

**REVISED PROPOSED REGULATION OF THE
COMMISSIONER OF INSURANCE**

LCB File No. R108-16

October 19, 2016

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-10, NRS 679B.130.

A REGULATION relating to insurance; requiring the establishment of an internal audit function for certain insurers and groups of insurers; revising provisions relating to auditing for insurers and groups of insurers; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the Commissioner of Insurance to adopt reasonable regulations for the administration of the Nevada Insurance Code. (NRS 679B.130) Existing law also requires certain insurers to annually file with the Commissioner a financial statement certified by a certified public accountant who is not an employee of the insurer. (NRS 680A.265) **Section 4** of this regulation requires certain insurers or groups of insurers to establish an internal audit function and establishes requirements relating to the internal audit function. **Section 3** of this regulation exempts certain insurers from the requirements of **section 4**. **Section 8** of this regulation requires the audit committee responsible for an insurer or group of insurers to oversee the internal audit function of the insurer or group of insurers and grant the persons responsible for the internal audit function suitable authority and resources to perform the function.

Section 1. Chapter 680A of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *“Internal audit function” means a person or persons who provide independent, objective and reasonable assurance designed to add value and improve an organization’s operations and accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, internal control and governance processes.*

Sec. 3. 1. *An insurer is exempt from the requirements of section 4 of this regulation if:*

(a) The insurer has annual direct written and unaffiliated assumed premiums, including international direct and assumed premiums but excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, of less than \$500,000,000; and

(b) If the insurer is a member of a group of insurers, the group of insurers of which the insurer is a member has annual direct written and unaffiliated assumed premiums, including international direct and assumed premiums but excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, of less than \$1 billion.

2. An insurer who was previously exempt from the requirements of section 4 of this regulation pursuant to subsection 1 but no longer qualifies for such an exemption shall comply with the requirements of section 4 of this regulation within 1 year after the date on which the insurer ceased to qualify for an exemption pursuant to subsection 1.

Sec. 4. 1. *Each insurer or group of insurers shall establish an internal audit function to provide assurance to the audit committee and the management of the insurer or group of insurers regarding the governance, risk management and internal controls of the insurer or group of insurers. The internal audit function must provide this assurance by performing general and specific audits, reviews and tests and by employing other techniques deemed necessary to protect assets, evaluate internal control effectiveness and efficiency and evaluate compliance with policies and regulations.*

2. The internal audit function must be organizationally independent to ensure that internal auditors remain objective. The internal audit function shall not defer ultimate

judgment on any audit matter to others. The audit committee shall appoint a person to head the internal audit function who has direct and unrestricted access to each applicable board of directors. A requirement that the internal audit function report to more than one person does not violate the requirements of this subsection.

3. The person appointed to head the internal audit function shall report to the audit committee regularly, but not less than annually, on the plan of the internal audit function for periodic audits, factors that may adversely impact the independence or effectiveness of the internal audit function, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.

4. An insurer which is a member of an insurance holding company system as defined in NRS 692C.060 or included in a group of insurers is deemed to satisfy the requirements of this section if an internal audit function has been established within the legal entity which exercises ultimate control over the insurer, within the intermediate holding company or within the insurer which satisfies the requirements of this section with respect to the insurer.

Sec. 5. NAC 680A.005 is hereby amended to read as follows:

680A.005 “Audit committee” means a committee or equivalent body established by the board of directors of an entity for the purpose of overseeing the accounting and financial reporting processes of an insurer or group of insurers , *the internal audit function of an insurer or group of insurers* and *all other* audits of financial statements of the insurer or group of insurers.

Sec. 6. NAC 680A.189 is hereby amended to read as follows:

680A.189 1. The insurer’s financial statements must be examined by an independent certified public accountant for the purposes of and the regulations adopted pursuant thereto. The

audit of the insurer's financial statements must be conducted in accordance with generally accepted auditing standards. In accordance with AU Section ~~{319, Consideration of Internal Control in a Financial Statement Audit,}~~ **314, Understanding the Entity and Its Environment and Assessing the Risks of Material Misstatement**, included in the *AICPA Professional Standards*, as adopted by reference in subsection 2, the independent certified public accountant must obtain an understanding of the insurer's internal control sufficient to plan the audit. If required by AU Section ~~{319,}~~ **314**, for those insurers required to file a Management's Report on Internal Control Over Financial Reporting pursuant to NAC 680A.203, the independent certified public accountant shall consider the most recently available report in planning and performing the audit of the financial statements. Consideration should be given to the procedures set forth in the *Financial Condition Examiners Handbook*, adopted by reference in NAC 679B.033, as the independent certified public accountant deems necessary.

