



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

Code: Section:

[Up^](#) [Add To My Favorites](#)

INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (*Division 2 enacted by Stats. 1935, Ch. 145.*)

PART 4. MISCELLANEOUS CASUALTY INSURANCES [12050 - 12129] (*Part 4 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 1. Surety Insurers on Reserve Basis; Capital Requirements and Permitted Insurances [12050 - 12122] (*Chapter 1 enacted by Stats. 1935, Ch. 145.*)

ARTICLE 5. Financial Guaranty Insurance [12100 - 12122] (*Article 5 repealed and added by Stats. 1990, Ch. 1032, Sec. 6.*)

[12100.](#) As used in this article:

(a) (1) "Financial guaranty insurance" means a surety bond, an insurance policy or, when issued by an insurer, an indemnity contract and any guarantee similar to the foregoing types, under which loss is payable upon proof of occurrence of financial loss to an insured claimant, obligee, or indemnitee as a result of any of the following events:

(A) Failure of any obligor on or issuer of any debt instrument or other monetary obligation (including equity securities guaranteed under a surety bond, insurance policy, or indemnity contract) to pay, when due to be paid by the obligor or scheduled at the time insured to be received by the holder of the obligation, principal, interest, premium, dividend, purchase price of or on the instrument or obligation, or other monetary payment when the failure is the result of financial default or insolvency, or, provided that the payment source is investment grade, any other failure of that payment source to make payment, regardless of whether the obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted.

(B) Changes in the levels of interest rates, whether short or long term, or the differential in interest rates between various markets or products.

(C) Changes in the rate of exchange of currency.

(D) Changes in the value of financial or commodity indices, or price levels in general.

(E) Other events that the commissioner determines by order, regulation, or written consent are substantially similar to any of the foregoing.

(2) Notwithstanding paragraph (1), "financial guaranty insurance" shall not include any of the following:

(A) Insurance of any loss resulting from any event described in paragraph (1), if the loss is payable only upon the occurrence of any of the following, as specified in a surety bond, insurance policy, or indemnity contract:

(i) A fortuitous physical event.

(ii) A failure of or deficiency in the operation of equipment.

(iii) An inability to extract or recover a natural resource.

(B) Title insurance authorized by Section 104 and as permitted to be written by title insurers pursuant to Chapter 1 (commencing with Section 12340) of Part 6.

(C) Surety insurance as authorized by Section 105.

(D) Credit unemployment insurance, meaning insurance on a debtor in connection with a specific loan or other credit transaction, to provide payments to a creditor in the event of unemployment of the debtor for the installments or other periodic payments becoming due while a debtor is unemployed.

(E) Credit insurance authorized by Section 113.

(F) Guaranteed investment contracts and funding agreements issued by life insurance companies that provide that the life insurer itself will make specified payments in exchange for specific premiums or contributions.

(G) Mortgage guaranty insurance authorized by Section 119 and as permitted to be written by a mortgage guaranty insurer pursuant to Chapter 2A (commencing with Section 12640.01) of Part 6.

(H) Indemnity contracts or similar guarantees, to the extent that they are not otherwise limited or proscribed by this article, in which a life insurer does any of the following:

(i) Guarantees its obligations or indebtedness or the obligations or indebtedness of a subsidiary (as defined in Section 1215) other than a financial guaranty insurance corporation; provided that:

(I) To the extent that any obligations or indebtedness are backed by specific assets, those assets shall at all times be owned by the life insurer or the subsidiary.

(II) In the case of the guarantee of the obligations or indebtedness of the subsidiary that are not backed by specific assets of the life insurer, the guarantee terminates once the subsidiary ceases to be a subsidiary.

(ii) Guarantees obligations or indebtedness (including the obligation to substitute assets where appropriate) with respect to specific assets acquired by a life insurer in the course of normal investment activities and not for the purpose of resale with credit enhancement, or guarantees obligations or indebtedness acquired by its subsidiary, provided that the assets acquired pursuant to this clause have been either of the following:

(I) Acquired by a special purpose entity, whose sole purpose is to acquire specific assets of the life insurer or the subsidiary and issue securities or participation certificates backed by the assets.

(II) Sold to an independent third party.

(iii) Guarantees obligations or indebtedness of an employee or agent of the life insurer.

(I) Any cramdown bond or mortgage repurchase bond, as those phrases are used by nationally recognized rating agencies in respect of mortgage-backed securities.

(J) Residual value insurance.

(K) Any other form of insurance covering risks that the commissioner determines by order, regulation, or written consent to be substantially similar to any of the foregoing.

(b) "Affiliate" means a person that, directly or indirectly, owns at least 10 but less than 50 percent of the financial guaranty insurance corporation or that is at least 10 percent but less than 50 percent, directly or indirectly, owned by a financial guaranty insurance corporation.

(c) "Asset-backed securities" means either of the following:

(1) Securities or other financial obligations of an issuer provided that both of the following apply:

(A) The issuer is a special purpose corporation, trust, or other entity, or, provided that the securities or other financial obligations constitute an insurable risk, is a bank, trust company, or other financial institution, deposits in which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation or any successors thereto.

(B) The securities or other financial obligations are related to a pool of assets so that all of the following apply:

(i) The pool of assets has been conveyed, pledged, or otherwise transferred to or is otherwise owned or acquired by the issuer.

(ii) The pool of assets backs the securities or other financial obligations issued.

(iii) No asset in the pool, other than an asset directly payable by, guaranteed by, or backed by the full faith and credit of the United States government or that otherwise qualifies as collateral under paragraph (1) or (2) of subdivision (e), has a value exceeding 20 percent of the aggregate value of the pool.

(2) A pool of credit default swaps or credit default swaps referencing a pool of obligations, provided that each of the following is true:

- (A) The swap counterparty whose obligations are insured under the credit default swap is a special purpose corporation, special purpose trust, or other special purpose legal entity.
- (B) No reference obligation in the pool, other than an obligation directly payable by, guaranteed by, or backed by the full faith and credit of the United States government, or that otherwise qualifies as collateral under paragraph (2) of subdivision (e), has a notional amount exceeding 10 percent of the pool's aggregate notional amount.
- (C) The insurer has the benefit of a deductible or other first loss credit protection against claims under its insurance policy.

(d) "Average annual debt service" means the amount of insured unpaid principal and interest on an obligation multiplied by the number of the insured obligations (assuming that each obligation represents a \$1,000 par value), divided by the amount equal to the aggregate life of all of those obligations. This definition, expressed as a formula in regard to bonds, is as follows:

Average Annual Debt Service	=	Total Debt Service × Number of Bonds
		Bond Years
Total Debt Service	=	Insured Unpaid Principal + Interest
Number of Bonds	=	Total Insured Principal
		\$1,000
Bond Years	=	Number of Bonds × Term in Years
Term in Years = Term to maturity based on scheduled amortization or, in the absence of a scheduled amortization in the case of asset-backed securities or other obligations lacking a scheduled amortization, expected amortization, in each case determined as of the date of issuance of the insurance policy based upon the amortization assumptions employed in pricing the insured obligations or otherwise used by the insurer to determine aggregate net liability.		

(e) "Collateral" means any of the following:

- (1) Cash.
- (2) The cashflow from specific obligations that are not callable and scheduled to be received based on expected prepayment speed on or prior to the date of scheduled debt service (including scheduled redemptions and prepayments) on the insured obligation, provided that any of the following is true, as applicable:

(A) The specific obligations are directly payable by, guaranteed by, or backed by the full faith and credit of the United States government.

