PROPOSED ORDER OF THE OFFICE OF THE COMMISSIONER OF INSURANCE REPEALING AND RECREATING A RULE

Office of the Commissioner of Insurance

Rule No. Agency 145 – Ins 3.09

The Commissioner of Insurance proposes an order to repeal and recreate Ins 3.09 relating to mortgage guaranty insurance.

The statement of scope for this rule SS: 099-23, was approved by the Governor on October 26, 2023, published in Register No. 815A3, on November 20, 2023, and approved by the Commissioner on January 16, 2024.

ANALYSIS PREPARED BY THE OFFICE OF THE COMMISSIONER OF INSURANCE (OCI)

1. **Statutes interpreted:**

   The proposed rule implements and interprets ss. 601.01 and 627.05, Wis. Stats., and s. Ins. 6.75(2) (i) and (j), Wis. Adm. Code. The proposed rule also implements and interprets ss. 601.42 (2), 611.19, 611.24, 618.21, 620.02, 623.02 to 623.04, 623.11, and 628.34 (12), Wis. Stats.

2. **Statutory authority:**

   Sections 601.41 (3), 601.01, 601.42 (2), 611.19, 611.24, 618.21, 620.02, 623.02 to 623.04, 623.11, 627.05, and 628.34 (12) Wis. Stat.

3. **Explanation of OCI's authority to promulgate the proposed rule under these statutes:**

   The Commissioner has the general authority to promulgate rules necessary to administer and enforce chs. 600 to 655, Wis. Stat., as provided under ss. 227.11 (2) (a) and 601.41 (3), Wis. Stat. The proposed rule updates a regulatory framework under s. Ins 3.09, Wis. Adm. Code, which is specific to the transaction of mortgage guaranty insurance. First, the proposed rule implements and interprets ss. 601.01 and 627.05, Wis. Stat., and s. Ins. 6.75 (2) (i) and (j), Wis. Adm. Code., which authorizes the Commissioner to define and delimit by rule classes of insurance for various regulatory purposes including determining the financial needs of insurers under 611.19, Wis, Stat., and other comparable chapters, providing instructions for reports and replies under 601.42, Wis. Stat., and exercising other regulatory powers.

   The proposed rule also implements and interprets numerous statutes authorizing the Commissioner to promulgate rules addressing various financial requirements for insurers, which include ss. 611.19 (initial capital and surplus), 611.24 (segregated accounts), 620.02 (segregated account investments), and 623.02 to 623.04 and 623.11 (accounting principles). The rule also implements and interprets 618.21, Wis. Stat., which applies the above referenced financial requirements to nondomestic insurers. Finally, this rule implements and interprets ss. 601.42 (2) and 628.34 (12), Wis. Stat., which authorizes the Commissioner to prescribe forms and unfair trade practices, respectively.

4. **Related statutes or rules:**

   Except for the current version of Section Ins. 3.09, Wis. Adm. Code, OCI is not aware of any statutes or rules that relate to this proposed rule.

5. **The plain language analysis and summary of the proposed rule:**

   Section Ins. 3.09, Wis. Adm. Code establishes minimum requirements for the transaction of mortgage guaranty insurance. Recently, the National Association of Insurance Commissioners (NAIC) adopted revisions to the Mortgage Guaranty Insurance Model Act. These revisions are aimed at modernizing regulations regarding the mortgage guaranty business. The proposed rule would repeal Section Ins. 3.09, Wis. Adm. Code and replace it with an updated rule that is more consistent with the Mortgage Guaranty Insurance Model Act. This will serve the dual purposes of modernizing the language of Section Ins. 3.09, Wis. Adm. Code and promoting uniformity amongst the states that regulate the mortgage guaranty business, like Wisconsin.

6. **Summary of and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:**

   Our office is unaware of any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule.

7. **Summary of any public comments and feedback on the statement of scope of the proposed rule that the agency received at any preliminary public hearing and comment period held under s. 227.136, Stat., and a description of how and to what extent the agency took those comments and that feedback into account in drafting the proposed rule.**

   The OCI held a public hearing regarding the statement of scope for this proposed rule, but it did not receive any public comments or feedback on the statement of scope.

8. **Comparison of similar rules in adjacent states as found by OCI:**

   Illinois: Ill. Admin. Code tit. 50, §§ 202.10 to 202.60 contain Illinois' requirements regarding the transaction of mortgage guaranty insurance. These rules address several of the concepts addressed in the proposed rule—such as required capital and surplus amounts, reserve amounts, and reinsurance—but the language of Illinois' rules is substantially different than the NAIC Mortgage Guaranty Insurance Model Act and the proposed rule.

