

(e) Management shall document and make available upon financial condition examination the basis upon which its assertions, required in (d) above, are made. Management may base its assertions, in part, upon its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

1. Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner and, as such, may include assembly of or reference to existing documentation.

2. Management's Report on Internal Control over Financial Reporting, required by (a) above, and any documentation provided in support thereof during the course of a financial condition examination, shall be deemed by the Department to be confidential information.

New Rule, R.2010 d.026, effective January 19, 2010.
See: 41 N.J.R. 3364(a), 42 N.J.R. 486(b).

Former N.J.A.C. 11:2-26.16, Confidentiality of documents, was recodified to N.J.A.C. 11:2-26.19.

11:2-26.17 Exemptions and effective dates

(a) Insurers having direct premiums written in this State of less than \$1,000,000 in any calendar year and less than 1,000 policyholders or certificateholders of directly written policies nationwide at the end of such calendar year shall be exempt from this subchapter for such year (unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities) except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of \$1,000,000 or more will not be so exempt.

(b) Foreign or alien insurers filing audited financial reports in another state, pursuant to such other state's requirement of audited financial reports which have been found by the Commissioner to be substantially similar to the requirements herein, are exempt from compliance with this subchapter if:

1. A copy of the audited financial report, communication of internal control related matters noted in an audit, and the accountant's letter of qualifications which are filed with such other state are filed with the Commissioner in accordance with the filing dates specified in N.J.A.C. 11:2-26.4, 26.11 and 26.12, respectively (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance); and

2. A copy of any notification of adverse financial condition report filed with such other state is filed with the Commissioner within the time specified in N.J.A.C. 11:2-26.10.

(c) Foreign or alien insurers required to file Management's Report of Internal Control over Financial Reporting in another state are exempt from filing the report in this state provided the other state has substantially similar reporting

requirements and the report is filed with the commissioner of the other state within the time specified.

(d) Domestic insurers who have retained a certified public accountant on or before January 19, 2010 who qualifies as independent shall comply with this subchapter for the year ending December 31, 2010 and each year thereafter unless the Commissioner permits otherwise.

(e) Domestic insurers who have not retained a certified public accountant on or before January 19, 2010 who qualifies as independent may meet the following schedule for compliance unless the Commissioner permits otherwise:

1. As of December 31, 2010, file with the Commissioner an audited financial report; and

2. For the year ending December 31, 2011, and each year thereafter, such insurers shall file with the Commissioner all reports and communication required by this subchapter.

(f) Foreign insurers shall comply with this subchapter for the year ending December 31, 2010 and each year thereafter unless the Commissioner permits otherwise.

(g) The requirements for independent certified public accountants set forth at N.J.A.C. 11:2-26.6 shall be in effect for audits of the year beginning January 1, 2010 and each year thereafter.

(h) The requirements for management's report of internal control over financial reporting set forth at N.J.A.C. 11:2-26.16 are effective beginning with the reporting period ending December 31, 2010 and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

(i) The requirements for audit committees as set forth in N.J.A.C. 11:2-26.14 are to be in effect January 19, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members (as opposed to a supermajority) because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year the threshold is exceeded (but not earlier than January 19, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition

or combination to comply with the independence requirements.

(j) Upon written application of any insurer, the Commissioner may grant an exemption from compliance with this subchapter if the Commissioner finds, upon review of the application, that compliance would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specific period or periods.

Amended by R.1993 d.68, effective February 1, 1993.

See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on compliance dates repealed; rule on exemptions recodified from 26.13, with new subsection (a) added.

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Recodified from N.J.A.C. 11:2-26.14 and amended by R.2010 d.026, effective January 19, 2010.

See: 41 N.J.R. 3364(a), 42 N.J.R. 486(b).

Section was "Exemptions". In the introductory paragraph of (b), substituted "Foreign or alien insurers" for "Insurers"; in (b)1, substituted "communication of internal control related matters noted in an audit" for "the report on any significant deficiencies in internal controls" and inserted a comma following "26.12"; added new (c); added (d) through (i); and recodified former (c) as (j). Former N.J.A.C. 11:2-26.17, Penalties, recodified to N.J.A.C. 11:2-26.20.

11:2-26.18 Alien insurers

(a) In the case of alien insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their domiciliary supervision authority duly audited by an independent chartered or similarly certified accountant.

(b) For such insurers, the letter required in N.J.A.C. 11:2-26.7 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the Commissioner pursuant to N.J.A.C. 11:2-26.4 and shall affirm that the opinion expressed is in conformity with such requirements.