(B) In the case of insured obligations denominated or payable in a foreign currency as permitted under paragraph (3) of subdivision (b) of Section 12112, the specific obligations are directly payable by, guaranteed by, or backed by the full faith and credit of the foreign government or the central bank thereof.

(C) The specific obligations are insured by the same insurer that insures the obligations being collateralized, and the cashflows from the specific obligations are sufficient to cover the insured scheduled payments on the obligations being collateralized.
- (3) The market value of investment grade obligations, other than obligations evidencing an interest in the project or projects financed with the proceeds of the insured obligations.
- (4) The face amount of each letter of credit that meets all of the following criteria:

(A) Is irrevocable.

(B) Provides for payment under the letter of credit in lieu of or as reimbursement to the insurer for payment required under a financial guaranty insurance policy.

(C) Is issued, presentable, and payable either:

(i) At an office of the letter of credit issuer in the United States.

(ii) At an office of the letter of credit issuer located in the jurisdiction in which the trustee or paying agent for the insured obligation is located.

(D) Contains a statement that either:

(i) Identifies the financial guaranty insurance corporation, its collateral agent, or any successor by operation of law, including any liquidator, rehabilitator, receiver, or conservator, as the beneficiary.

(ii) Identifies the trustee or the paying agent for the insured obligation as the beneficiary.

(E) Contains a statement to the effect that the obligation of the letter of credit issuer under the letter of credit is an individual obligation of that issuer and is in no way contingent upon reimbursement with respect thereto.

(F) Contains an issue date and an expiration date.

(G) Does either of the following:

(i) Has a term at least as long as the shorter of the term of the insured obligation or the term of the financial guaranty insurance policy.

(ii) Provides that the letter of credit shall not expire without 30 days prior written notice to the beneficiary and allows for drawing under the letter of credit in the event that, prior to expiration, the letter of credit is not renewed or extended or a substitute letter of credit or alternate collateral meeting the requirements of subdivision (e) is not provided.

(H) If the letter of credit is governed by the 1983 revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400 or 500), or any successor revision approved by the commissioner, it shall contain a provision for an extension of time, of not less than 30 days after resumption of business, to draw against the letter of credit in the event that one or more of the occurrences described in Article 19 of Publication 400 or 500 occurs.

(I) Is issued by a bank, trust company, or savings association that meets all of the following criteria:

(i) Is organized and existing under the laws of the United States or any state thereof or, in the case of a financial institution organized under the laws of a foreign country, has a branch or agency office licensed under the laws of the United States or any state thereof and is domiciled in a member country of the Organization of Economic Co-operation and Development having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the commissioner.

(ii) Has (or is the principal operating subsidiary of a financial institution holding company that has) a long-term debt rating of at least investment grade.

(iii) Is not a parent, subsidiary, or affiliate of the trustee or paying agent, if any, with respect to the insured obligation if that trustee or paying agent is the named beneficiary of the letter of credit.

(5) The amount of credit protection available to the insurer (or its nominee) under each credit default swap that satisfies each of the following:

(A) May not be amended without the consent of the insurer and may only be terminated in accordance with one of the following:

(i) At the option of the insurer.

(ii) At the option of the counterparty to the insurer (or its nominee), if the credit default swap provides for the payment of a termination amount equal to the replacement cost of the terminated credit default swap determined with reference to standard documentation of the International Swap and Derivatives Association, Inc. or otherwise acceptable to the commissioner.

(iii) At the discretion of the commissioner acting as rehabilitator, liquidator, or receiver of the insurer upon payment by or on behalf of the insurer of any termination amount due from the insurer.

(B) Provides for payment under all instances in which payment under a financial guaranty insurance policy is required, except that payment under the credit default swap may be on a first loss, excess of loss, or other nonpro rata basis and may apply on an aggregate basis to more than one policy.

(C) Is provided by one of the following:

(i) A counterparty whose obligations under the credit default swap are insured by a financial guaranty insurance corporation licensed under this article or guaranteed by a financial institution referred to in clauses (ii) and (iii) of this subparagraph.

(ii) A financial institution satisfying the requirements of clauses (i) to (iii), inclusive, of subparagraph (I) of paragraph (4), provided that obligations of the financial institution on parity with its obligations under the credit default swap are rated as investment grade, and further provided that, if the financial institution is not organized under, or acting through a branch or agency office licensed under, the laws of the United States or any state thereof, then the financial institution is required to collateralize the replacement cost of the credit default swap in the event that it fails to maintain the investment grade rating.

(iii) Any other financial institution that the commissioner determines to be substantially similar to any specified in clause (i) or (ii).

(iv) The requirements of this subparagraph shall not be construed as authority for an insurer domiciled in the United States to issue credit default swaps unless the insurer has explicit authority to issue credit default swaps.

Collateral shall be deposited with or held by the financial guaranty insurance corporation, held by a trustee or agent for the benefit of the financial guaranty insurance corporation in trust or to perfect a security interest, or held in trust pursuant to the bond indenture or other trust arrangement by a trustee or custodian for the benefit of holders of the insured obligations in the form of funds for payment of insured obligations, sinking funds, or other reserves that may be used for the payment of insured obligations, collateral agent fees and trustee fees, or reimbursement of the financial guaranty insurance corporation on any obligation insured by the corporation. The trustee, custodian, or agent shall be a bank, savings association, depository institution, or other entity acceptable to the commissioner, the deposits of which are insured by the Bank Insurance Fund or the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation (or any successors thereto), or in the case of banking organizations organized under the laws of a foreign country in addition satisfies the requirements of clauses (i) and (ii) of subparagraph (I) of paragraph (4), and in each case that has a net worth of at least twenty-five million dollars (\$25,000,000). The trustee or agent may also be an approved or qualified servicer or originator of the kind of assets that comprise the collateral that maintains in force at all times errors and omissions insurance applicable to the trust or agency activities, including without limitation, a servicer qualified under a federal or state insurance or guaranty program to service loans or mortgage loans. The commissioner may adopt regulations, bulletins, notices or orders to limit the amount of collateral provided by obligations, letters of credit, or credit default swaps, or to limit the amount of collateral provided by any single issuer, bank, or counterparty as provided for in this subdivision. The commissioner may also require additional reporting as deemed necessary.

(f) "Commercial real estate" means income-producing real property other than residential property consisting of less than five units.

(g) "Contingency reserve" means an additional liability reserve established to protect policyholders against the effects of adverse economic cycles or other unforeseen circumstances.

(h) "Credit default swap" means an agreement referencing credit derivative definitions published from time to time by the International Swap and Derivatives Association, Inc., or otherwise acceptable to the commissioner, pursuant to which a party agrees to compensate another party in the event of a payment default by, insolvency of, or other adverse credit event in respect of, an issuer of a specified security or other obligation; provided that the agreement does not constitute an insurance contract and the making of the credit default swap does not constitute the transaction of insurance.

(i) "Excess spread" means, with respect to any insured issue of asset-backed securities, the excess of (A) the scheduled cashflow on the underlying assets that is reasonably projected to be available, over the term of the insured securities after payment of the expenses associated with the insured issue, to make debt service payments on the insured securities over (B) the scheduled debt service requirements on the insured securities, provided that this excess is held in the same manner as collateral is required to be held under subdivision (e).

(j) "Financial guaranty insurance corporation" means an insurer transacting financial guaranty insurance.

(k) "Governmental unit" means a state, territory, or possession of the United States of America, the District of Columbia, the country of Canada, a province of Canada, the United Kingdom, a public authority of the United Kingdom, a member country of the Organization for Economic Co-operation and Development having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the commissioner, a municipality, or a political subdivision of any of the foregoing, or any public agency or instrumentality thereof.

