

CHAPTER 22
FINANCIAL GUARANTY INSURANCE

Chapter exempt from chapter rescission pursuant to Iowa Code section 17A.7

191—22.1(515C) Definitions.

22.1(1) “*Financial guaranty insurance*” means a surety bond, insurance policy or, when issued by an insurer, an indemnity contract and any guaranty similar to a surety bond, insurance policy, or insurer-issued indemnity contract, 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 an obligor on a debt instrument or other monetary obligation (including common or preferred stock guaranteed under a surety bond, insurance policy, or indemnity contract) to pay when due principal, interest, premium, dividend, or purchase price of or on the debt instrument or monetary obligation, when the failure is the result of a financial default or insolvency, regardless of whether the obligation is incurred directly or as guarantor by or on behalf of another obligor that has also defaulted.

b. A change in the level of interest rates, whether short- or long-term, or the differential in interest rates between various markets or products.

c. A change in the rate of exchange of currency.

d. Inconvertibility of one currency into another for any reason, or inability to withdraw funds held in a foreign country resulting from restrictions imposed by a governmental authority.

e. A change in the value of a specific asset or commodity, financial or commodity index, or price levels in general.

f. Another event which the commissioner determines is substantially similar to any of those in paragraphs “*a*” through “*e*.”

22.1(2) “*Financial guaranty insurance*” does not include:

a. Insurance of a loss resulting from an event described in subrule 22.1(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:

(1) A fortuitous physical event.

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

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

b. An individual or schedule public official bond.

c. A contract bond, including bid, payment, or maintenance bond, or a performance bond if the bond is guarantying the execution of any contract other than a contract of indebtedness or other monetary obligation.

d. A court bond required in connection with judicial, probate, bankruptcy, or equity proceedings, including a waiver, probate, open estate, and life tenant bond.

e. A bond running to the federal, state, county, or municipal government, or other political subdivision, as a condition precedent to granting of a license to engage in a particular business or of a permit to exercise a particular privilege.

f. A loss security bond or utility payment indemnity bond running to a governmental unit, railroad, or charitable organization.

g. A lease, purchase and sale, or concessionaire surety bond.

h. 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 a debtor, for the installments or other periodic payments becoming due while a debtor is unemployed.

i. Credit insurance, meaning insurance indemnifying manufacturers, merchants, or educational institutions extending credit against loss or damage resulting from nonpayment of debts owed to them for goods or services provided in the normal course of their business.

j. Guaranteed investment contracts issued by life insurance companies which provide that the life insurer itself will make specified payments in exchange for specific premiums or contributions.

k. Residual value insurance.

- l.* Mortgage guaranty insurance authorized by Iowa Code chapter 515C.
- m.* An indemnity contract or similar guaranty in which an insurer guaranties its obligations or indebtedness or the obligations or indebtedness of a subsidiary of which it owns more than 50 percent, other than a financial guaranty insurance corporation.
- n.* Any other form of insurance covering risks which the commissioner determines to be substantially similar to any of the forms in this subrule.

22.1(3) “*Industrial development bond*” means a 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 payable or guarantied by a governmental unit.

22.1(4) “*Investment grade*” means having a rating of not less than Baa3 by Moody’s Investors Service or BBB- by Standard and Poor’s Corporation, or a comparable rating by any nationally recognized rating service, or a rating of not less than 2 by the National Association of Insurance Commissioners, or, if not rated, having characteristics substantially comparable to obligations rated.

22.1(5) “*Municipal obligation bond*” means a security, or other instrument, including a state lease but not a lease of any other governmental entity, under which a payment obligation is created, issued by or on behalf of a governmental unit to finance a project serving a substantial public purpose, and which 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 guarantied by the United States or any agency, department, or instrumentality of the United States, or by a state housing agency.
- 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 a lease obligation, payable from future appropriations.