Amended by R.1993 d.68, effective February 1, 1993.

See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on reports prepared in accordance with generally accepted accounting principles repealed; rule on alien insurers recodified from 26.16.

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Recodified from N.J.A.C. 11:2-26.15 by R.2010 d.026, effective January 19, 2010.

See: 41 N.J.R. 3364(a), 42 N.J.R. 486(b).

Former N.J.A.C. 11:2-26.18, Severability, recodified to N.J.A.C. 11:2-26.21.

11:2-26.19 Confidentiality of documents

All documents submitted to the Commissioner pursuant to this subchapter are confidential and not public documents as defined in the Public Records Act, N.J.S.A. 47:1A-1 et seq.

Recodified by R.1993 d.68, effective February 1, 1993.

See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on alien insurers recodified to 26.15; rule on confidentiality of documents recodified from 26.17.

Recodified from N.J.A.C. 11:2-26.16 by R.2010 d.026, effective January 19, 2010.

See: 41 N.J.R. 3364(a), 42 N.J.R. 486(b).

11:2-26.20 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as provided by law.

Recodified by R.1993 d.68, effective February 1, 1993.

See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on confidentiality of documents recodified to 26.16; rule on penalties recodified from 26.18.

Recodified from N.J.A.C. 11:2-26.17 by R.2010 d.026, effective January 19, 2010.

See: 41 N.J.R. 3364(a), 42 N.J.R. 486(b).

11:2-26.21 Severability

If any section of this subchapter is held to be invalid, the remaining parts of this subchapter are not to be affected.

Recodified by R.1993 d.68, effective February 1, 1993.

See: 24 N.J.R. 1940(a), 24 N.J.R. 2708(a), 25 N.J.R. 588(a).

Rule on penalties recodified to 26.17; rule on severability recodified from 26.19.

Recodified from N.J.A.C. 11:2-26.18 by R.2010 d.026, effective January 19, 2010.

See: 41 N.J.R. 3364(a), 42 N.J.R. 486(b).

SUBCHAPTER 27. DETERMINATION OF INSURERS IN A HAZARDOUS FINANCIAL CONDITION

11:2-27.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the factors which the Commissioner shall consider in determining whether an insurer is in a hazardous financial condition as defined herein. A determination of hazardous financial condition provides one of the grounds upon which the Commissioner may seek an order from the Superior Court to rehabilitate, liquidate the business or conserve the assets within this State of domestic, foreign or alien insurers pursuant to N.J.S.A. 17:30C-1 et seq. and 17B:32-31 et seq., or upon which an insurer may become subject to administrative supervision pursuant to N.J.S.A. 17:51A-1 et seq., and provides one of the grounds upon which the Commissioner may take action to revoke or nonrenew an insurer's authority to transact insurance in this State, or withdraw the eligibility of an eligible surplus lines insurer to insure surplus lines risks in the State pursuant to law, including but not limited to, N.J.S.A. 17:32-2, 17B:23-2, and 17:22-6.46.

(b) This subchapter shall apply to all domestic, foreign and alien insurers and all other entities subject to N.J.S.A. 17:30C-1 et seq., 17B:32-31 et seq., or N.J.S.A. 17:51A-1 et seq.; and to all eligible surplus lines insurers.

Emergency Amendment, R.1993 d.447, effective August 16, 1993 (expired October 15, 1993).

See: 25 N.J.R. 4286(a).

Adopted Concurrent Proposal, R.1993 d.556, effective October 15, 1993.

See: 25 N.J.R. 4286(a), 25 N.J.R. 5182(a).
Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2-27.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

AVR means the asset valuation reserve calculated for the purpose of completing the NAIC annual statement in accordance with its instructions and the Accounting Practices and Procedures Manual.

“Commissioner” means the Commissioner of the New Jersey Department of Banking and Insurance.

“Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of the insurer as defined in N.J.S.A. 17:27A-1.

“Department” means the New Jersey Department of Banking and Insurance.

“Eligible surplus lines insurer” means an unauthorized insurer in which an insurance coverage is placed or may be placed pursuant to N.J.S.A. 17:22-6.40 et seq.

“Hazardous financial condition” means that, based on its present or reasonably anticipated financial condition, an insurer, although not yet financially impaired or insolvent, is unlikely to be able:

1. To meet obligations to policyholders, certificate holders and other insureds with respect to known claims and reasonably anticipated claims; or
2. To pay other obligations in the normal course of business.