2. The *AICPA Professional Standards* are hereby adopted by reference and may be obtained ~~{by mail}~~ from the American Institute of Certified Public Accountants ~~{, Member Service Center, Order Processing, 220 Leigh Farm Road, Durham, North Carolina 27707-8110 or}~~ by ordering via telephone at (888) 777-7077, by facsimile at (800) 362-5066 or on the Internet at ~~{<http://www.epa2biz.com>}~~ <http://www.aicpastore.com/> at the price of ~~[\$135]~~ **\$179** for members of the American Institute of Certified Public Accountants and ~~[\$168.75]~~ **\$219** for nonmembers.

Sec. 7. NAC 680A.193 is hereby amended to read as follows:

680A.193 1. In addition to the annual Audited Financial Report, each insurer shall furnish the Commissioner with a completed Communication of Internal Control Related Matters Noted in an Audit as to any ~~{unremediated}~~ material weaknesses in its internal control over financial reporting noted during the audit.

2. The report required pursuant to the provisions of this section must be prepared by the independent certified public accountant within 60 days after the date on which the annual Audited Financial Report is filed with the Commissioner and must contain a description of any ~~unremediated~~ material weakness in the insurer's internal control over financial reporting noted during the audit of the insurer's financial statements by the accountant, as of December 31 of the most recent calendar year.

3. If there are no ~~unremediated~~ material weaknesses noted, the report to the Commissioner must state that there are no ~~unremediated~~ material weaknesses noted.

4. The insurer must provide a description of any remedial actions taken or proposed to be taken to correct any ~~unremediated~~ material weaknesses, if the actions taken by the insurer are not described in the accountant's report.

5. As used in this section, ~~unremediated~~ "material weakness" has the meaning ascribed to it in the Statements of Auditing Standards No. ~~112,~~ *115*, Communicating Internal Control Related Matters Identified in an Audit, included in the *AICPA Professional Standards*, adopted by reference in NAC 680A.189.

Sec. 8. NAC 680A.199 is hereby amended to read as follows:

680A.199 1. The provisions of this section do not apply to a foreign or alien insurer licensed in this State or an insurer that is a SOX Compliant Entity or a direct or indirect wholly owned subsidiary of a SOX Compliant Entity.

2. The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant for the purpose of preparing or issuing the Audited Financial Report or related work pursuant to NAC 680A.173 to 680A.211, inclusive ~~1,~~ *and sections 3 and 4 of this regulation.* Any dispute between the management of the insurer and the

accountant during the course of the audit regarding the financial reporting for the preparation or issuance of the annual Audited Financial Report of the insurer must be resolved by the audit committee. Each accountant shall report directly to the audit committee.

3. *The audit committee shall be responsible for:*

(a) Overseeing the internal audit function of the insurer or group of insurers; and

(b) Granting the internal audit function suitable authority and resources to perform its function.

4. Each member of the audit committee must be a member of the board of directors of the insurer or a member of the board of directors of an entity that controls a group of insurers. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.

~~4.1~~ 5. Except as otherwise provided in this subsection, to be considered independent for the purposes of this section, a member of the audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board or committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. If, by law, participation on the board of directors by otherwise nonindependent members is required, such members may participate in the audit committee and be designated as independent for audit committee purposes, unless they are an officer or employee of the insurer or one of its affiliates. The audit committee of any entity that controls a group of insurers may be deemed to be the audit committee for one or more of these controlled insurers solely for the purposes of NAC 680A.173 to 680A.211, inclusive, *and sections 3 and 4 of this regulation* at the election of the controlling person.

~~15.1~~ 6. If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, the insurer shall provide notice to the Commissioner, and the member may remain an audit committee member of the insurer until the earlier of the next annual meeting of the insurer or 1 year after the occurrence of the event that caused the member to be no longer independent.