(l) "Guarantees of consumer debt obligations" means insurance policies indemnifying a purchaser or lender against loss or damage resulting from defaults on a pool of debts owed for extensions of credit (including in respect of installment purchase agreements and leases) to individuals provided in the normal course of the purchaser's or lender's business, provided that the pool meets the

requirements of paragraph (2) of subdivision (c) and that the pool has been determined to be investment grade. Policies providing that coverage shall contain a provision that all liability terminates upon sale or transfer of the underlying obligation to any transferee that is not an insured of the financial guaranty insurance corporation under a similar policy.

(m) "Industrial development bond" means any security, or other instrument under which a payment obligation is created, issued by or on behalf of a governmental unit to finance a project serving a private industrial, commercial, or manufacturing purpose and not guaranteed by a governmental unit.

(n) "Insurable risk" means that the obligation on an uninsured basis has been determined to be not less than investment grade. With respect to asset-backed securities as defined in subdivision (c), the determination shall be, based solely on the pool of assets backing the insured obligation or securing the financial guaranty insurance corporation, without consideration of the creditworthiness of the issuer.

(o) "Investment grade" means that the obligation or parity obligation of the same issuer is rated in one of the top four generic lettered rating classifications by a securities rating agency acceptable to the commissioner, that the obligation or parity obligation of the same issuer, without regard to financial guaranty insurance, has been identified in writing by that rating agency as an insurable risk deemed to be of investment grade quality, or that the obligation or parity obligation of the same issuer has been determined to be investment grade (as indicated by a category 1 or 2 rating) by the Securities Valuation Office of the National Association of Insurance Commissioners.

(p) "Municipal bonds" means municipal obligation bonds and special revenue bonds.

(q) (1) "Municipal obligation bond" means any security, or other instrument, including a lease payable or guaranteed by the United States or another national government that qualifies as a governmental unit, or any agency, department, or instrumentality thereof, or by a state or an equivalent subdivision of another national government that qualifies as a governmental unit, but not a lease of any other governmental unit, under which a payment obligation is created, issued by or on behalf of a governmental unit or issued by a special purpose corporation, special purpose trust, or other special purpose legal entity to finance a project or undertaking serving a substantial public purpose, and that is one or more of the following:

(A) Payable from tax revenues, but not tax allocations, within the jurisdiction of the governmental unit.

(B) Payable or guaranteed by the United States of America or another national government that qualifies as a governmental unit, or any agency, department, or instrumentality thereof, or by a housing agency of a state or an equivalent political subdivision of another national government that qualifies as a governmental unit.

(C) Payable from rates or charges (but not tolls) levied or collected in respect of a nonnuclear utility project, public transportation facility (other than an airport facility) or public higher education facility.

(D) With respect to lease obligations, payable from past, present, or future appropriations.

(2) Notwithstanding paragraph (1), obligations of a special purpose corporation, special purpose trust, or other special purpose legal entity shall not be considered municipal obligation bonds unless the obligations are investment grade at the time of issuance, the obligations are payable from sources enumerated in subparagraphs (A) to (D), inclusive, and the project being financed or the tolls, tariffs, usage fees, or other similar rates or charges for its use are subject to regulation or oversight by a governmental entity.

(r) "Parent" means a person that, directly or indirectly, owns at least 50 percent of a financial guaranty insurance corporation.

(s) "Reinsurance" means cessions qualifying for credit under Section 12121.

(t) "Security" or "secured" means any of the following:

(1) A deposit at least equal to the full amount of the outstanding principal of the insured obligation.

(2) Collateral, as defined by subdivision (e), at least equal to the full amount of the outstanding principal of the insured obligation or that has a market value or scheduled cashflow that is equal to or greater than the scheduled debt service on the insured obligation.

(3) Property, provided the financial guaranty insurance corporation or the trustee has possession of evidence of the right, title, or authority to claim or foreclose thereon or otherwise dispose of the property for value, the scheduled cashflow from which, or market value thereof, is at least equal to the scheduled debt service on the insured obligation.

(u) "Special revenue bond" means any security or other instrument under which a payment obligation is created, issued by or on behalf of, or payable or guaranteed by, a governmental unit to finance a project or undertaking serving a substantial public purpose and not payable from the sources enumerated in subdivision (q) or securities that are substantially similar to the foregoing issued by any of the following:

(1) A not-for-profit corporation.

(2) A special purpose corporation, special purpose trust or other special purpose legal entity, provided that the obligations are investment grade at the time of issuance, the obligations are not payable from the sources enumerated in subparagraphs (A) to (D), inclusive, of paragraph (1) of subdivision (q), and the project being financed or the tolls, tariffs, usage fees, or other similar rates or charges for its use are subject to regulation or oversight by a governmental entity.

(v) "Subsidiary" means a person that, directly or indirectly, is at least 50 percent owned by a financial guaranty insurance corporation.

(w) "Total net liability" of a financial guaranty insurance corporation means the aggregate amount of insured unpaid principal, interest, and other monetary payments, if any, of guaranteed obligations insured or assumed, less reinsurance and less collateral.

(x) "Utility first mortgage obligation" means an obligation of an issuer secured by a first priority mortgage on property owned or leased by an investor-owned or cooperative-owned utility company and located in the United States, Canada, or a member country of the Organization for Economic Co-operation and Development having a sovereign rating in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the commissioner, provided that the utility or utility property or the usage fees or other similar utility rates or charges are subject to regulation or oversight by a governmental entity.

(Amended by Stats. 2012, Ch. 786, Sec. 41. (AB 2303) Effective January 1, 2013.)

12101. An insurer may be organized and admitted to transact financial guaranty insurance in the manner prescribed for stock property and casualty insurers by the laws of this state. Except as provided in Section 12118, an insurer shall be required to be licensed to transact financial guaranty insurance in California before it transacts that insurance in this state. An insurer shall become admitted to transact financial guaranty insurance upon making application and complying with all the requirements of the law.

(Repealed and added by Stats. 1990, Ch. 1032, Sec. 6.)

12102. (a) An insurer with a certificate of authority to transact the business of financial guaranty insurance as defined in Section 12100 may also transact the business of surety insurance as defined in Section 105.

(b) An insurer licensed in this state to transact financial guaranty insurance may not transact any other classes of insurance in this state except surety insurance.

(c) An insurer that anywhere transacts or is licensed for any classes other than financial guaranty insurance, surety insurance, and credit insurance shall not be eligible for a certificate of authority for the class of financial guaranty insurance in this state.

(d) A financial guaranty insurance corporation may only assume in this state those lines of insurance it is admitted to transact in this state.

(e) In other states, an insurer may assume financial guaranty, surety, and credit lines of insurance if it is authorized to transact those lines of insurance in other states.

(f) After licensure the holder shall continue to comply with the requirements of this section.

(Amended by Stats. 2004, Ch. 47, Sec. 1. Effective June 14, 2004.)

12103. Prior to the issuance of a certificate of authority to transact financial guaranty insurance, an insurer shall submit for the approval of the commissioner a plan of operation detailing the types and projected diversification of guaranties that will be issued, the underwriting procedures that will be followed, managerial oversight methods, investment policies, and other matters prescribed by the commissioner including, but not limited to, those necessary to allow the commissioner to make a finding for the purposes of Section 717.

(Repealed and added by Stats. 1990, Ch. 1032, Sec. 6.)