“Insurer” means a person subject to the insurance supervisory authority of, or to liquidation, rehabilitation, reorganization, or conservation by, the Commissioner pursuant to N.J.S.A. 17:30C-1 et seq., 17B:32-31 et seq. or N.J.S.A. 17:51A-1 et seq., or by the equivalent insurance supervisory official of another state. “Insurer” includes all persons purporting to be engaged in the business of insurance as an insurer in this State and all persons in the process of organization to become insurers.

“Life and health insurer” means an insurer authorized or admitted pursuant to the provisions of Title 17B of the Revised Statutes to solely transact the business of life insurance, health insurance or annuities in this State as those terms are defined in N.J.S.A. 17B:17-3, 17B:17-4 and 17B:17-5, respectively.

“NAIC” means the National Association of Insurance Commissioners.

Emergency Amendment, R.1993 d.447, effective August 16, 1993 (expired October 15, 1993).

See: 25 N.J.R. 4286(a).

Adopted Concurrent Proposal, R.1993 d.556, effective October 15, 1993.

See: 25 N.J.R. 4286(a), 25 N.J.R. 5182(a).

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

Amended by R.2001 d.6, effective January 2, 2001.

See: 32 N.J.R. 3530(a), 33 N.J.R. 85(a).

11:2-27.3 Determination of hazardous financial conditions; factors

(a) The Commissioner shall consider the following factors, either singly or in a combination of two or more, in determining whether an insurer is in a hazardous financial condition:

1. Adverse findings reported in financial condition and market conduct examination reports and/or failure to comply with recommendations contained therein;
2. Adverse findings from the NAIC Insurance Regulatory Information System and its related reports;
3. The ratios of commission expense, general insurance expense, policy benefits and reserve increases as to annualized premium and net investment income which could lead to an impairment of capital and surplus;
4. A finding that the insurer’s asset portfolio, when viewed in light of current economic conditions, is not of sufficient value, liquidity, or diversity to assure the company’s ability to meet its outstanding obligations as they mature;
5. A finding that an assuming reinsurer is not able to meet the obligations being assumed or that the insurer’s reinsurance program does not provide sufficient protection for the company’s remaining surplus, after taking into account the insurer’s cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
6. A finding that the insurer’s operating loss in the last 12 month period or any shorter period of time, including, but not limited to, net capital gain or loss, change in non-admitted assets and cash dividends paid to shareholders, is greater than 50 percent of such insurer’s remaining surplus as regards policyholders in excess of the minimum required;

7. A finding that any parent, affiliate, subsidiary or reinsurer is insolvent, or, in the opinion of the Commissioner, is threatened with insolvency or is delinquent in payment of its monetary or other obligations;

8. A finding that contingent liabilities, pledges or guarantees, either individually or collectively, involve a total amount which, in the opinion of the Commissioner, may affect the solvency of the insurer;

9. A finding that any person controlling an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer;

10. The age and doubtful collectability of receivables;

11. A finding that the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, expertise and reputation deemed necessary by the Commissioner;

12. A finding that the management of an insurer has failed to respond to inquiries from the Commissioner regarding the condition of the insurer or has furnished false and misleading information concerning such inquiries;

13. A finding that the management of an insurer has filed any false or misleading financial statement, has released any false or misleading financial statement to lending institutions or to the general public, has made a false or misleading entry or has omitted an entry of a material amount in the books of the insurer;

14. A finding that, in the opinion of the Commissioner, the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

15. A finding that, in the opinion of the Commissioner, the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems;

16. A finding that the surplus as regards policyholders is not adequate in relation to the amount of the insurer's loss and loss adjustment expense reserve liabilities established;

17. A finding that a life insurer's surplus as regards policyholders plus AVR reserves is not adequate in relation to the amount of liabilities less AVR reserves less separate account liabilities;

18. A finding that the insurer does not possess the minimum capital and surplus (in the case of stock insurers) or net assets (in the case of mutual insurers) required by statute to be maintained or as otherwise required by the Commissioner pursuant to law;

19. A finding that the insurer has reinsurance reserve credits, recoverables or receivables due from insurance companies in receivership and such credits, recoverables

or receivables are greater than 25 percent of surplus or 15 percent of admitted assets;

20. A finding that a life and health insurer has taken a credit for reserves for business assumed from an insurance company in receivership under a modified co-insurance system or in any other manner in which the ceding insurer withholds assets, and such reserve credit is greater than 25 percent of surplus or 15 percent of admitted assets;