   Iowa: Iowa Code §§ 515C.1 to 515C.11 contain Iowa's requirements regarding the transaction of mortgage guaranty insurance. These rules address some of the concepts that are addressed in the proposed rule—such as the required surplus and reserve amounts—but the language of Iowa's rules is substantially different than the NAIC Mortgage Guaranty Insurance Model Act and the proposed rule.

   Michigan: Michigan Admin. Code §§ R. 500.1231 to 500.1234 contain Michigan's requirements regarding the transaction of mortgage guaranty insurance. These rules address some of the concepts that are addressed in the proposed rule—such as the establishment of a contingency reserve—but the language of Michigan's rules is substantially different than the NAIC Mortgage Guaranty Insurance Model Act and the proposed rule.

Minnesota: Minn. Stat. § 47.207 sets forth standards for cancellation of private mortgage insurance. This statute is substantially different than the NAIC Mortgage Guaranty Insurance Model Act and the proposed rule.

9. A summary of the factual data and analytical methodologies that OCI used in support of the proposed rule and how any related findings support the regulatory approach chosen for the proposed rule:

The OCI reviewed the current language of Section Ins. 3.09, Wis. Adm. Code and the NAIC Mortgage Guaranty Insurance Model Act.

10. Any analysis and supporting documentation that OCI used in support of OCI's determination of the rule's effect on small businesses under s. 227.114:

OCI anticipates that the proposed repeal and replacement of Section Ins. 3.09 may have some economic impact on insurers in the mortgage guaranty space, particularly newly formed mortgage guaranty companies. However, OCI also anticipates that the proposed rule will help support the economic stability of the mortgage guaranty insurance market. OCI does not anticipate an economic impact on small businesses.

11. See the attached Private Sector Fiscal Analysis.

12. A description of the Effect on Small Business:

See Section 10.

13. Agency contact person:

A copy of the full text of the proposed rule changes, analysis and fiscal estimate may be obtained from the web site at:
https://oci.wi.gov/Pages/Regulation/RulesCurrentlyPending.aspx or by contacting Karyn Culver at:

Phone: (608) 267-9586
Email: karyn.culver@wisconsin.gov
Address: 125 South Webster St – 2nd Floor, Madison WI 53703-3474
Mail: PO Box 7873, Madison, WI 53707-7873

14. Place where comments are to be submitted and deadline for submission:

Persons wishing to testify or provide oral or written comments regarding the proposed administrative rule may appear during the hearing. Additionally, the rule may be reviewed and comments made at https://docs.legis.wisconsin.gov/code or sent to the following:

The deadline for submitting comments is 4:30 p.m. on October 11, 2024.

Written comments can be mailed or hand-delivered to:

Andrea Davenport

Legal Unit - OCI Rule Comment for Rule Ins 3.09
Office of the Commissioner of Insurance
125 South Webster St – 2nd Floor
Madison WI 53703-3474

Email address: andrea.davenport@wisconsin.gov

For additional information please contact Andrea Davenport at andrea.davenport@wisconsin.gov.

The proposed rule changes are:

SECTION 1. Ins. 3.09 is repealed and recreated to read:

(1) PURPOSE. This section implements and interprets s. Ins 6.75 (2) (i) and (j) and ss. 601.01, 601.42, 611.19(1), 611.24, 618.21, 620.02, 623.02, 623.03, 623.04, 623.11, 627.05 and 628.34 (12), Stats., for the purpose of establishing minimum requirements for the transaction of mortgage guaranty insurance.

(2) SCOPE. This rule shall apply to the underwriting, investment, marketing, rating, accounting and reserving activities of insurers which write the type of insurance authorized by s. Ins 6.75 (2) (i) and (j).

(3) DEFINITIONS.

(a) “Annual statement" means the fire and casualty annual statement forms identified in s. Ins 7.02, Forms 22-010 and 22-011.

(b) “Authorized real estate security” means:

1. An amortized note, bond or other instrument of indebtedness, except for reverse mortgage loans made pursuant to s. 138.058, Stats., 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 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; a mixed-use building with only one non-residential use and one one-family dwelling unit; or a 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 subd. (c)1. 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 that evidences 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 that, at the time of 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 subd. (b)1. 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.

(c) "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.

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

(e) "Commissioner" means the Commissioner of Insurance or the Office of the Commissioner of Insurance, as appropriate.

