

**INSURANCE**

**DEPARTMENT OF BANKING AND INSURANCE**

**DIVISION OF INSURANCE**

**Waivers of Mortgage Guaranty Insurers' Liability-to-Policyholders Surplus Ratios**

**Proposed New Rule: N.J.A.C. 11:2-27.5**

Authorized By: Thomas B. Considine, Commissioner, Department of Banking and  
Insurance.

Authority: N.J.S.A. 17:46A-9 and 17:1-8.1; and P.L. 2010, c. 93.

Calendar Reference: See Summary below for explanation of exception to calendar  
requirements.

Proposal Number: PRN 2011-042

Submit comments by April 8, 2011 to:

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Legislative and Regulatory Affairs  
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The agency proposal follows:

## Summary

P.L. 2010, c. 93 (“the Act”) was enacted on November 30, 2010. It provides that from February 1, 2011 until January 31, 2014, the Commissioner of the Department of Banking and Insurance (Department) may waive the statutory liability-to-policyholders’ surplus ratio on application by a mortgage guaranty insurance company. In addition, the Act included an amendment to N.J.S.A. 17:46A-3 which provides that the Commissioner shall promulgate regulations concerning the process for a mortgage guaranty insurance company to submit a written request for the waiver, including the information necessary for the review of the request and the factors to be considered in approving or disapproving the request. The amended statute further requires that any mortgage guaranty insurance company granted such a waiver shall submit quarterly reports to the Commissioner concerning the company’s financial condition and requires the Commissioner to promulgate regulations concerning the information to be included in such reports.

The Department is now proposing a new rule to implement these statutory provisions.

Proposed N.J.A.C. 11:2-27.5(a) sets forth the statutory liability-to-policyholders’ surplus ratio, stating that a mortgage guaranty insurance company shall not transact any new business if the total liability on its aggregate insurance policies exceeds 25 times its policyholders’ surplus.

Proposed N.J.A.C. 11:2-27.5(b) states that for the three-year period between February 1, 2011 and January 31, 2014, a mortgage guaranty insurance company may apply for a waiver of the statutory liability-to-policyholders’ surplus ratio. Subsection (b)

further states that the application for such waiver shall be in writing and shall be submitted at least 90 days prior to the date that the mortgage guaranty insurance company expects to exceed the liability-to-policyholders' surplus ratio.

Proposed N.J.A.C. 11:2-27.5(c) sets forth the information to be included with the written request for the waiver.

Proposed N.J.A.C. 11:2-27.5(d) sets forth the criteria the Commissioner shall use in deciding whether to approve or disapprove a request for a waiver.

Proposed N.J.A.C. 11:2-27.5(e) states that upon concluding that a request for a waiver should be granted written notice shall be provided to the applicant. It further states that if the Commissioner determines that additional information is required to adequately monitor the mortgage guaranty insurer during the waiver period such information will be set forth in the Commissioner's written notice of determination and the insurer will provide such information in the quarterly report.

Proposed N.J.A.C. 11:2-27.5(f) sets forth the requirement that a mortgage guaranty insurer receiving a waiver shall submit quarterly reports. The subsection sets forth the information that shall be included in these reports. That information shall be submitted to the Commissioner on the first day of the third month following the approval of the waiver and quarterly thereafter.

Proposed N.J.A.C. 11:2-27.5(g) states that denials of requests for waivers shall be issued in writing. The subsection further sets forth the procedure for an insurer who has been denied a waiver to request a hearing.

A 60-day comment period is provided for in this proposal and, therefore, pursuant to N.J.A.C. 1:30-3.3(a)5, the proposal is not subject to the provisions of N.J.A.C. 1:30-3.1 and 3.2 governing rulemaking calendars.

### **Social Impact**

The Department believes that the proposed new rule on waiving the statutory liability-to-policyholders' surplus ratio on application by a mortgage guaranty insurance company will favorably impact the residential real estate market in New Jersey, including all those involved in selling and buying homes as well as those involved in the mortgage market. The Department believes that the temporary loosening of the liability-surplus standards provided for in the Act will increase the availability of mortgages, thereby allowing for more New Jersey residents to purchase and sell homes.

### **Economic Impact**

Due to the current economic conditions, mortgage guaranty insurers are unable to meet the demand for mortgage guaranty insurance without exceeding the statutory liability-to-policyholders' surplus ratio. By allowing for a temporary waiver of the restriction, more mortgage guaranty insurance will be written and, consequently, lenders will be able to issue more mortgage loans. The increase in available mortgage funding will favorably impact the residential real estate mortgage market in New Jersey, including buyers and sellers, mortgage bankers and brokers, real estate professionals and others in related fields such as appraisers, home inspectors and contractors. Mortgage guaranty insurers will incur the initial costs of preparing the application for the waiver

which include the cost of an independent actuary. Mortgage guaranty insurers will also incur the recurring costs of producing the required quarterly reports.

### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed new rule is not subject to any Federal requirements or standards.

### **Jobs Impact**

The Department believes that the proposed new rule may cause jobs to be generated by loosening a restriction that currently impedes lenders from making additional mortgage loans available. The Department does not possess any empirical data on the basis of which it can estimate the number of jobs that may be generated. The Department invites interested parties to submit any data or studies concerning the jobs impact of the proposed new rules.

### **Agriculture Industry Impact**

The Department does not expect any agriculture impact from the proposed new rule (see The Right to Farm Act, N.J.S.A. 4:1C-1 et seq., and the Administrative Procedure Act, N.J.S.A. 52:14B-4(a)(2)).