12104. An admitted financial guaranty insurance corporation shall be subject to all of the provisions of this code applicable to property and casualty insurers to the extent that the provisions are not inconsistent with the provisions of this article.

(Repealed and added by Stats. 1990, Ch. 1032, Sec. 6.)

12105. The filing fee for a certificate of authority or amended certificate of authority to transact financial guaranty insurance shall be seven thousand four hundred seventy-two dollars (\$7,472).

(Amended by Stats. 2017, Ch. 534, Sec. 73. (AB 1699) Effective January 1, 2018.)

12106. (a) An admitted financial guaranty insurance corporation's investments in any one entity insured by that corporation shall not exceed 4 percent of its admitted assets as of the end of the prior calendar year, except that this limit shall not apply to investments payable or guaranteed by a United States governmental unit or agency or the State of California if the investments payable or guaranteed by the United States governmental unit or agency or the State of California shall be rated in one of the top two generic lettered rating classifications by a securities rating agency acceptable to the commissioner.

(b) In addition to any transaction that an insurer meeting the requirements of Section 1211 may effect and maintain under any other provision of this code, a financial guaranty insurance corporation may effect and maintain a transaction in contracts for the future delivery or receipt of the currency of a foreign country, interest rate options, credit default swaps under which the insurer is acquiring credit protection, and any other products included in the plan referred to in paragraph (7), if the following conditions are satisfied:

- (1) The transaction is used for the purpose of limiting risk of loss under financial guaranty insurance policies or reinsurance contracts covering those policies due to fluctuations in interest rates or currency exchange rates or, in the case of credit default swaps, financial default, insolvency, or other credit events.
- (2) The transaction does not exceed a duration of 12 months beyond the term of those policies or reinsurance contracts.
- (3) The amount of foreign currencies to be purchased under the transaction does not exceed the amount guaranteed under those policies or reinsurance contracts that is denominated in foreign currency.
- (4) The amount that is subject to interest rate hedging transactions does not exceed the amount guaranteed under those policies or reinsurance contracts that is subject to the risk of interest rate fluctuations.
- (5) The counterparty to the transaction has, or is the principal operating subsidiary of a holding company that has, a long-term unsecured debt rating or claims-paying ability rating that is at least investment grade.
- (6) The transaction is not conducted for arbitrage purposes.
- (7) The transaction is entered into pursuant to a plan that has been approved by the board of directors of the financial guaranty insurance corporation and filed with and approved by the insurance department of the state of domicile of the financial guaranty insurance corporation.

(c) A transaction entered into pursuant to subdivision (b) shall be governed by the terms of this section and shall not be subject to Section 1211.

(Amended by Stats. 2005, Ch. 412, Sec. 2. Effective January 1, 2006.)

12107. (a) No insurer shall be issued a license to transact financial guaranty insurance unless it has paid-in capital of at least fifteen million dollars (\$15,000,000) and surplus of at least eighty-five million dollars (\$85,000,000), and shall at all times thereafter maintain a minimum paid-in capital of fifteen million dollars (\$15,000,000) and a minimum surplus of sixty million dollars (\$60,000,000).

(b) An insurer licensed in this state and issuing or reinsuring financial guaranty insurance policies in this state prior to January 1, 1991, shall, notwithstanding the provisions of subdivision (a), be deemed to meet the combined paid-in capital and surplus requirements for transacting the financial guaranty insurance business during the period between January 1, 1991, and January 1, 1993, if it has combined capital and surplus of forty-five million dollars (\$45,000,000), which includes paid-in capital of at least two million five hundred thousand dollars (\$2,500,000).

(c) On and after January 1, 1993, every financial guaranty insurance corporation must fully comply with the condition in subdivision (a) that a minimum paid-in capital of fifteen million dollars (\$15,000,000) be held and maintained.

(Repealed and added by Stats. 1990, Ch. 1032, Sec. 6.)

12108. (a) An admitted financial guaranty insurance corporation shall establish and maintain a contingency reserve.

(b) With respect to all financial guaranties written prior to and in force as of July 1, 1989:

- (1) The financial guaranty insurance corporation shall establish and maintain a contingency reserve consistent with the requirements applicable for municipal bond insurance policies which were in effect prior to July 1, 1989, in an amount equal to 50 percent of earned premiums on those policies.
- (2) To the extent that the financial guaranty insurance corporation's contingency reserves maintained as of July 1, 1989, are less than those required for municipal bond insurance policies pursuant to paragraph (1), the corporation shall have until January 1, 1994, to bring its reserves into compliance.

(c) With respect to financial guaranties of municipal obligation bonds, special revenue bonds and investment grade industrial development bonds written after July 1, 1989:

- (1) The financial guaranty insurance corporation shall establish and maintain a contingency reserve in accordance with paragraph (3) of subdivision (d) for all those insured issues in each calendar year for each category listed in paragraph (2) of this subdivision.
- (2) The total contingency reserve required shall be the greater of 50 percent of premiums written for each such category or the following amount prescribed for each such category:

(A) Municipal obligation bonds, 0.8 percent of principal outstanding.

(B) Special revenue bonds, 1.2 percent of principal outstanding.

(C) Investment grade industrial development bonds secured by collateral or with a remaining term at the date of insurance of seven years or less and utility first mortgage obligations, 1.4 percent of principal outstanding.

(D) All other investment grade industrial development bonds, 1.6 percent of principal outstanding.

(3) Contributions to the contingency reserve required by this paragraph, equal to one-eightieth of the total reserve required, shall be made each quarter for 20 years, provided, however, that contributions may be discontinued so long as the total reserve for all categories listed in items (A) through (D) of subparagraph (2) exceeds the percentages contained in items (A) through (D) when applied against unpaid principal.

(d) With respect to all other financial guaranties written on or after July 1, 1989:

(1) The financial guaranty insurance corporation shall establish and maintain a contingency reserve in accordance with paragraph (3) for all those insured issues in each calendar year for each such category listed in paragraph (2).

(2) The total contingency reserve required shall be the greater of 50 percent of premiums written for each such category or the following amount prescribed for each such category:

(A) Investment grade obligations, secured by collateral, or with a remaining term at the date of insurance of seven years or less, 1.2 percent of principal outstanding.

(B) Other investment grade obligations, 1.7 percent of principal outstanding.

(C) Noninvestment grade obligations secured by collateral, 2.5 percent of principal outstanding.

(D) Other noninvestment grade obligations, 3.0 percent of principal outstanding.

(3) Contributions to the contingency reserve required by subparagraphs (A) and (B) of paragraph (2), equal to one-sixtieth of the total reserve required, shall be made each quarter for 15 years, and contributions to the contingency reserve required by subparagraphs (C) and (D) of paragraph (2), equal to one-fortieth of the total reserve required, shall be made each quarter for 10 years provided, however, that contributions may be discontinued so long as the total reserve for all categories listed in subparagraphs (A) through (D) of paragraph (2) exceeds the percentages contained in subparagraphs (A) through (D) when applied against unpaid principal.

(e) Contingency reserves required in subdivisions (b), (c), and (d) may be established and maintained net of collateral and reinsurance, provided that, in the case of reinsurance, the reinsurance agreement requires that the reinsurer shall, on or after the effective date of the reinsurance, establish and maintain a reserve in an amount equal to the amount by which the financial guaranty insurance corporation reduces its contingency reserve. In addition, contingency reserves required in subdivisions (c) and (d) may be maintained net of refundings and refinancings to the extent the refunded or refinanced issue is paid off or secured by obligations that are directly payable or guaranteed by the United States government, and net of insured securities in a unit investment trust or mutual fund that have been sold from the trust or fund without insurance.