(f) "Contingency Reserve" means an additional premium reserve established to protect policyholders against the effect of adverse economic cycles.

(g) "Domiciliary Commissioner" means the principal insurance supervisory official of the jurisdiction in which a mortgage guaranty insurance company is domiciled.

(h) "Effective Guaranty" means 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.

(i) "Loan-to-value" means the ratio of the entire indebtedness to value of the collateral property expressed as a percentage.

(j) “Loss” means losses and loss adjustment expenses.

(k) “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.

(l) “Mortgage Guaranty Insurance” means that kind of insurance authorized by s. Ins 6.75 (2) (i), which includes 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.

(m) “Mortgage guaranty insurer" means an insurer that insures pursuant to s. Ins 6.75 (2) (i).

(n) “Mortgage guaranty insurers report of compulsory surplus" means the quarterly supplementary report required by s. Ins 7.02.

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

(p) “NAIC” means the National Association of Insurance Commissioners.

(q) “Person” means any individual, corporation, association, partnership or any other legal entity.

(r) “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.

(s) “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.

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

(u) “Surplus as regards policyholders" means an insurer's net worth, the difference between its assets and liabilities, as reported in its annual statement.

(4) 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.

(5) 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.

(6) 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 as regards policyholders. Any risk or portion of risk which has been reinsured shall be deducted in determining the limitation of risk.

(7) 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 surplus as regards policyholders of at least $20,000,000.

(b) *Minimum capital requirements applicability*. A mortgage guaranty insurance company formed prior to the passage of this rule may maintain the amount of capital and surplus or minimum surplus as regards policyholders previously required by statute or administrative order for a period not to exceed twelve months following the effective date of the adoption of this rule.

(c) *Minimum capital requirements adjustments*. The domiciliary commissioner may by order reduce the minimum amount of capital and surplus or minimum surplus as regards policyholders required under par. (7) (a) 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.

(8) MORTGAGE GUARANTY COMPULSORY SURPLUS.

(a) This section implements a compulsory surplus position for a mortgage guaranty insurance company for the purpose of complying with s. 623.11, Stats., establishing an amount of capital and compulsory surplus a mortgage guaranty insurance company is required to maintain to provide reasonable security against contingencies affecting its financial position in order to provide an ample margin of safety and sound operation. The mortgage guaranty compulsory surplus position shall be net of reinsurance ceded but shall include reinsurance assumed.

(b) If a policy of mortgage guaranty insurance insures individual loans with a percentage claim settlement option on such loans, a mortgage guaranty insurer shall maintain a compulsory surplus position based on: each $100 of the face amount of the mortgage; the percentage coverage; and the loan-to-value category. The minimum amount of compulsory surplus position shall be calculated in the following manner:

1. If the loan-to-value is greater than 75%, the minimum compulsory surplus position per $100 of the face amount of the mortgage for the specific percent coverage shall be as shown in the schedule below: - See PDF for table.
2. If the loan-to-value is at least 50% and not more than 75%, the minimum amount of the compulsory surplus position shall be 50% of the minimum of the amount calculated under subd. 1.
3. If the loan-to-value is less than 50%, the minimum amount of compulsory surplus position shall be 25% of the amount calculated under subd. 1.

(c) If a policy of mortgage guaranty insurance provides coverage on a group of loans subject to an aggregate loss limit, the compulsory surplus position shall be:

1. If the equity is not more than 50% and is at least 20%, or equity plus prior insurance or a deductible is at least 25% and not more than 55%, the minimum amount of compulsory surplus position shall be calculated as follows: - See PDF for table
2. If the equity is less than 20%, or the equity plus prior insurance or a deductible is less than 25%, the minimum amount of compulsory surplus position shall be 200% of the amount required by subd. 1.
3. If the equity is more than 50%, or the equity plus prior insurance or a deductible is more than 55%, the minimum amount of compulsory surplus position shall be 50% of the amount required by subd. 1.

(d) If a policy of mortgage guaranty insurance provides for layers of coverage, deductibles or excess reinsurance, the minimum amount of compulsory surplus position shall be computed by subtraction of the minimum position for the lower percentage coverage limit from the minimum position for the upper or greater coverage limit.