21. A finding that the insurer has issued subordinated premium or surplus debentures to finance its operations without the prior approval of the Commissioner for use as policyholder surplus;

22. A finding that the insurer has failed to maintain books and records sufficient to permit examiners to determine the financial condition of the insurer;

23. A finding that the insurer has moved the location of the books and records necessary to conduct an examination of such insurer without notifying the Department of such location;

24. A finding that the owners or management of an insurer have engaged in unlawful transactions;

25. A finding that the insurer has delegated the administration of an insurance function necessary to such insurer's survival directly or indirectly to a person without adequate controls and/or which creates a conflict of interest;

26. A finding that the insurer has a pattern of not settling valid claims within a reasonable time after due proofs of loss have been received by such insurer;

27. A finding that the insurer has been issued a final administrative or judicial order, initiated by an insurance regulatory agency of another state, with a finding that such insurer is insolvent or in a hazardous financial condition;

28. A finding that the insurer does not follow a policy on rating and underwriting standards appropriate to the risk; and

29. A finding of any other fact or circumstance that indicates that an insurer is in a hazardous financial condition.

(b) The Commissioner shall presume that the factor set forth in (a)4 above exists with respect to a domestic property and casualty insurer if the Commissioner finds the following:

1. The insurer has invested in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries, in amounts which exceed the lesser of 10 percent of such insurer's assets or 50 percent of such insurer's surplus as regards policyholders, or that otherwise after such investments that the insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

i. In calculating the amount of such investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

(1) The total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

(2) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation; or

2. The insurer has invested any amount in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, and that each such subsidiary has not agreed to limit its investments in any asset so that such investments will not cause the amount of the total investment of the insurer to exceed the investment limitations described in (b)1 above or in any other applicable provision of N.J.S.A. 17:24-1 et seq. The total investment of the insurer shall include any direct investment by the insurer in an asset, and the insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of such subsidiary.

(c) An insurer may rebut the presumption as set forth in (b) above pursuant to N.J.A.C. 11:2-27.4(b) by demonstrating to the Commissioner that after such investments the insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(d) In making a determination of an insurer's financial condition pursuant to this subchapter, the Commissioner may adjust assets and liabilities as necessary to accurately reflect the insurer's financial position in any manner including, but not limited to, the following:

1. Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired, or otherwise subject to a delinquency proceeding, or which has entered into an invalid reinsurance agreement;

2. Make appropriate adjustments to asset values in its investment portfolio or attributable to investments in or transactions with parents, subsidiaries, or affiliates;

3. Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; and

4. Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12 month period.

(e) With respect to the domestic life and health insurers, the factor set forth in (a)4 above shall be presumed to exist if the Commissioner finds the following:

1. The insurer has invested in common stock, preferred stock, debt obligations and other securities of one or more subsidiaries in amounts which:

i. Exceed the lesser of eight percent of such insurer's admitted assets or 50 percent of such insurer's surplus as regards policyholders; or

ii. Otherwise demonstrate after such investments that the insurer's surplus as regards policyholders is not reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

2. In calculating the amount of the investments referenced in (e)1 above, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:

i. The total net monies or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and

ii. All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation.

Emergency Amendment, R.1993 d.447, effective August 16, 1993 (expired October 15, 1993).

See: 25 N.J.R. 4286(a).

Adopted Concurrent Proposal, R.1993 d.556, effective October 15, 1993.

See: 25 N.J.R. 4286(a), 25 N.J.R. 5182(a).

Amended by R.1994 d.550, effective November 7, 1994.

See: 26 N.J.R. 3589(a), 26 N.J.R. 4407(a).

Amended by R.2005 d.46, effective February 7, 2005.

See: 36 N.J.R. 4209(a), 37 N.J.R. 527(b).

Added (e).

11:2-27.4 Determination of hazardous financial condition; corrective action

(a) If the Commissioner determines that the continued operation of an insurer may be hazardous to the policyholders or public in this State, the Commissioner may, upon such a determination, subject the insurer to administrative supervision pursuant to N.J.S.A. 17:51A-1 et seq. and may issue an order requiring the insurer to take such actions as the Commissioner deems necessary to abate such determination, including, but not limited to:

1. Reduce the total amount of present and potential liability for policy benefits by reinsurance;
2. Reduce, suspend or limit the volume of business being accepted or renewed;
3. Reduce general insurance and commission expenses by specified methods;
4. Increase the insurer's capital and surplus;
5. Suspend or limit the declaration and payment of dividends by an insurer to its stockholders or to its policyholders;
6. File reports in a form acceptable to the Commissioner concerning the market value of an insurer's assets;
7. Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Commissioner deems necessary;
8. Document the adequacy of premium rates in relation to the risks insured;
9. File, in addition to regular annual statements, interim financial reports on the form adopted by the NAIC or in such format as prescribed by the Commissioner; or
10. Take such other actions as the Commissioner may deem necessary in a particular case to protect the insurer's policyholders and the public.

