



Ohio Administrative Code Rule 3901-1-13 Mortgage guaranty insurance.

Effective: February 14, 2022

(A) Purpose

The purpose of this rule is to implement division (A)(24) of section 3929.01 of the Revised Code, as it pertains to the writing and servicing of that kind of insurance known as mortgage guaranty insurance as hereinafter defined.

(B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under section 3901.041 of the Revised Code.

(C) Definitions

The definitions set forth in this rule shall govern the construction of the terms used in this rule:

(1) "Mortgage guaranty insurance" is:

(a) 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 such real estate is a residential building or a condominium unit or buildings designed for occupancy by not more than four families; or

(b) 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 such real estate is a building or buildings designed for occupancy by five or more families or designed to be occupied for industrial or commercial purposes; or



(c) 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 such real estate is a building or buildings designed to be occupied for industrial or commercial purposes.

(2) "Authorized real estate security" for the purpose of this rule means a note, bond or other evidence of indebtedness, not exceeding one-hundred and three per cent of the lower of the fair value as fixed by appraisal or purchase price of the real estate, secured by a mortgage, deed of trust, or other instrument which constitutes, or is equivalent to, a first lien or charge on real estate, provided:

(a) Any percentage in excess of one-hundred per cent is used only for closing costs.

(b) The real estate loan secured in such manner is one of a type which:

(i) A bank,

(ii) A building and loan association, federal savings and loan, or a service corporation of either, or

(iii) An insurance company, which is supervised and regulated by a department of the state of Ohio 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 to exceed a certain percentage of the value of the real estate.

(c) The improvement on such real estate is a building or buildings designed for occupancy as specified by paragraphs (C)(1)(a) and (C)(1)(b) of this rule.

(d) The lien on such real estate may be subject to and subordinate to the following:

(i) The lien on any public bond, assessment or tax, when no installment, call or payment of or under such bond, assessment or tax is delinquent.

(ii) Outstanding mineral, oil, water or timber rights, rights-of-way, easements or rights-of-way of



support, sewer rights, building restrictions or other restrictions or covenants, conditions or regulations of use, or outstanding leases upon such real property under which rents or profits are reserved to the owner thereof.

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

(D) Capital and surplus

A mortgage guaranty insurance company shall not transact the business of mortgage guaranty insurance in the state of Ohio unless: if a stock insurance company, it has capital and surplus in the aggregate amount of not less than two million five hundred thousand dollars, which aggregate shall include paid-in capital of not less than one million and contributed surplus of not less than one million or if a mutual insurance company, a minimum surplus of two million five hundred thousand dollars.

(E) Limitations and restrictions on transacting business

(1) Mortgage guaranty insurance may be transacted in this state by insurers fulfilling the requirements of paragraph (E)(6) of this rule and holding a certificate of authority for the transaction of such insurance pursuant to Title XXXIX of the Revised Code and shall be written only to insure loans secured by authorized real estate securities as defined in paragraph (C)(2) of this rule.

(2) Geographic concentration

(a) A mortgage guaranty insurance company shall not insure loans secured by a single risk in excess of ten per cent of the company's aggregate capital, surplus and contingency reserve.

(b) No mortgage guaranty insurance company shall have more than twenty per cent of its total insurance in force in any one metropolitan statistical area ("MSA") as defined by the United States office of management and budget.

(3) Advertising



No mortgage guaranty insurance company or any 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 to the effect that the real estate investments of any financial institution are "insured investments," unless the brochure, pamphlet, report or advertising clearly states that the loans are insured by mortgage guaranty insurance companies authorized to transact the business of mortgage guaranty insurance in the state of Ohio or are insured by an agency of the federal government, as the case may be.

(4) Investment limitation

A mortgage guaranty insurance company shall not invest in notes or other evidences of indebtedness secured by a mortgage or other lien upon real property. This section shall not apply to obligations secured by real property or contracts for the sale of real property, which obligations or contracts of sale are acquired in the course of 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.

(5) Coverage limitation

(a) A mortgage guaranty insurance company shall limit its coverage, with respect to any one authorized real estate security, net of reinsurance, ceded to a reinsurer unaffiliated with the company or an affiliated reinsurer which does not own, and is not owned by, in whole or in part, the ceding mortgage guaranty insurer, to a maximum of twenty-five per cent of the entire indebtedness to the insured under that authorized real estate security. 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.

(b) The coverage limits set out in paragraph (E)(5)(a) of this rule shall not apply to a mortgage guaranty insurance company that possesses capital and surplus in excess of twenty-five million dollars.