(e) If a policy of mortgage guaranty insurance provides for coverage on loans secured by junior liens, the compulsory surplus position shall be:

1. If the policy provides coverage on individual loans, the minimum amount of compulsory surplus position shall be calculated as in par. (c) as follows:
    a. The loan-to-value percent is the entire loan indebtedness on the property divided by the value of the property;
    b. The percent coverage is the insured portion of the junior loan divided by the entire loan indebtedness on the collateral property; and
    c. The face amount of the insured mortgage is the entire loan indebtedness on the property.
2. If the policy provides coverage on a group of loans subject to an aggregate loss limit, the compulsory surplus position shall be calculated according to par. (d) as follows:

a. The equity is the complement of the loan-to-value percent calculated as in subd. 1.;

b. The percent coverage is calculated as in subd. 1.; and

c. The face amount of the insured mortgage is the entire loan indebtedness on the property.

(f) If a policy of mortgage guaranty insurance provides for coverage on leases, the compulsory surplus position shall be $4 for each $100 of the insured amount of the lease.

(g) If a policy of mortgage guaranty insurance insures loans with a percentage loss settlement option coverage between any of the entries in the schedules in this subsection, then the factor for compulsory surplus position per $100 of the face amount of the mortgage shall be prorated between the factors for the nearest Percent Coverage listed.

(h) The minimum compulsory surplus shall be the greater of the aggregate compulsory surplus calculated under this subsection or the minimum capital and surplus required under sub. (7).

(9) 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 subsection shall not apply to a mortgage guaranty insurance company until it has possessed a certificate of authority in this state for three (3) years.

(10) 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.

(11) 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 subsection 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 subsection 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

subsection shall not apply to investments held by a mortgage guaranty insurance company prior to the passage of this rule.

(12) RESERVE REQUIREMENTS.

(a) *Unearned premium reserves, loss reserves, and premium deficiency reserves*. Financial reporting will be prepared in accordance with the Accounting Practices and Procedures Manual and Annual Financial Statement Instructions of the NAIC.

(b) *Contingency reserve*. Each mortgage guaranty insurance company shall establish a contingency reserve subject to the following provisions:

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

2. Except as provided within this rule, 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 deemed in excess of the requirements of sub. (17), sub. (7), and sub. (8) as filed with the most recently filed annual statement. The mortgage guaranty insurance company's domiciliary commissioner may consider loss developments and trends in reviewing a request for withdrawal. If any portion of the contingency reserve for which withdrawal is requested is maintained by a reinsurer or in a segregated account or trust of a reinsurer, the domiciliary commissioner may also consider the financial condition of the reinsurer.

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

(13) 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 subsection 19 or the contingency reserve requirement of subsection 12. The unearned premium reserve and the loss reserves required by subsection 12 shall be established and maintained by the direct insurer or by the assuming reinsurer so that the aggregate reserves shall be equal to or greater than the reserves required by direct writer. The cession shall be accounted for as provided in the accounting practices and procedures prescribed or permitted by the applicable Accounting Practices and Procedures Manual of the NAIC.

(c) *Termination*. Any reinsurance agreement entered into by a mortgage guaranty insurer shall provide that the ceding mortgage guaranty insurance company has a right to terminate the ceding of additional insurance under the reinsurance agreement if so ordered by the domiciliary commissioner.

(14) 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 financial officer; and

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

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

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

(15) QUALITY ASSURANCE

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

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

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

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

4. 'Policy and procedures documentation.' Mortgage guaranty quality assurance program, excluding policies and procedures of reinsurance, shall be formally established and documented to define scope, roles and responsibilities.

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

6. 'Lender performance reviews.' Quality assurance monitoring provisions shall include an assessment of lender performance.

7. ‘Underwriting performance reviews.’ Quality assurance monitoring provisions shall assess compliance with underwriting standard.
8. ‘Problem loan trend reviews.’ Quality assurance monitoring provisions shall assess prospective risks associated with timely loan payment including delinquency, default inventory, foreclosure and persistency trends.
9. ‘Underwriting system change oversight.’ Underwriting system program changes shall be monitored to ensure the integrity of underwriting and pricing programs, which impact automated underwriting system decision making.
10. ‘Pricing and performance oversight.’ Pricing controls shall be monitored to ensure that business segment pricing supports applicable performance goals.
11. ‘Internal audit validation.’ Periodic internal audits shall be conducted to validate compliance with the mortgage guaranty quality assurance program.

(b) *Regulator access and review of quality assurance program*. The commissioner shall be provided access to an insurer’s mortgage guaranty quality assurance program for review at any reasonable time upon request and during any financial regulatory examination. Nothing herein shall be construed to limit a regulator’s right to access any and all of the records of an insurer in an examination or as otherwise necessary to meet regulatory responsibilities.