(b) If an insurer is subject to an order issued by the Commissioner pursuant to (a) above, and the insurer objects to the actions ordered to be taken as set forth therein, the insurer may request a hearing before the Department on the Commissioner's determination within 10 days from the date of receipt of such order as follows:

1. A request for a hearing shall be in writing and shall include:
 - i. The name, address, and daytime telephone number of a contact person familiar with the matter;
 - ii. A copy of the order involved;
 - iii. A statement requesting the hearing; and
 - iv. A concise statement specifying the manner wherein the action(s) ordered by the Commissioner would not result in improving the condition of the insurer.

2. Pursuant to N.J.S.A. 17:51A-1 et seq., all proceedings, hearings, notices, correspondence, reports, records and other information in the possession of the Commissioner or the Department relating to the supervision of the insurer are confidential, except as otherwise provided by N.J.S.A. 17:51A-1 et seq. Any confidential proceeding in connection with an order issued pursuant to this rule and N.J.S.A. 17:51A-1 et seq. shall be held by the Commissioner or his designee at the Department.

3. The Commissioner may open such proceedings or hearings or disclose the notices, correspondence, reports, records or information to a department, agency or instrumentality of this or another state of the United States, or make such information public, if the Commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state of the United States, is in the best interest of the public, or in the best interest of the insurer, its insureds or creditors.

(c) Nothing contained in this section shall be construed to limit or preclude the Commissioner from independently requiring an insurer to take specific actions or limit specified activities pursuant to other provisions of Title 17 or 17B of the Revised Statutes.

Emergency New Rule, R.1993 d.447, effective August 16, 1993 (expired October 15, 1993).

See: 25 N.J.R. 4286(a).

Adopted Concurrent Proposal, R.1993 d.556, effective October 15, 1993.

See: 25 N.J.R. 4286(a), 25 N.J.R. 5182(a).

Changes upon adoption effective November 15, 1993.

Amended by R.1996 d.3, effective January 2, 1996.

See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

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.

New Rule, R.2011 d.154, effective June 6, 2011.
See: 43 N.J.R. 268(a), 43 N.J.R. 1349(a).

SUBCHAPTER 28. CREDIT FOR REINSURANCE

11:2-28.1 Purpose and scope

(a) The purpose of these rules is to implement the provisions of N.J.S.A. 17:51B-1 et seq. by establishing procedures to be employed by insurers which cede risks to appropriate reinsurers and which assume the risk from the ceding insurers to whom these rules apply.

(b) This subchapter applies to all insurers which transact business in this State, except as described in (b)2 below, including insurers which are domiciled in this State. This subchapter also applies to insurers which are either licensed to transact business in this State or are eligible to write surplus lines insurance in this State, and which in either case are domiciled in a state or country which does not employ standards regarding credit for reinsurance substantially similar to the standards set forth herein.

1. For a life and health ceding insurer to qualify for a credit for reinsurance in accordance with this subchapter, the ceding insurer shall also comply with the requirements of N.J.S.A. 17:51B-1 et seq. and all administrative rules promulgated thereunder concerning the regulation of life and health reinsurance contracts.

2. Where an insurer which is either licensed to transact business in this State or is an eligible surplus lines insurer in this State and in either case the state in which it is domiciled is accredited by the NAIC or employs standards regarding credit for reinsurance as determined by the Commissioner to be substantially similar to the standards set forth in these rules, the insurer shall comply with the rules regarding credit for reinsurance in its state of domicile.

Amended by R.1993 d.557, effective November 15, 1993.
See: 25 N.J.R. 4289(a), 25 N.J.R. 5184(a).
Amended by R.1996 d.3, effective January 2, 1996.
See: 27 N.J.R. 3278(b), 28 N.J.R. 152(b).

11:2-28.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Annual statement" means a statement showing an insurer's financial condition at the close of business on December 31 of the preceding year and its business for that year in the form adopted by the NAIC, prepared in accordance with the annual statement instructions and the