(6) Mortgage guaranty insurance as monoline



(a) A mortgage guaranty insurance company which anywhere transacts any class of insurance other than mortgage guaranty insurance is not eligible to transact mortgage guaranty insurance in the state of Ohio.

(b) A mortgage guaranty insurance company which anywhere transacts the classes of insurance defined in paragraph (C)(1)(b) or (C)(1)(c) of this rule may not transact in the state of Ohio the class of mortgage guaranty insurance defined in paragraph (C)(1)(a) of this rule, provided, however, a mortgage guaranty insurance company which transacts a class of insurance defined in paragraph (C)(1)(a) of this rule may write up to five per cent of its insurance in force on residential property designed for occupancy by five or more families.

(7) Underwriting discrimination

(a) Nothing in this rule shall be construed as limiting the right of any mortgage guaranty insurance company to impose reasonable requirements upon the lender with regard to the terms of any note or bond or other evidence of indebtedness secured by a mortgage or deed of trust, such as requiring a stipulated down payment by the borrower.

(b) No mortgage guaranty insurance company may discriminate in the issuance or extension of mortgage guaranty insurance on the basis of sex, marital status, race, color, creed, national origin, physical handicap or mental handicap.

(c) No policy of mortgage guaranty insurance, excluding policies of reinsurance, shall be written unless and until the insurer itself or the lender, in compliance with underwriting directives from the insurer and subject to periodic underwriting audits by the insurer, shall have conducted a reasonable and thorough examination of the evidence supporting credit worthiness of the borrower and the appraisal report reflecting market evaluation of the property and shall have determined that prudent underwriting standards have been met.

(8) Policy forms and premium rates filed

(a) All policy forms and endorsements, and rates to be charged and the premium including all



modifications of rates and premiums to be paid by the policyholder shall be filed with and subject to the provisions of sections 3937.01 to 3937.18 of the Revised Code. With respect to owner-occupied, single-family dwellings or owner-occupied two family dwellings, 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) 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 rule shall not be deemed to be of 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.

(9) Outstanding total liability

(a) A mortgage guaranty insurance company shall not at any time have outstanding a total liability, net of reinsurance, under its aggregate mortgage guaranty insurance policies exceeding twenty-five times its capital, surplus and contingency reserve. In the event that any mortgage guaranty insurance company has outstanding total liability exceeding twenty-five times its capital, surplus and contingency reserve, it shall cease transacting new mortgage guaranty business until such time as its total liability no longer exceeds twenty-five times its capital, surplus and contingency reserve.

(b) The superintendent, in the superintendent's sole discretion, may permit a temporary exception to the requirement set out in paragraph (E)(9)(a) of this rule 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 and adequate to its financial needs. The request must be made in writing at least ninety days in advance of the date that the mortgage guaranty insurer expects to exceed the requirements of paragraph (E)(9)(a) of this rule and shall, at a minimum, address the factors specified in paragraph (E)(9)(c) of this rule, provided, however, that a mortgage guaranty insurance company may submit a request for such exception within ten days after the effective date of this rule as amended and shall be deemed to have complied with the ninety day requirement in paragraph (E)(9)(b) of this rule.



- (c) In determining whether a mortgage guaranty insurer's policyholders position is reasonable in relation to the mortgage guaranty insurer's aggregate insured risk and adequate to its financial needs, the superintendent shall consider all of the following:
- (i) The size of the mortgage guaranty insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other criteria as deemed appropriate by the superintendent.
 - (ii) The extent to which the mortgage guaranty insurer's business is diversified across time, geography, credit quality, origination, and distribution channels.
 - (iii) The nature and extent of the mortgage guaranty insurer's reinsurance program.
 - (iv) The quality, diversification, and liquidity of the mortgage guaranty insurer's assets and its investment portfolio.
 - (v) The historical and forecasted trend in the size of the mortgage guaranty insurer's policyholder's position.
 - (vi) The policyholder's position maintained by other comparable mortgage guaranty insurers in relation to the nature of their respective insured risks.
 - (vii) The adequacy of the mortgage guaranty insurer's reserves.
 - (viii) The quality and liquidity of investments in affiliates. The superintendent may treat any such investment as a non-admitted asset for purposes of determining the adequacy of surplus as regards policyholders.
 - (ix) 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.
 - (x) An independent actuary's opinion as to the reasonableness and adequacy of the mortgage guaranty insurer's historical and projected policyholder position.



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

(xii) 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) The superintendent may retain accountants, actuaries, or other experts to assist the superintendent in the review of the mortgage guaranty insurer's request submitted pursuant to paragraph (E)(9)(b) of this rule. The mortgage guaranty insurer shall bear the cost of retaining such experts.

