **Sanctions.** The Commissioner may, after notice and hearing, suspend or revoke the Certificate of Authority of a Mortgage Guaranty Insurance company, or in his or her discretion, issue a cease and desist order to a Mortgage Guaranty Insurance company that pays a commission, rebate, or makes any unlawful conveyance of value under this section in willful violation of the provisions of this Act. In the event of the issuance of a cease and desist order, the Commissioner may, after notice and hearing, suspend or revoke the Certificate of Authority of a Mortgage Guaranty Insurance company that does not comply with the terms thereof.

F. **Educational Efforts and Promotional Materials Permitted.** A Mortgage Guaranty Insurance company may engage in any educational effort with borrowers, members of the general public, and officers, directors, employees, contractors and agents of insured lenders that may reasonably be expected to reduce its risk of Loss or promote its operational efficiency and may distribute promotional materials of minor value.

**Section 19. Rescission**

The Right of Rescission shall be governed by the following:

A. **Rescission Rights and Responsibilities.** All Mortgage Guaranty Insurance company master policies shall include a detailed description of provisions governing rescissions, re-pricing, and cancellations, which specify the insurer’s and insured’s rights, obligations and eligibility terms under which those actions may occur to ensure transparency.

**Section 20. Records Retention**

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

B. **Retention Period.** Policy and claim records shall be retained for the period during which the Certificate or claim is active plus five (5) years, unless otherwise specified by the Insurance Commissioner.

Recordkeeping requirements shall relate to:

1. Records to clearly document the application, underwriting, and issuance of each Master Policy and Certificate of Insurance; and
2. Claim records to clearly document the inception, handling and disposition

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

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

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.

1. Third-Party maintenance related responsibilities shall be set forth in a written agreement, a copy of which shall be maintained by the insurer and available for purposes of examination.

**Section 21. No Private Right of Action**

No Private Right of Action. Nothing in this Act is intended to, or does, create a private right of action based upon compliance or noncompliance with any of the Act’s provisions. Authority to enforce compliance with this Act is vested exclusively in the Commissioner.

**Section 22. Regulations**

The Commissioner shall have the authority to promulgate rules and regulations deemed necessary to effectively implement the requirements of this Act.
Chronological Summary of Actions (all references are to the Proceedings of the NAIC).

March 13, 2023

Chief Deputy Commissioner Jackie Obusek, Chair
Mortgage Guaranty Insurance (E) Working Group
National Insurance Commissioners
c/o Mr. Andy Daleo
Senior Manager – Financial Regulatory Services
Via email adaleo@naic.org

Re: RAA Comments regarding proposed changes to the Mortgage Guaranty Insurance Model Act

Dear Chief Deputy Commissioner Obusek:

The Reinsurance Association of America (RAA) appreciates the opportunity to submit comments to the Mortgage Guaranty Insurance (E) Working Group regarding the exposure draft of the Mortgage Guaranty Insurance Model Act (#630). The Reinsurance Association of America (RAA) is a national trade association representing reinsurance companies doing business in the United States. RAA membership is diverse, including reinsurance underwriters and intermediaries licensed in the U.S. and those that conduct business on a cross-border basis. The RAA also has life reinsurance affiliates.

The RAA appreciates the Working Group’s continued thoughtful engagement with updating the model act. While the RAA had issues with the previous draft, we believe these concerns have now been addressed. The RAA was concerned that Section 11(B) of the Model was potentially in conflict with the Credit for Reinsurance Model Law (#785), but the deletion of the concerning language in the new draft has removed this potential conflict. The RAA now no longer believes there is any concern of a conflict and support this deletion of the potentially conflicting language.

The RAA understands the efforts to amend this model have been on going or quite some time and appreciates the NAIC’s willingness to listen and address the RAA’s concerns. The RAA appreciates the opportunity to share the thoughts of our members and looks forward to further discussions about them.

Sincerely,

[Signature]

Karalee C. Morell
SVP and General Counsel
Reinsurance Association of America
Comments of the Center for Economic Justice

To the NAIC Mortgage Guaranty Insurance Working Group

Regarding Revisions the Mortgage Guaranty Insurance Model Act

March 14, 2023

The Center for Economic Justice submits the following comments on the most recent exposure draft of revisions to NAIC Model 630. We strongly object to the insertion of the new Section 21 prohibiting a private right of action based on any provision of the model law and urgently request the removal of this new section.

The rationale offered by industry for this profoundly anti-consumer provision is their “belief” that the model represents a “complete statutory scheme” intended “to be enforced exclusively by the respective commissioners who have the expertise to administer the act.” As is typically the case with industry arguments to curtail consumer or business access to civil justice, industry argues that absent such a prohibition, frivolous litigation will result.

History tells a different story. With great respect for state insurance regulators – those who have had and continue to have responsibility for various aspects of private mortgage insurance oversight – the failure of private mortgage insurers to pursue sound risk management practices in the lead-up to the financial crisis occurred because of

1) the structural nature of the private mortgage insurance markets (reverse competition) and,
2) insurance regulators’ lack of understanding of the dangers posed by the mechanisms used by private mortgage insurers to compete for business.

PMI is sold by insurers to mortgage lenders who, in turn, sell PMI with certain mortgages to borrowers. Unlike a normally competitive market in which purchasers exert market pressure on sellers and can discipline sellers on price and terms, PMI insurers compete for the lenders’ business since the lenders are the gatekeepers for access to the premium-paying borrowers.
The NAIC has defined reverse competition as follows:

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

In the case of PMI leading up to the financial crisis, the reverse competition led to abandonment of sound risk management by PMI insurers as they sought the lenders’ business with ever-greater kickbacks and considerations. PMI insurers invented various mechanisms to kick back PMI premium to lenders. One glaring example was the use by PMI insurers of lender-affiliated reinsurance (“captive reinsurance”), Far from being a risk management tool, as concluded by at least one senior insurance regulator, this was a blatant kickback mechanism and part of an overall abdication of effective risk management by both the insurers and regulators. Captive reinsurance was only one method of inducement.

There is simply no proven track record of state insurance regulators providing a comprehensive consumer protection capability regarding private mortgage insurance and certainly no track record to justify a prohibition on a private right of action. Given the variety of market conduct features now included in the model – prohibitions on rebates, undue contractual preference, inducements and captive reinsurance – it is critical that regulators have assistance in identifying market and compliance problems by consumer and business exercising of a right of action.

The prohibition on a private right of action is hypocritically one-sided. PMI insurers face no prohibition against suing a lender, despite lenders being part of a comprehensive statutory scheme. Further, industry has offered no evidence of any significant amount of “frivolous” litigation. The prohibition against a private right of action is not only a solution in search of a problem, but also incredible chutzpah by an a sector of the insurance industry with a history of consumer abuses that contributed to the collapse of the mortgage and real estate market leading to the Great Recession.

CEJ urges the working group to remove new Section 21 from the revised model.