

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Insurance
Regulation/Package Title: Corporate governance annual disclosure.
Rule Number(s): 3901-3-19

Date: January 12, 2017

Rule Type:

☒ New

☐ Amended

☐ Rescinded

☐ 5-Year Review

☐ No Change

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Regulatory Intent

1. Please briefly describe the draft regulation in plain language.

Please include the key provisions of the regulation as well as any proposed amendments.

The intent of the rule is to provide more information to the department on insurers' corporate governance practices on an annual basis. Currently, the department obtains information on insurers' corporate governance practices during full-scope examinations, which typically occur once every three to five years. However, information on governance practices, including changes that can have a substantial impact on current and prospective solvency, is not widely available to regulators in the period between onsite examinations. Through the adoption of standards in this area, regulators can ensure that sufficient

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117
CSIOhio@governor.ohio.gov

information on governance practices is available to assess the solvency of insurers on an annual basis.

These rules set forth requirements regarding corporate governance annual disclosures that are required of all domestic insurers. They include specifics regarding filing procedures and contents of the disclosure in order for the insurers to demonstrate the strengths of their governance framework and practices.

2. Please list the Ohio statute authorizing the Agency to adopt this regulation.

Sections 3901.77 and 3901.074 of the Revised Code.

3. Does the regulation implement a federal requirement? ☐ Yes ☒ No

Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?

☐ Yes ☒ No

If yes, please briefly explain the source and substance of the federal requirement.

Not applicable.

4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.

Not applicable.

5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?

The purpose for this regulation is to establish the required content of the Corporate Governance Annual Disclosure (CGAD) in order for the superintendent of insurance to gain an understanding of the insurer's corporate governance structure, policies and practices.

U.S. insurance regulators have concluded that in order to effectively ensure the long-term success of insurers, state regulators must have greater insight into insurers' corporate governance practices. State regulators, members of the National Association of Insurance Commissioners (NAIC), and members of the insurance industry began to work together to identify essential corporate governance principles to be used in U.S. insurance regulation. Collaboration between the NAIC and the insurance industry led to the creation of the CGAD model law and model rule, which represent the best practices for the corporate governance of insurers.

6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?

Success will be measured by all domestic insurers providing the necessary CGAD by the annual deadline. Additionally, the information in the CGAD enables the superintendent of

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insurance to gain an understanding of the insurer's corporate governance structure, policies and practices.

Development of the Regulation

7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation. *If applicable, please include the date and medium by which the stakeholders were initially contacted.*

Interested stakeholders for this rule include the Association of Ohio Life Insurance Companies (AOLIC), the Ohio Association of Health Plans (OAHP), the Ohio Insurance Institute (OII), the American Fraternal Alliance (AFA), the Property and Casualty Insurers (PCI) and the National Association of Mutual Insurance Companies (NAMIC). The department began informally sharing a draft of the rule early in 2016 as meetings were held with the various stakeholder associations. In October 2016 the proposed rule was emailed to stakeholders formally requesting comment; a second email was sent approximately two weeks after the first email reminding stakeholders to submit comments. No changes were requested.

8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?

Interested parties and stakeholders were included throughout the process. However, they did not request changes to the rule.

9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?

The NAIC developed the model CGAD act and rule, which was created and vetted through a committee process that included research and input from numerous state regulators and industry stakeholders. This was a multi-year project to study and compare existing governance requirements for U.S. insurers to establish best practices, international standards and U.S. regulatory needs.

10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?

No alternative regulation was considered. The rule was specifically developed to provide detail regarding the requirements of the CGAD. The language of this model regulation was developed in conjunction with the model statute during a collaborative stakeholder process.

11. Did the Agency specifically consider a performance-based regulation? Please explain.

Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.

The corresponding statute, section 3901.074 of the Revised Code requires that the superintendent establish the required content of the CGAD. However, the rules were designed so the insurer has discretion regarding the appropriate format for providing the information. The insurer is permitted to customize the communication to provide the most relevant information necessary to permit the superintendent to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer.

In completing the annual disclosure, the insurer may reference other existing documents (e.g., the own risk and solvency assessment (ORSA) summary report, holding company form B or form F filings, U.S. securities and exchange commission (SEC) proxy statements, foreign regulatory reporting requirements, etc.) to the regulator in fulfillment of the information requested in various areas in order to eliminate duplication of paperwork.

12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?

The department is the sole regulator for insurance in the state of Ohio so there are no duplicate regulations.

13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.

The rules included in this packet will form the structure to guide the consistent application of regulation.

The department has already engaged the insurers regarding timelines and filing requirements. The department has offered to hold training sessions, as needed, for smaller insurers. Staff will review submissions by insurers in "round table" format to allow the staff to normalize around a standard review process. Feedback will be given to insurers on deficiencies and opportunities to cure will be offered.

Adverse Impact to Business

14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:

- a. Identify the scope of the impacted business community;
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and
- c. Quantify the expected adverse impact from the regulation.

The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.

a. Insurers domiciled in Ohio.

b. Insurers will need to annually complete and file the CGAD. In the first year this may take a substantial amount of time to compile and format the information. In the following years, the document will simply need to be updated with any changes that occurred during the year so the impact in later years should be significantly less.

c. To complete the initial CGAD, the insurer will need to spend an estimated forty working hours gathering the necessary information. Most of the information that is required to be included should already be known to the insurer and relied upon in its ongoing board and business operations. Many insurers currently summarize and describe their corporate governance practices to a number of various stakeholders on a regular basis. In addition, the disclosure requirements allow reference to existing documents and filings and provide guidance for filing changes from the prior year to simplify the reporting process. The time to complete subsequent CGADs should drop significantly as the insurer will only need to update the CGAD with any changes that occurred during the year.

In light of the fact that this is a new submission requirement, there have been no CGADs filed at this time. Staff have simply made a good faith estimate of the impact based on typical submissions to the department. Staff will be offering trainings to impacted insurers to assist them in understanding the requirements of the filing and making suggestions on how to avoid unnecessary duplication of work. Department staff will maintain communications with insurers to track potential common omissions or misunderstandings to help ensure that the process remains effective and efficient.

15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?

Currently, the department obtains a significant amount of information on insurers’ corporate governance practices during full-scope examinations, which typically occur once every three to five years. However, information on governance practices, including changes that can have a substantial impact on current and prospective solvency, is not widely available to the department in the period between onsite examinations. Through the adoption of standards in this area, the department can ensure that sufficient information on governance practices is available to assess the solvency of insurers on an annual basis.

Regulatory Flexibility

16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.

The insurer has discretion regarding the appropriate format for providing the information and is permitted to customize the reporting to provide the most relevant information necessary to permit the department to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer. This includes a recognition by the department that smaller insurers may submit less complex CGADs and may need additional advice and guidance as to the filing requirements.

17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?

Paperwork violations and/or first time offender issues would be handled on a case by case basis to determine whether the violation could have a serious impact on the overall financial solvency of the insurer.

Minor errors would be handled by advising the entity and providing them an opportunity to cure the omission.

18. What resources are available to assist small businesses with compliance of the regulation?

Department staff is available to assist any insurer regardless of size. Given that the CGAD is new to Ohio, staff will maintain specific contact points and access to information located in a subject matter dedicated area of the department's web page. Staff will also be available during normal department business hours to answer any questions and training sessions will be offered to smaller insurers on an as-needed basis.