(16) 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 subdivision (3) (c) 1. b., which is owner-occupied at the time of loan origination and for at least 50% of the days within the twelve (12) consecutive months prior to borrower default, the borrower shall not be liable to the insurance company for any deficiency arising from a foreclosure sale.

(b) *Premium rates*. Each mortgage guaranty insurance company (excluding bulk mortgage guaranty insurance and pool mortgage guaranty insurance) shall file with the commissioner the rate to be charged including all modifications.

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

(17) 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 and reported as required by s. Ins 7.02.

(b) *Waiver*. The commissioner may waive the requirement found in paragraph (17) (a) 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 paragraph (17) (a) and shall, at a minimum, address the factors specified in paragraph (17) (c).

(c) *Waiver criteria*. In determining whether a mortgage guaranty insurer's policyholders position is reasonable in relation to the mortgage guaranty insurer's aggregate insured risk in force and adequate to its financial needs, all of the following factors, among others, may be considered:

1. The size of the mortgage guaranty insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria.
2. The extent to which the mortgage guaranty insurer's business is diversified across time, geography, credit quality, origination, and distribution channels.
3. The nature and extent of the mortgage guaranty insurer's reinsurance program.
4. The quality, diversification, and liquidity of the mortgage guaranty insurer's assets and its investment portfolio.
5. The historical and forecasted trend in the size of the mortgage guaranty insurer's policyholders position.
6. The policyholders position maintained by other comparable mortgage guaranty insurers in relation to the nature of their respective insured risks.
7. The adequacy of the mortgage guaranty insurer's reserves.
8. The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders.
9. The quality of the mortgage guaranty insurer's earnings and the extent to which the reported earnings of the mortgage guaranty insurer include extraordinary items.
10. An independent actuary's opinion as to the reasonableness and adequacy of the mortgage guaranty insurer's historical and projected policyholders position.
11. The capital contributions which have been infused or are available for future infusion into the mortgage guaranty insurer.
12. The historical and projected trends in the components of the mortgage guaranty insurer's aggregate insured risk, including, but not limited to, the quality and type of the risks included in the aggregate insured risk.

(d) *Authority to retain experts*. The commissioner may retain accountants, actuaries, or other experts to assist in the review of the mortgage guaranty insurer's request submitted pursuant to paragraph (17) (b). The mortgage guaranty insurer shall bear the commissioner's cost of retaining those persons.

(e) *Specified duration*. Any waiver shall be:

1. For a specified period of time not to exceed two years; and
2. Subject to any terms and conditions that the commissioner shall deem best suited to restoring the mortgage guaranty insurer's minimum policyholders position required by paragraph (17) (a).

(18) 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.

(19) 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 subsection. 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 subsection.

(20) LIMITATIONS ON REBATES, COMMISSIONS, CHARGES AND CONTRACTUAL PREFERENCES

(a) *Inducements*. A mortgage guaranty insurance company shall not pay or cause to be paid either directly or indirectly, to any owner, purchaser, lessor, lessee, mortgagee or prospective mortgagee of the real property that secures the authorized real estate security or that is the fee of an insured lease, or any interest therein, or to any person who is acting as an agent, representative, attorney or employee of such owner, purchaser, lessor, lessee or mortgagee, any commission, or any part of its premium charges or any other consideration as an inducement for or as compensation on any mortgage guaranty insurance business.

(b) *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*. A mortgage guaranty insurance company shall not make a rebate of any portion of the premium charge, as shown by the schedule required by paragraph (16)(c). No mortgage guaranty insurance company shall 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) *Refund of unearned premium*. A mortgage guaranty insurer shall make provision for prompt refund of any unearned premium in the event of termination of the insurance prior to its scheduled termination date. If the borrower paid or was charged for the premium, the refund shall be made to the borrower, or to the insured for the borrower's benefit, otherwise refund may be paid to the insured.

(e) *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.

(f) *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 subsection in willful violation of the provisions of this rule. 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.

(g) *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.

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

(22) 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 rule shall comply with the following requirements:

1. Insurer maintenance responsibilities shall provide for record storage in a location that will allow the records to be reasonably produced for examination within the time period required.

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

(23) REGULATIONS. The commissioner shall have the authority to promulgate rules and regulations deemed necessary to effectively implement the requirements of this rule.

(24) ENFORCEMENT. This section may be enforced under ss. 601.41, 601.64, 601.65, Stats., or ch. 645, Stats., or any other enforcement provision of chs. 600 to 646, Stats.

SECTION 2. EFFECTIVE DATE. A rule is effective on the first day of the month commencing after the date of publication.