(e) Any waiver shall be for a specified time, not to exceed two years and shall be subject to any terms and conditions imposed by the superintendent, in the superintendent's sole discretion.

(10) High risk underwriting

Any mortgage guaranty insurance company which receives five per cent or more of its net annual premium from policies written to insure loans secured by authorized real estate securities having a greater than ninety-five per cent loan-to-value ratio shall notify the superintendent within thirty days. The superintendent may, if the superintendent finds that further underwriting of loans having a greater than ninety-five per cent loan-to-value ratio would have an adverse impact on the solvency of the company, prohibit the company from further underwriting such loans.

(F) Rebates, commissions, charges and conflict of interest

(1) Rebates, commissions and charges

(a) 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 which secures the authorized real estate security or which is the fee of an insured lease, or any interest therein, or any person who is acting as an agent, representative, attorney or employee of such owner, purchaser 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) In connection with the placement of any mortgage guaranty insurance, a mortgage guaranty insurance company shall not cause or permit any commission, fee, remuneration, or other compensation to be paid to, or received by, any insured lender or lessor; any subsidiary or affiliate of any insured; any officer, director or employee of any insured or any member of their immediate family; any corporation, partnership, trust, trade association in which any insured or any such officer, director, or employee or member of their immediate family has a financial interest; or any designee, trust, nominee, or other agent or representative of any of the foregoing.

(c) No mortgage guaranty insurance company shall make any rebate of any portion of the premium charge shown by the schedule required by paragraph (E)(8)(b) of this rule. No mortgage guaranty insurance company shall quote any rate or premium charge to any person which is different than that currently available to others for the same type of coverage. The amount by which any premium charge is less than that called for by the current schedule of premium charges is an unlawful rebate.

(2) Conflict of interest

(a) If a member of a holding company system, a mortgage guaranty insurance company licensed to transact business in this state shall not 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 any affiliate unless such insurance is underwritten on the same basis, for the same consideration and subject to the same insurability requirements as insurance provided to nonaffiliated lenders.

(i) Any mortgage guaranty insurance company which receives, in the aggregate, twenty per cent of more of its net annual premium from policies written to insure mortgages originated by affiliates in the holding company system shall, concurrent with the filing of its annual statement, notify the superintendent of that fact.

(ii) The superintendent may, if the superintendent finds that further underwriting of policies issued



on said loans would have an adverse impact on the solvency of the company, prohibit the mortgage guaranty insurance company for further underwriting such loans.

(b) A mortgage guaranty insurance company, the holding company system of which it is a part or any affiliate shall not pay any commission, remuneration, rebates or engage in activities proscribed in paragraph (F)(1) of this rule.

(G) Reserves

(1) Unearned premium reserves

A mortgage guaranty insurance company shall compute and maintain an unearned premium reserve as required by the superintendent of insurance.

(2) Loss reserve

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

(a) Insured loans which have resulted in the conveyance of property which remains unsold;

(b) Insured loans in the process of foreclosure;

(c) Insured loans in default for four months or for any lesser period which is defined as default for such purposes in the policy provisions; and

(d) Insured leases in default for four months or for any lesser period which is defined as default for such purposes in policy provisions.

(3) Contingency reserve



Each mortgage guaranty insurance company shall establish a contingency reserve out of net premiums 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 per cent of such remaining earned premiums. Contributions to the contingency reserve made during each calendar year shall be maintained for a period of one hundred twenty months, except that withdrawals may be made by the company in any year in which the actual incurred losses exceed thirty-five per cent of the corresponding earned premiums, and no such releases shall be made without prior approval by the superintendent of the insurance company's state of domicile. If the coverage provided in this rule exceeds the limitations set forth herein, the superintendent 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.

(H) Reinsurance

Whenever a mortgage guaranty insurance company obtains reinsurance from an insurance company which is properly licensed to provide such reinsurance or from an appropriate governmental agency, the mortgage guaranty insurer and the reinsurer shall establish and maintain the reserves required in this rule 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 rule.

(I) Miscellaneous

(1) Whenever the laws of any other jurisdiction in which a mortgage guaranty insurance company subject to the requirement of this rule 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 such larger unearned premium reserve or contingency reserve in the aggregate shall be deemed to be in compliance with this rule.

(2) Unearned premium reserves and contingency reserves shall be computed and maintained on risks insured after the effective date of this rule as required by paragraphs (G)(1) and (G)(3) of this rule.



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

(J) Severability

If any paragraph, term or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair or invalidate any other paragraph, term or provision of this rule, but the remaining paragraphs, terms and provisions shall be and continue in full force and effect.