(f) The contingency reserves may be released thereafter in the same manner in which they were established and withdrawals therefrom, to the extent of any excess, may be made from the earliest contributions to such reserves remaining therein:

(1) With the prior written approval of the commissioner, if the actual incurred losses for the year, in the case of the categories of guaranties subject to subdivision (c) exceeds 35 percent of earned premiums, or in the case of the categories of guaranties subject to subdivision (d) exceed 65 percent of earned premiums.

(2) Upon 30 days prior written notice to the commissioner, provided that the contingency reserve has been in existence for 40 quarters, for reserves subject to subdivision (c), and 30 quarters, for reserves subject to subdivision (d), upon demonstration that the amount carried is in excess of required amounts or excessive in relation to the financial guaranty insurance corporation's outstanding obligations.

(3) A financial guaranty insurance corporation may invest the contingency reserve in tax and loss bonds or similar securities purchased pursuant to Section 832(e) of the Internal Revenue Code (or any successor provision), only to the extent of the tax savings resulting from the deduction for federal income tax purposes of a sum equal to the annual contributions to the contingency reserve. The contingency reserve shall otherwise be invested only in classes of securities or types of investments specified in Article 3 (commencing with Section 1170) of Chapter 2 of Part 2 of Division 1 and Article 4 (commencing with Section 1190) of Chapter 2 of Part 2 of Division 1.

12109. (a) In addition to the contingency reserve, the case basis method or other method as may be prescribed by the commissioner shall be used to determine loss reserves, which shall include a reserve for claims reported and unpaid net of collateral. A deduction from loss reserves shall be allowed for the time value of money by application of a discount rate equal to the average rate of return on the admitted assets of the financial guaranty insurance corporation as of the date of the computation of that reserve. The discount rate shall be adjusted at the end of each calendar year.

In addition a reserve component for incurred but not reported claims shall be reasonably estimated if deemed necessary by the financial guaranty insurance corporation, or following an examination or actuarial analysis, by the commissioner.

(b) Except as otherwise permitted by the commissioner, no deduction shall be made for anticipated salvage in computing case basis loss reserves, unless that salvage is held by or under the control of the financial guaranty insurance corporation and would qualify as an admitted asset under Section 1100 and Article 3 (commencing with Section 1170) of Chapter 2 of Part 2 of Division 1 and Article 4 (commencing with Section 1190) of Chapter 2 of Part 2 of Division 1, or unless that salvage constitutes or is secured by a clean, irrevocable letter of credit which is approved by the commissioner or complies with the definition of a letter of credit provided in subdivision (e) of Section 12100.

(c) If the insured principal and interest on a defaulted issue of obligations exceed 10 percent of the financial guaranty insurance corporation's capital, surplus, and contingency reserves, its reserve so established shall be supported by a report from an independent source acceptable to the commissioner.

(Repealed and added by Stats. 1990, Ch. 1032, Sec. 6.)

12110. An unearned premium reserve shall be established and maintained net of reinsurance and collateral with respect to all financial guaranty premiums. Where financial guaranty insurance premiums are paid on an installment basis, an unearned premium reserve shall be established and maintained, net of reinsurance, computed on a daily or monthly pro rata basis. All other financial guaranty insurance premiums written shall be earned in proportion with the expiration of exposure, or by such other method as may be prescribed or approved by the commissioner.

(Amended by Stats. 2005, Ch. 412, Sec. 4. Effective January 1, 2006.)

12111. An admitted financial guaranty insurance corporation shall adopt procedures reasonably calculated to ensure, to the extent it is commercially feasible for the financial guaranty insurance corporation, that any prospectus which discloses that a policy of financial guaranty insurance has been issued also discloses that in the event the financial guaranty insurance corporation were to become insolvent, any claims arising under the policies of financial guarantee insurance are excluded from coverage by the California Insurance Guaranty Association, established pursuant to Article 15.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1.

(Amended by Stats. 2005, Ch. 412, Sec. 5. Effective January 1, 2006.)

12112. (a) Except as provided in Section 12118, financial guaranty insurance may be transacted in this state only by an insurer admitted to transact financial guaranty insurance.

(b) The following guaranties are permissible:

(1) Financial guaranty insurance shall be written only to insure timely payment of contractual obligations, including principal and interest, purchase obligations, dividends, or any other payment obligation, however characterized of the following:

(A) Municipal obligation bonds.

(B) Special revenue bonds.

(C) Industrial development bonds.

(D) Obligations of corporations, trusts, or similar entities established under applicable law.

(E) Partnership obligations.

(F) Asset-backed securities, trust certificates and trust obligations other than mortgage-backed securities secured by first mortgages on real property which are insurable by a mortgage guaranty insurer authorized under Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2, unless one of the following applies:

(i) The mortgages with loan-to-value ratios in excess of 80 percent are insured by mortgage guaranty insurers authorized under Chapter 2A (commencing with Section 12640.01) of Part 6 of Division 2, are insured by mortgage guaranty insurers

licensed under the laws of any other state if that insurer has a claims paying rating of investment grade from a securities rating agency acceptable to the commissioner, or are in an aggregate principal amount less than the single risk limits prescribed in subdivision (e) of Section 12115.

(ii) Additional mortgages with principal balances, other collateral with a market value, or, provided the insured risk is investment grade, excess spread, in each instance in an amount at least equal to the coverage that would otherwise be provided by those mortgage guaranty insurers in accordance with item (i) of this subparagraph are pledged as additional support for the asset-backed securities.

(G) Installment purchase agreements executed as a condition of sale.

(H) Consumer debt obligations.

(I) Utility first mortgage obligations.

(J) Any other debt instrument or monetary obligation that the commissioner determines by order, regulation, or written consent to be substantially similar to any of the foregoing.

(2) A corporation may insure the timely payment of monetary obligations in any category designated in paragraph (1), notwithstanding that the obligation may be insured by a financial guaranty insurance policy issued by another insurer. In the event that any obligation is insured by more than one financial guaranty insurance policy, then each of the insurance policies may by its terms specify its priority of payment in the event of a default under the obligation insured or under any other insurance policy, provided that an insurer shall be entitled to take into account payment under another policy insuring the obligation for purposes of establishing and maintaining loss reserves only to the extent that the policy issued by the insurer provides for payment only in the event of payment default under both the obligation and the other policy.

(3) A corporation may also write financial guaranty insurance, as defined in subparagraph (A) of paragraph (1) of subdivision (a) of Section 12100 to insure the timely payment of non-United States dollar debt instruments or other monetary obligations denominated or payable in foreign currency, only for the categories listed in subparagraphs (A) to (J), inclusive, of paragraph (1), provided that each of the following conditions is satisfied:

(A) The currency is that of an Organisation for Economic Co-operation and Development country or another country whose sovereign rating is investment grade, or the country is not disapproved by the commissioner within 30 days following receipt of written notification. The commissioner shall not disapprove the country if it is demonstrated that there is no undue risk associated with insuring the timely payment of the instruments or obligations. In making such a determination, the commissioner shall take into consideration the corporation's outstanding liabilities on noninvestment grade instruments and obligations in relation to its outstanding liabilities on all instruments and obligations and in relation to the amount of surplus to policyholders.

(B) Reserves required pursuant to Sections 12108, 12109, and 12110 in regard to the obligations are established and adjusted quarterly based upon the then current foreign exchange rates.

(C) The obligations do not exceed 25 percent of an insurer's aggregate net liability.

(D) The aggregate and single risk limitations prescribed by Section 12106 and 12115 are determined by applying the then current foreign exchange rates.