~~16.1~~ 7. To exercise the election of the controlling person to designate the audit committee for purposes of NAC 680A.173 to 680A.211, inclusive, *and sections 3 and 4 of this regulation*, the ultimate controlling person shall provide written notice to the insurance regulatory authority of other affected states. Notification must be made timely before the issuance of the Audited Financial Report and include a description of the basis for the election. The election may be changed through notice to the Commissioner by the insurer, which must include a description of the basis for the change. The election remains in effect for perpetuity or until rescinded.

~~17.1~~ 8. The audit committee shall require the independent certified public accountant that performs any audit for an insurer as required by NAC 680A.173 to 680A.211, inclusive, *and sections 3 and 4 of this regulation* to timely report to the audit committee in accordance with the requirements of Statements of Auditing Standards No. ~~61.1~~ *114, The Auditor's Communication [with Audit Committees,] With Those Charged With Governance*, included in the *AICPA Professional Standards*, as adopted by reference in NAC 680A.189, including, without limitation:

- (a) All significant accounting policies and material permitted practices;
- (b) All material alternative treatments of financial information within statutory accounting principles that have been discussed with the management of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and

(c) Any other material written communications between the independent certified public accountant and the management of the insurer, including any management letter or schedule of unadjusted differences.

~~18.1~~ **9.** If an insurer is a member of an insurance holding company system ~~1.1~~ *as defined in NRS 692C.060*, the reports required by subsection ~~17.1~~ **8** may be provided to the audit committee on an aggregate basis for the insurers in the holding company system if the independent certified accountant identifies to the audit committee any substantial differences among insurers in the system.

~~19.1~~ **10.** The proportion of independent audit committee members must meet or exceed the following criteria:

| Previous Calendar Year Direct Written and Assumed Premiums | | |
|--|--|---|
| \$0 – 300,000,000 | \$300,000,001 – 500,000,000 | Over \$500,000,000 |
| No minimum requirements. | Majority (50 percent or more) of members shall be independent. | Supermajority (75 percent or more) of members shall be independent. |

~~110.1~~ **11.** The Commissioner may require the board of directors of an insurer or a group of insurers to enact improvements to the independence of the audit committee membership, if:

(a) The insurer is subject to filing the Risk-Based Capital (RBC) Report and the insurer has identified a risk-based capital action level event pursuant to the provisions of NAC 681B.400 to 681B.595, inclusive;

(b) The insurer meets one or more of the standards of an insurer deemed to be in hazardous financial condition identified pursuant to NRS 680A.205 and NAC 680A.220 to 680A.226, inclusive; or

(c) The insurer otherwise exhibits qualities of a troubled insurer.

~~{11}~~ **12.** All insurers with less than \$500 million in direct written and assumed premiums for the previous calendar year are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

~~{12}~~ **13.** An insurer with direct written and assumed premiums, excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, of less than \$500 million may apply in writing to the Commissioner for a waiver from the requirements of this section based on hardship. If the waiver is granted, the insurer shall file, with its annual statement filing, the approval for the waiver with the states in which it is licensed or doing business and with the National Association of Insurance Commissioners. If the nondomestic state accepts electronic filing with the National Association of Insurance Commissioners, the insurer shall file the approval in an electronic format acceptable to the National Association of Insurance Commissioners.

~~{13. — The requirements of this section become effective on January 1, 2010, except that:}~~

14. Notwithstanding any provision of this section to the contrary:

(a) An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premiums must comply with the independence requirements within 1 year after the year the threshold is exceeded; and

(b) An insurer that becomes subject to one of the independence requirements because of a business combination must comply with the independence requirements within 1 calendar year after the date of acquisition or combination.

Sec. 9. NAC 680A.203 is hereby amended to read as follows:

680A.203 1. Except as otherwise provided in subsections 2 and 3, beginning with the reporting period ending December 31, 2010, and each year thereafter, every insurer required to file an Audited Financial Report pursuant to NRS 680A.265 and the regulations adopted pursuant thereto that has annual direct written and assumed premiums of \$500 million or more, excluding premiums reinsured with the Federal Crop Insurance Corporation and the National Flood Insurance Program, must prepare a report of the insurer's or group of insurers' internal control over financial reporting. The Management's Report on Internal Control Over Financial Reporting must be filed with the Commissioner along with the Communication of Internal Control Related Matters Noted in an Audit report described in NAC 680A.193. The Management's Report on Internal Control Over Financial Reporting must be current as of the previous December 31.