### **Regulatory Flexibility Analysis**

Some mortgage guaranty insurers affected by the proposed new rule may be businesses which employ fewer than 100 full-time employees and be small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule does impose reporting, recordkeeping and compliance requirements on any company applying for a waiver of the statutory liability-to-policyholders' surplus ratio, as described in the Summary above. The cost of compliance with the proposed new rules is discussed in the Economic Impact above. The rule requires that any company applying for the aforementioned waiver must supply an opinion by an independent actuary as to the reasonableness and adequacy of the mortgage guaranty insurer's historical and projected policyholder position. The Department does not have any specific data on the costs of such an opinion but assumes that the costs will vary in accordance with the expertise of the actuary and the complexity of the analysis required to render the opinion. The application of the proposed new rule to small businesses is appropriate because the rule is necessary to enable the Department to monitor the financial condition of the insurer while the statutory safeguard is temporarily waived. The policy considerations which compel the Department to maintain such oversight are applicable irrespective of the size of the regulated entity. Hence, no variation is provided in the requirements imposed by the new rule based upon business size.

### **Smart Growth Impact**

The proposed new rule has no impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan.

### **Housing Affordability Impact**

The proposed new rule may have an impact on affordable housing in New Jersey by increasing the availability of mortgage loans for the purchase of such housing. There is an extreme unlikelihood that the new rule would evoke a change in the average costs associated with housing because the new rule concerns waivers for mortgage guaranty insurers' liability exposure ratios.

### **Smart Growth Development Impact**

The Department believes that there is an extreme unlikelihood that the proposed new rule would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed new rule concerns waivers for mortgage guaranty insurers' liability exposure ratios.

**Full text** of the proposed new rule follows:

#### 11:2-27.5 Mortgage guaranty insurance; waivers

(a) A mortgage guaranty insurance company shall not transact any new business if the total outstanding liability under its aggregate insurance policies, as computed as set forth in N.J.S.A. 17:46A-3, exceeds 25 times its policyholders' surplus.

(b) From February 1, 2011 until January 31, 2014, the Commissioner may approve a written request for a waiver of the restriction set forth in (a) above received from a mortgage guaranty insurer. The request shall be made in writing at least 90 days

in advance of the date that the mortgage guaranty insurer expects to exceed the said restriction. Waiver requests shall be directed to:

The Office of Solvency Regulation  
Department of Banking and Insurance  
PO Box 325  
Trenton, New Jersey 08625-0325  
Fax: 609 292- 6765  
Email: osr@dobi.state.nj.us

(c) A written request for a waiver as referenced in (b) above shall include all the following information:

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, demonstrated by a general description of the mortgage guaranty insurers' reinsurance program and a summary of the reinsurance contracts;
4. The mortgage guaranty insurer's assets and its investment portfolio, including information on its quality, diversity and liquidity;
5. The historical and forecasted trend in the size of the mortgage guaranty insurer's policyholder position;



6. The mortgage guaranty insurer's reserves and information on the adequacy of the reserves;

7. The extent and liquidity of the mortgage guaranty insurer's investments in affiliates, including information on the quality and liquidity of the investments. The Commissioner may treat any such investment as a non-admitted asset for purposes of determining the adequacy of surplus as regards policyholders;

8. The mortgage guaranty insurer's earnings, including information on the quality of the earnings, and the extent to which the reported earnings of the mortgage guaranty insurer include extraordinary items;

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

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

11. 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. Information on quality and type of risks should include the percentage of high risk loans and the percentage of primarily sub-prime lenders included in the aggregate risk.

(d) A waiver as referenced in (b) above shall be granted if the Commissioner determines that the relationship of the mortgage guaranty insurer's total liability outstanding under its aggregate insurance policies to the company's financial position is reasonable and adequate to meet its financial needs. In determining if that relationship is reasonable and adequate, the Commissioner shall consider and evaluate all of the

information listed above and any other information as may be deemed necessary by the Commissioner.

(e) Upon concluding that a request for a waiver should be granted, written notice of such a determination shall be provided to the applicant. If the Commissioner determines that additional information is required to adequately monitor the mortgage guaranty insurer during the waiver period, such information shall be set forth in the Commissioner's written notice of determination granting the request for the waiver. The insurer shall then provide such information in the quarterly report referenced in (f) below.

(f) On the first day of the third month following the approval a waiver and every three months thereafter, the insurer to whom a waiver was issued shall submit to the Commissioner a quarterly report. All such reports shall include:

1. The quarterly statements filed by the insurer with the domestic regulator and the National Association of Insurance Commissioners;
2. Regional and economic indicators relevant to the mortgage guaranty insurer;
3. The mortgage guaranty insurer's reinsurance program;
4. Status of waivers in other states regarding the outstanding total liability under aggregate insurance policies to policyholders' surplus ratio; and
5. Any other information deemed necessary by the Commissioner which was set forth in the notice granting the request for a waiver as referenced in (e) above.

(g) Denials of waiver requests shall be issued in writing. An insurer whose waiver request is denied may request a hearing by filing with the Department a written

request for a hearing within 30 days of the date of the notification of the denial of the waiver request. All such hearing requests shall be directed to the address specified in (b) above. Upon receipt of a timely-filed request for a hearing, the matter shall be considered in accordance with the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rules promulgated thereunder at N.J.A.C. 1:1.