(Amended by Stats. 2005, Ch. 412, Sec. 6. Effective January 1, 2006.)

12113. An admitted financial guaranty insurance corporation shall keep copies of all relevant materials prepared by the insurer or used in the initial underwriting or ongoing monitoring of insured risk; all relevant documents pertaining to changes in the credit risk or performance of the insured on the obligation, and all materials pertaining to the examination of the condition of collateral, assets, or other security; and any other materials requested by the commissioner. All those materials shall be maintained for the entire period during which the insurance is in force and shall be available for examination upon request of the commissioner by the commissioner or by any rating agency approved by the commissioner.

(Added by Stats. 1990, Ch. 1032, Sec. 6.)

12114. (a) An insurer may insure obligations enumerated in subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (b) of Section 12112 that are not investment grade so long as at least 95 percent of the insurer's total net liability on the kinds of obligations enumerated in those subparagraphs is investment grade.

(b) The financial guaranty insurance corporation shall at all times maintain capital, surplus, and contingency reserve in the aggregate no less than the sum of the following:

- (1) 0.3333 percent of the total net liability under guaranties of municipal bonds and utility first mortgage obligations.
- (2) 0.6666 percent of the total net liability under guaranties of investment grade asset-backed securities.
- (3) 1.0 percent of the total net liability under guaranties, secured by collateral or having a term of seven years or less of:
 - (A) Investment grade industrial development bonds, and
 - (B) Other investment grade obligations.

(4) 1.5 percent of the total net liability under guaranties of other investment grade obligations.

(5) 2.0 percent of the total net liability under guaranties of:

- (A) Noninvestment grade consumer debt obligations, and
- (B) Noninvestment grade asset-backed securities.

(6) 3.0 percent of the total net liability under guaranties of noninvestment grade obligations secured by first mortgages on commercial real estate and having loan-to-value ratios of 80 percent or less.

(7) 5.0 percent of the total net liability under guaranties of other noninvestment grade obligations.

(8) If the amount of collateral required by paragraph (3) of subdivision (b) is no longer maintained, that proportion of the obligation insured which is not so collateralized shall be subject to the aggregate limits specified in paragraph (4) of subdivision (b).

(9) Additional surplus determined by the commissioner to be adequate to support the writing of surety insurance and credit insurance if the financial guaranty insurance corporation has been authorized to transact surety insurance and credit insurance as authorized by Section 12102.

(c) Whenever the reserves for outstanding credit insurance losses or loss expenses or any insurer licensed in this state to transact financial guaranty insurance are determined by the commissioner to be inadequate, he or she shall require the insurer to maintain additional reserves.

(Amended by Stats. 2005, Ch. 412, Sec. 7. Effective January 1, 2006.)

12115. A financial guaranty insurance corporation admitted to transact financial guaranty insurance in this state shall limit its exposure to loss, net of collateral and reinsurance, as follows:

(a) For municipal obligation bonds and special revenue bonds:

(1) The insured average annual debt service with respect to any one entity and backed by a single revenue source may not exceed 10 percent of the aggregate of the financial guaranty insurance corporation's capital, surplus, and contingency reserve.

(2) The insured unpaid principal issued by a single entity and backed by a single revenue source may not exceed 75 percent of the aggregate of the financial guaranty insurance corporation's capital, surplus, and contingency reserve.

(b) For each issue of asset-backed securities issued by a single entity, and for each pool of consumer debt obligations, the lesser of:

(1) Insured average annual debt service; or

(2) Insured unpaid principal (reduced by the extent to which the unpaid principal of the supporting assets and, provided the insured risk is investment grade, excess spread, exceed the insured unpaid principal) divided by nine; shall not exceed 10 percent of the aggregate of the financial guaranty insurance corporation's capital, surplus, and contingency reserve, provided that no asset in the pool supporting the asset-backed securities exceeds the single risk limits prescribed in subdivision (e) of Section 12115 if directly guarantied; and provided further that, if the issuer of such insured asset-backed securities is a special purpose corporation, trust or other entity and that issuer shall have indebtedness outstanding with respect to any other pool of assets, either such other indebtedness shall be entitled to the benefits of a financial guaranty policy of the same financial guaranty insurance corporation, or such other indebtedness shall (A) be fully subordinated to the insured obligation, with respect to, or be nonrecourse with respect to, the pool of assets that supports the insured obligation, (B) be nonrecourse to the issuer other than with respect to the asset pool securing such other indebtedness and proceeds in excess of the proceeds necessary to pay the insured obligation ("excess proceeds") and (C) not constitute a claim against the issuer to the extent that the asset pool securing such other indebtedness or excess proceeds are insufficient to pay such other indebtedness.

(c) For obligations issued by a single entity and secured by commercial real estate, and not meeting the definition of asset-backed securities, the insured unpaid principal less 50 percent of the appraised value of the underlying real estate shall not exceed 10

percent of the aggregate of the financial guaranty insurance corporation's capital, surplus, and contingency reserve.

(d) For utility first mortgage obligations, the insured average annual debt service shall not exceed 10 percent of the aggregate of the financial guaranty insurance corporation's capital, surplus, and contingency reserve.

(e) For all other financial guaranties, the insured unpaid principal for any one entity and backed by a single revenue source may not exceed 10 percent of the aggregate of the financial guaranty insurance corporation's capital, surplus, and contingency reserve.

(Amended by Stats. 2005, Ch. 412, Sec. 8. Effective January 1, 2006.)

12115.5. (a) If an admitted financial guaranty insurance corporation fails to maintain a rating in any of the top three generic rating classifications by any securities rating agency acceptable to the commissioner, it shall immediately send written notification of this failure to both the commissioner and the insurance regulatory authority in its state of domicile.

(b) (1) If an admitted financial guaranty insurance corporation fails to maintain a rating at least equal to the highest notch in the fourth generic rating classification by any securities rating agency acceptable to the commissioner, the insurer shall prepare and file with the commissioner a two-year business plan, in reasonable detail, together with other information that the commissioner requires. The plan shall be filed within 45 days of the date when the insurer fails to maintain that rating.

(2) In response to that failure, the commissioner may conduct any examination or analysis of the insurer's assets, liabilities, and operations, including its pricing, that he or she deems necessary.

(3) After reviewing the business plan and conducting any examination or analysis, the commissioner may issue a corrective order specifying the corrective measures that he or she determines to be required, and the insurer shall implement those measures. In determining corrective measures, the commissioner may take into account the factors that he or she deems relevant with respect to the insurer, including the results of the examination or analysis.

(c) If an admitted financial guaranty insurance corporation fails to maintain an investment grade rating by any securities rating agency acceptable to the commissioner, it shall not do either of the following without the commissioner's specific prior written approval:

(1) If domiciled in this state, accept additional risks or issue new policies anywhere.

(2) If domiciled in another state, accept additional risks in this state or issue new policies insuring risks in this state.

(Added by Stats. 2005, Ch. 412, Sec. 9. Effective January 1, 2006.)

12116. (a) If an admitted financial guaranty insurance corporation at any time exceeds any limitation prescribed by subdivision (a) or (b) of Section 12114 or Section 12115, the corporation shall immediately notify the commissioner in writing. Upon receipt of the written notification, or independent of its receipt, the commissioner may issue an order to show cause why the financial guaranty insurance corporation should not cease transacting financial guaranty insurance business. If the commissioner issues such an order, the commissioner shall serve notice of hearing with the order to the financial guaranty insurance corporation stating the time and place therefor, and the conduct, condition or grounds upon which the commissioner has made the order. The hearing shall occur not less than 20 nor more than 30 days after notice is served. At the hearing, the burden to show cause why the financial guaranty insurance corporation should not cease transacting new financial guaranty insurance shall be borne solely by the financial guaranty insurance corporation.