2. An insurer or a group of insurers:

(a) That is not required to file an Audited Financial Report because the total written premium of the insurer or group of insurers is below the threshold and subsequently becomes subject to the reporting requirements shall file the Management's Report on Internal Control Over Financial Reporting within 2 years after the year in which the threshold is exceeded; or

(b) That is acquired in a business combination shall file the Management's Report on Internal Control Over Financial Reporting within 2 calendar years after the date of acquisition or combination.

3. In addition to an insurer described in subsection 1, the Commissioner may require an insurer to file the Management's Report on Internal Control Over Financial Reporting if:

(a) The insurer is subject to the Risk-Based Capital Report pursuant to the provisions of NRS ~~681B.290~~ **681B.550** and the insurer has identified a risk-based capital action level event that requires the insurer to file a corrective action plan pursuant to the provisions of NAC 681B.400 to 681B.595, inclusive;

(b) The insurer meets one or more of the standards of an insurer deemed to be in hazardous financial condition identified pursuant to the provisions of NRS 680A.205 and NAC 680A.220 to 680A.226, inclusive; or

(c) The insurer otherwise exhibits qualities of a troubled insurer.

4. An insurer or group of insurers that is:

(a) Directly subject to the provisions of Section 404;

(b) A member of a holding company system whose parent is directly subject to Section 404;

(c) Not directly subject to Section 404 but a SOX Compliant Entity; or

(d) A member of a holding company system whose parent is not directly subject to Section 404 but is a SOX Compliant Entity,

↳ may file its or its parent's Section 404 Report and an addendum in satisfaction of this section's requirement, if those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer's or group of insurers' statutory Audited Financial Reports were included in the scope of the Section 404 Report. The addendum must be a positive statement by the management of the insurer that there are no material processes with respect to the preparation of the insurer's or group of insurers' statutory Audited Financial Reports excluded from the Section 404 Report.

5. If there are internal controls of the insurer or group of insurers that have a material impact on the preparation of the insurer's or group of insurers' statutory Audited Financial Reports and those internal controls were not included in the scope of the Section 404 Report, the insurer or group of insurers may file:

(a) The Management's Report on Internal Control Over Financial Reporting; or

(b) The Section 404 Report and the Management's Report on Internal Control Over Financial Reporting for those internal controls that have a material impact on the preparation of the insurer's or group of insurers' statutory Audited Financial Reports not covered by the Section 404 Report.

6. A Management's Report on Internal Control Over Financial Reporting must include each of the following:

(a) A statement that the management of the insurer is responsible for establishing and maintaining adequate internal control over financial reporting.

(b) A statement that the management of the insurer has established internal control over financial reporting and an assertion, to the best of the management's knowledge and belief after diligent inquiry, as to whether its internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles.

(c) A statement that briefly describes the approach or processes by which the management of the insurer evaluated the effectiveness of its internal control over financial reporting.

(d) A statement that briefly describes the scope of work that is included and whether any internal controls were excluded.

(e) A statement disclosing any ~~unremediated~~ material weaknesses in the internal control over financial reporting identified by the management of the insurer as of the previous December 31. The management of the insurer may not conclude that the internal control over financial reporting is effective to provide reasonable assurance regarding the reliability of financial statements in accordance with statutory accounting principles if there are one or more ~~unremediated~~ material weaknesses in its internal control over financial reporting.

(f) A statement regarding the inherent limitations of internal control systems.

(g) Signatures of the chief executive officer and the chief financial officer or, in the absence of one of these positions, signatures of two other principal officers or directors who have an equivalent position or title.

7. The management of the insurer shall document and make available upon examination of its financial condition the basis upon which its assertions are made, as required pursuant to subsection 6. Such basis may include its review, monitoring and testing of internal controls undertaken in the normal course of its activities.

8. The management of the insurer has discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost-effective manner and, as such, may include assembly of or reference to existing documentation.

9. The Management's Report on Internal Control Over Financial Reporting and any documentation provided in support thereof during the course of a financial condition examination must be kept confidential by the Division.

10. As used in this section, ~~unremediated~~ "material weakness" has the meaning ascribed to it in the Statements of Auditing Standards No. ~~112~~ **115**, Communicating Internal Control

Related Matters Identified in an Audit, included in the *AICPA Professional Standards*, adopted by reference in NAC 680A.189.

Sec. 10. This regulation becomes effective on January 1, 2017.