22.1(6) “*Special revenue bond*” means a 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 substantial purpose and not payable from the sources enumerated in subrule 22.1(5) in connection with the payment of a municipal obligation bond.

22.1(7) “*Security*” or “*secured*” means any or all of the following:

- a.* A deposit equal to at least the full amount of the principal of the insured obligation.
- b.* Collateral at least equal to the full amount of the principal of the insured obligation, or the scheduled cash flow from which is equal to or greater than the scheduled debt service on the insured obligation and is due prior to the date when the scheduled debt service is payable.
- c.* Property, provided the corporation has possession of evidence of the right, title or authority to claim or foreclose on the property or otherwise dispose of such property for value, the scheduled cash flow from which, or market value of which, is at least equal to the scheduled debt service on the insured obligation and is due prior to the date when the scheduled debt service is payable.

191—22.2(515) Financial requirements and reserves. An insurance company otherwise authorized under Iowa Code chapter 515 to write financial guaranty insurance shall do so only when all of the following requirements are satisfied:

22.2(1) It has paid-in capital of at least \$1 million and surplus of at least \$1 million.

22.2(2) It establishes a contingency reserve, net of reinsurance, as follows:

- a.* The contributions to the reserve shall be calculated by applying the following percentages to the net principal written each calendar year of guaranties issued or delivered in this state of:
 1. Municipal obligation bonds, 0.8 percent.
 2. Special revenue bonds, 1.2 percent.
 3. Industrial development bonds, 1.6 percent.
 4. Secured investment grade obligations, 1.6 percent.
 5. Investment grade obligations not secured, 2.5 percent.
 6. All other obligations guarantied, 3.0 percent.
- b.* (1) Quarterly additions to the reserve for paragraph “*a.*,” “1,” “2,” and “3” above must be equal to the greater of one-eightieth of the amounts derived by applying the appropriate contribution specified in

paragraph “a” or 50 percent of the quarterly earned premiums on the guaranties and must be maintained for a period of 20 years.

(2) Quarterly additions to the reserve for paragraph “a,” “4” to “6” must be equal to the greater of one-fortieth of the amounts derived by applying the appropriate contribution specified in paragraph “a” or 50 percent of the quarterly earned premiums on the guaranties and must be maintained for a period of ten years.

c. The reserve may be released after the expiration of the applicable time period, listed in paragraph “b,” subparagraphs (1) and (2), in the same manner, except that a part of the reserve may be released proportional to the reduction in net total liabilities resulting from reinsurance and the reinsurer shall, on the effective date of the reinsurance, establish a reserve in an amount equal to the amount released.

d. A withdrawal from the contingency reserve, to the extent of any excess, may be made from the earliest contributions to the reserve remaining in the reserve:

(1) With the approval of the commissioner, in any year in which the actual incurred losses exceed 35 percent of earned premiums.

(2) Upon 30 days’ prior notice to the commissioner, provided that the contingency reserve has been in existence for 40 quarters, for reserves subject to paragraph “b,” subparagraph (1), and 20 quarters, for reserves subject to paragraph “b,” subparagraph (2), upon demonstration that the amount carried is excessive in relation to the corporation’s outstanding obligations.

22.2(3) In addition to the contingency reserve, the case basis method or other method as the commissioner may require must be used to determine loss reserve on guaranties issued or delivered in this state. This method shall include a reserve for claims reported and unpaid net of collateral. A deduction from loss reserves must 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 insurer as of the date of the computation of the reserve. The discount rate shall be adjusted at the end of each calendar year.

22.2(4) The insurance company shall maintain an unearned premium reserve on guaranties issued or delivered in this state, net of reinsurance, computed on the month pro rata basis, if financial guaranty premiums are paid on an installment basis. All other financial guaranty premiums paid must be earned proportionately with the expiration of exposure, or by any other method the commissioner requires or approves.

These rules are intended to implement Iowa Code sections 511.8(5) and 515C.6.

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