(b) If the commissioner does not issue an order pursuant to subdivision (a) upon receiving written notice, the financial guaranty insurance corporation shall, within 30 days after the limitations are breached, submit a written plan to the commissioner detailing the steps that it will take or has taken to reduce its exposure to loss to no more than the amounts permitted by subdivisions (a) and (b) of Section 12114 and Section 12115. If, after review of the written plan, the commissioner determines that the corporation has not presented reasonable steps to reduce its exposure to loss to not more than the permitted amounts, the commissioner may issue an order to show cause following the same procedures as prescribed in subdivision (a).

(c) If, after notice and hearing pursuant to subdivision (a) or (b), the commissioner determines that the financial guaranty insurance corporation has exceeded any limitation prescribed by subdivision (a) or (b) of Section 12114 or Section 12115, the commissioner may order the corporation to cease transacting any new financial guaranty insurance business until its exposure to loss no longer exceeds these limitations.

(d) The provisions of this section and Section 12115.5 shall in no way limit the stop order power of the commissioner under any other section.

(Amended by Stats. 2005, Ch. 412, Sec. 10. Effective January 1, 2006.)

12116.5. (a) The commissioner may, for good cause, implement by regulation, order, or written consent, reasonable conditions or limitations under which any or all admitted financial guaranty insurance corporations may insure the type of business described in

paragraph (2) of subdivision (c) of Section 12100 or subdivision (a) of Section 12119, reduce reserves in respect of collateral described in paragraph (2) or (5) of subdivision (e) of Section 12100, or engage in the transactions described in subdivision (b) of Section 12106, when, in the judgment of the commissioner, those conditions or limitations are necessary and appropriate to safeguard insurer solvency.

(b) Whenever the reserves for outstanding liabilities for obligations insured under subdivision (c) of Section 12100 are determined by the commissioner to be inadequate, he or she shall require the insurer to maintain additional reserves.

(c) The commissioner may disallow, for purposes of any financial statements or reports required or permitted to be filed under this code, the recognition of collateral authorized by paragraph (2) or (5) of subdivision (e) of Section 12100 if the commissioner finds after inquiry and review that the collateral fails to legally secure the obligations to which it relates, the collateral is inaccurately valued, the value of the collateral is insufficient in relation to the obligations secured, or the legality or value of the collateral cannot readily be ascertained based on information provided.

(d) The commissioner may require restatement or other relevant revision of any admitted financial guaranty insurer's annual or other financial statement or report required or permitted to be filed under this code if the commissioner finds after inquiry and review that any transaction entered into under subdivision (b) of Section 12106 has the effect of distorting, misrepresenting, or otherwise rendering inaccurate, misleading, or incomplete the financial condition of the insurer in any material respect.

(e) No credit default swap authorized or permitted to be insured, acquired, or otherwise used for any purpose by any admitted financial guaranty insurance corporation under any provision of this code shall be used in any manner for more than one purpose, or under more than one statutory authorization, unless authorized by this code.

(Added by Stats. 2005, Ch. 412, Sec. 11. Effective January 1, 2006.)

12117. A financial guaranty insurance corporation shall not be deemed in violation of any limitation prescribed by Section 12115 with respect to any financial guaranty insurance outstanding prior to January 1, 1991, if the financial guaranty insurance corporation was in compliance with the applicable single risk limit in effect in this state at the time that the financial guaranty insurance policy was issued. If the financial guaranty insurance corporation was not so in compliance, it shall comply with the limitations prescribed by Section 12115 no later than January 1, 1994.

(Added by Stats. 1990, Ch. 1032, Sec. 6.)

12118. An admitted insurer transacting financial guaranty insurance in this state but which is not admitted to transact, financial guaranty insurance in this state shall be subject to all the provisions of this article and:

(a) May continue to write financial guaranties of the type authorized by subdivision (b) of Section 12112 as follows:

(1) For a period not to exceed five years from January 1, 1991, provided that by July 1, 1991, application shall be made to the commissioner to organize or admit a financial guaranty insurance corporation, controlled by or under common control with that insurer, which financial guaranty insurance corporation, once admitted, shall immediately assume all of the financial guaranty insurance in force on the books of the insurer which was written on or after January 1, 1991.

(2) In the case of an insurer transacting only financial guaranty insurance prior to January 1, 1991, which would comply with all of the requirements for admission as a financial guaranty insurance corporation under this article and which has made application, and has paid the filing fee of five thousand dollars (\$5,000) required by Section 12105 to amend its current certificate of authority to financial guaranty insurance by no later than March 1, 1991, the insurer may continue to write financial guaranty insurance until the time that the commissioner issues or denies the amended certificate of authority or the application is otherwise terminated.

(b) Shall, if it does not make application for an amended certificate of authority to transact the business of financial guaranty insurance pursuant to paragraph (1) of subdivision (a), cease writing any new financial guaranty insurance by no later than July 1, 1991. An insurer subject to this paragraph may do one or more of the following:

(1) Reinsure its net in-force business with an admitted financial guaranty insurance corporation.

(2) Subject to the prior approval of its domiciliary commissioner and the commissioner of this state, reinsure all or part of its net in-force business with an insurer meeting the requirements of subdivision (b) of Section 12121, except that, in the case of an admitted surety insurer or a nonadmitted insurer that transacts financial guaranty insurance and insurance other than financial guaranty insurance, the insurer's combined capital and surplus shall be at least one hundred million dollars (\$100,000,000) and subparagraphs (A) to (F), inclusive, of paragraph (3) of subdivision (b) of Section 12121 shall not be applicable. The assuming insurer shall maintain reserves for the reinsured business in the manner applicable to the ceding insurer under paragraph (2) of subdivision (a) of Section 12121.

(3) Thereafter continue the risks then in force and, with 30 days prior written notice to its domiciliary commissioner, write new financial guaranty policies provided the writing of the policies is reasonably prudent to mitigate either the amount of or possibility of

loss in connection with business written prior to January 1, 1991. However, an insurer shall receive the prior approval of its domiciliary commissioner and the commissioner of this state before writing any new financial guaranty insurance policies that would have the effect of increasing its risk of loss.

(c) Shall, for all guaranties in force prior to January 1, 1991, including those that fall under the definition of financial guaranty insurance contained in subdivision (a) of Section 12100, be subject to the contingency reserve, reserves for loss and loss adjustment expenses, and unearned premium reserve requirements applicable for municipal bond insurance policies which were in effect prior to July 1, 1989, or January 1, 1991, as appropriate. To the extent that the insurer's contingency reserves maintained as of the effective date of this article are less than those required under paragraph (1) of subdivision (b) of Section 12108, the insurer shall have until January 1, 1994, to bring its reserves into compliance, except that a part of the reserve may be released proportional to the reduction in net total liabilities resulting from reinsurance, provided that the reinsurer shall, on the effective date of the reinsurance, establish a reserve in an amount equal to the amount released and, in addition, a part of the reserve may be released with the approval of the commissioner upon demonstration that the amount carried is excessive in relation to the corporation's outstanding obligations.

(d) Shall be subject to the reserve requirements applicable to financial guaranty insurance corporations, for business transacted on or after January 1, 1991.

(Amended by Stats. 1994, Ch. 662, Sec. 4. Effective January 1, 1995.)

12119. Policy forms and any amendments thereto shall be filed with the commissioner within 30 days after their use in this state by the financial guaranty insurance corporation.

(a) (1) Every policy shall provide that, in the event of a payment default or insolvency of the obligor, there shall be no acceleration of the payments required to be made under the policy with respect to guaranteed obligations except at the option of the financial guaranty insurance corporation.

(2) Notwithstanding paragraph (1), the following provisions apply:

(A) A policy may insure amounts payable under a credit default swap or interest rate, currency, or other swap upon a credit event or termination event if the expected amount payable on an accelerated basis in respect of any individual obligation referenced by a credit default swap or in the aggregate under an interest rate, currency, or other swap does not exceed the single risk limits prescribed in subdivision (e) of Section 12115.

(B) A policy insuring a credit default swap referencing an obligation shall be treated as if the insurer had directly insured the referenced obligation for all other purposes of this article, including, without limitation, contingency reserve requirements, except that the currency of amounts owed under the credit default swap, rather than the currency of the obligations referenced by the credit default swap, shall apply for purposes of determining whether the obligation is a permissible guaranty under subdivision (b) of Section 12112.

(b) Every policy shall contain a statement that in the event the insurer were to become insolvent, any claims arising under a policy of financial guaranty insurance are excluded from coverage by the California Insurance Guaranty Association, established pursuant to Article 15.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1.

(c) The commissioner may prescribe additional minimum policy provisions determined by the commissioner to be necessary or appropriate to protect policyholders, claimants, obligees, or indemnitees.

(Amended by Stats. 2005, Ch. 412, Sec. 12. Effective January 1, 2006.)

12120. An admitted financial guaranty insurance corporation with respect to financial guaranty insurance rates, shall not be subject to Sections 1861.01 and 1861.05, except that financial guaranty insurance rates shall not be excessive, inadequate, or unfairly discriminatory or otherwise in violation of Chapter 9 (commencing with Section 1850) of Part 2 of Division 1.

(Added by Stats. 1990, Ch. 1032, Sec. 6.)

12121. (a) For financial guaranty insurance that takes effect on or after January 1, 1991, an insurer authorized to transact financial guaranty insurance shall receive credit for reinsurance as an asset or as a reduction from liabilities only if the reinsurance is placed with a reinsurer as provided in subdivision (b), and if the reinsurance agreement may be terminated or amended only if one or more of the following applies:

(1) At the option of the reinsurer or the ceding insurer if the reinsurance agreement provides that the liability of the reinsurer with respect to policies in effect at the date of termination shall continue until the expiration or cancellation of each such policy.

(2) With the consent of the ceding company, if the reinsurance agreement provides for a cutoff of the reinsurance in force as of the date of termination.

(3) At the discretion of the commissioner acting as rehabilitator, liquidator, or receiver of the ceding or assuming insurer.

(b) Reinsurance may be placed with one of the following:

(1) Another financial guaranty insurance corporation admitted pursuant to this article to transact financial guaranty insurance which may be under common control with the ceding financial guaranty insurer or financial guaranty corporation, but which does not own, and is not owned by, in whole or in part, directly or indirectly, the ceding financial guaranty insurer or financial guaranty insurance corporation.

(2) Another financial guaranty insurance corporation admitted pursuant to this article which does own, or is owned by, in whole or in part, directly or indirectly, the ceding financial guaranty insurer or financial guaranty insurance corporation provided that (A) the value of the ownership interest in either case does not exceed the greater of (i) 35 percent of its combined capital and surplus or (ii) 50 percent of the excess of its surplus over its liabilities and capital, and (B) the financial guaranty insurance corporation providing the reinsurance is rated at the time of cession and thereafter in one of the two top generic rating classifications by a securities rating agency acceptable to the commissioner.

(3) An insurer admitted to transact surety insurance but not financial guaranty insurance pursuant to this article, if the insurer meets all of the following criteria:

(A) Has and maintains combined capital and surplus of at least fifty million dollars (\$50,000,000).

(B) Establishes and maintains the reserves required in Sections 12108, 12109, and 12110, except that if the reinsurance agreement is not pro rata the contribution to the contingency reserve shall be equal to 50 percent of the quarterly earned insurance premium.

(C) Complies with the provisions of subdivision (b) of Section 12114, except that its maximum aggregate assumed total net liability shall be one-half that permitted for a financial guaranty insurance corporation. For the purpose of determining compliance with this clause, the assuming reinsurer, unless at the time of cession and thereafter it is rated in one of the two top generic rating classifications by a securities rating agency acceptable to the commissioner, shall be limited to using 10 percent of its capital and surplus in making this calculation.

(D) Complies with the provisions of Section 12115.

(E) If the insurer is an affiliate, parent, or subsidiary of the financial guaranty insurance corporation, the affiliate, parent, or subsidiary shall not assume a percentage of the corporation's total liability in excess of its percentage of equity interest in the corporation.

(F) Assumes from the financial guaranty insurance corporation and any affiliate, parent, or subsidiary that is a financial guaranty insurance corporation or an insurer writing only financial guaranty insurance as is or would be permitted by this article, and any other kinds of insurance that a financial guaranty insurance corporation may write in this state, together with all other reinsurers subject to this paragraph, less than 50 percent of the total exposures insured by the financial guaranty insurance corporation and such affiliates, parent, or subsidiaries after deducting any reinsurance placed with another financial guaranty insurance corporation that is not an affiliate, parent, or subsidiary or an insurer writing only financial guaranty insurance as is or would be permitted by this article that is not an affiliate, parent, or subsidiary.

(4) A nonadmitted insurer transacting only financial guaranty insurance as is or would be permitted by this article and that otherwise complies with the provisions of subparagraphs (A), (E), and (F) of paragraph (3), and otherwise complies with paragraph (1) or (2), and in compliance with the requirements of subdivision (b) or (c) of Section 922.4 or subdivision (a) of Section 922.5, as applicable.

(5) A nonadmitted insurer not transacting only financial guaranty insurance as is or would be permitted by this article and that complies with the provisions of subparagraphs (A), (C), (E), and (F) of paragraph (3) in an amount not exceeding the liabilities carried by the ceding financial guaranty insurance corporation and in compliance with the requirements of subdivision (b), (c), or (d) of Section 922.4 or subdivision (a) or (b) of Section 922.5, as applicable.

(c) In determining whether the financial guaranty insurance corporation meets the limitations imposed by Section 12115, in addition to credit for other types of qualifying reinsurance, the financial guaranty insurance corporation's aggregate risk may be reduced to the extent of the limit for aggregate reinsurance but, in no event, in an amount greater than the amount of the aggregate risk that will become due during the unexpired term of the reinsurance agreement in excess of the financial guaranty insurance corporation's retention pursuant to the reinsurance agreement.

(Amended by Stats. 2012, Ch. 277, Sec. 13. (SB 1216) Effective January 1, 2013.)

12122. No insurer authorized to transact financial guaranty insurance shall pay any commission to or make any gift of money, property, or other valuable thing to any employee, agent, or representative of any issuer of any debt instrument or other monetary

obligation of any kind which may be insured pursuant to this article or to any trustee or agent of any such issuer, or to any employee, agent, or representative of any underwriter of any issuer of those debt instruments or monetary obligations as an inducement to the purchase of that insurance, nor may, at any time there is in force a policy issued by that insurer insuring those debt instruments or monetary obligations, any employee, agent, or representative of the issuer or underwriter receive from or on behalf of that insurer any such payment or gift.

(Added by Stats. 1990, Ch. 1032, Sec. 6.)