

Rule Summary and Fiscal Analysis

Part A - General Questions

EXHIBIT 7

Rule Number: 3901-1-50

Rule Type: Amendment

Rule Title/Tagline: Annual financial reports.

Agency Name: Department of Insurance

Division:

Address: 50 W Town Street Suite 300 Columbus OH 43215

Contact: Tina Chubb **Phone:** (614) 728-1044

Email: Tina.Chubb@insurance.ohio.gov

I. Rule Summary

1. **Is this a five year rule review?** Yes
 - A. **What is the rule's five year review date?** 2/22/2021
2. **Is this rule the result of recent legislation?** No
3. **What statute is this rule being promulgated under?** 119.03
4. **What statute(s) grant rule writing authority?** 3901.041
5. **What statute(s) does the rule implement or amplify?** 3901.07, 3901.77
6. **What are the reasons for proposing the rule?**

This rule is being reviewed as a part of the agency five year rule review.

7. **Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.**

The purpose of rule 3901-1-50, annual audited financial reports, is to facilitate the department's surveillance of the financial condition of insurers by requiring (a) an annual audit of financial statements reporting the financial position and results of operation of insurers by independent certified public accountants, (b) communication

of internal control related matters noted in an audit, and (c) management's report of internal control over financial reporting.

Proposed amendments to this rule include an addition to the NAIC model enacted in 2016, this simply clarifies that entities whom were exempt from paragraph (O) of this rule and no longer qualify for the exemption, shall have one year after the threshold is exceeded to comply with the requirements of paragraph (O) of this rule. Amendments to paragraph (L)(5) of this rule, broaden accountants authority to file annual audited financial reports by not requiring Ohio specific license authority but rather their respective state licensing authority. Various technical amendments are also proposed.

8. **Does the rule incorporate material by reference? No**
9. **If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

Not Applicable

10. **If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

Not Applicable

II. Fiscal Analysis

11. **Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

0.00

Not applicable.

12. **What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

Not applicable.

13. **Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

14. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No
15. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.

Not applicable.

III. Common Sense Initiative (CSI) Questions

16. Was this rule filed with the Common Sense Initiative Office? Yes
17. Does this rule have an adverse impact on business? Yes
 - A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? No
 - B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No

The rule imposes no direct penalty. However, a company that fails to comply with the filing requirement would violate rule 3901-3-04 of the Administrative Code, placing it into hazardous financial condition, and making it subject to administrative action under sections 3903.01 to 3903.59 of the Revised Code.

- C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes

The costs of the audits depend on the size and complexity of the audit, and it is expected that every company would be conducting audits for their own financial review. These requirements are similar to the auditing requirements of publicly traded companies monitored by the Securities and Exchange Commission.

- D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No

IV. Regulatory Restrictions (This section only applies to agencies indicated in R.C. 121.95 (A))

18. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? No

A. How many new regulatory restrictions do you propose adding?

Not Applicable

B. How many existing regulatory restrictions do you propose removing?

Not Applicable

3901-1-50

Annual financial reports.**EXHIBIT 8****(A) Purpose**

- (1) The purpose of this rule is to facilitate the department's surveillance of the financial condition of insurers by requiring (a) an annual audit of financial statements reporting the financial position and results of operation of insurers by independent certified public accountants, (b) communication of internal control related matters noted in an audit, and (c) management's report of internal control over financial reporting. This rule shall apply to all insurers, except those insurers having direct premiums written of less than one million dollars and having less than one thousand policyholders nationwide at the end of any year. Those insurers will be exempt from this rule for the year they do not meet this threshold unless the superintendent makes a specific finding that compliance by the insurer is necessary for the superintendent to carry out his or her statutory responsibilities. Insurers having assumed premiums to contracts and/or treaties of reinsurance of one million dollars or more will not be exempt. Insurers filing audited financial reports in another state, pursuant to such other state's requirement of audited financial reports, which are found by the superintendent to be substantially similar to the requirements herein, are exempt from this rule if:
 - (a) A copy of the audited financial report, communication of internal control related matters noted in audit, and the accountant's letter of qualifications, which are filed with such other states are filed with the superintendent in accordance with the filing dates specified in paragraphs (D), (K) and (L) of this rule. (Canadian insurers may submit accountants' reports as filed with the office of the superintendent of financial institutions, Canada); and
 - (b) A copy of any notification or report of adverse financial condition filed with such other state is filed with the superintendent within the time specified in paragraph (J) of this rule. Foreign or alien insurers required to file management's report of internal control over financial reporting in another state are exempt from filing the report in this state provided the other state has substantially similar reporting requirements and the report is filed with the superintendent of the other state within the time specified.
- (2) This rule shall not prohibit, preclude or in any way limit the superintendent from ordering, conducting and performing examinations of insurers under the rules and regulations and the practice and procedures of the department.

(B) Authority

This rule is promulgated pursuant to the authority vested in the superintendent under section 3901.041 of the Revised Code which requires the superintendent to adopt, amend, and rescind rules and make adjudications necessary to discharge his or her duties and exercise his or her powers under Title XXXIX of the Revised Code, subject to sections 119.01 to 119.13 of the Revised Code. This rule is issued to implement sections 3901.04, 3901.07 and 3901.77 of the Revised Code.

(C) Definitions

- (1) "Audited Financial Report" means the annual report defined in the items specified in paragraph (E) of this rule.
- (2) "Accountant" and "Independent Certified Public Accountant" mean an independent certified public accountant or accounting firm, as defined by the general standards of the "American Institute of Certified Public Accountants," in good standing with the "American Institute of Certified Public Accountants" and in all states in which it is licensed to practice; for Canadian and British companies, it means a Canadian-chartered or British-chartered accountant.
- (3) An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
- (4) "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 process of an insurer or group of insurers, the internal audit function of an insurer or group of insurers (if applicable), and external audits of financial statements of the insurer or group of insurers. 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 this rule at the election of the controlling person. Refer to paragraph (N) of this rule for exercising this election. If an audit committee is not designated by the insurer, the insurer's entire board of directors shall constitute the audit committee.
- (5) "Department" means the Ohio department of insurance.
- (6) "Indemnification" means an agreement of indemnity or a release from liability where the intent or effect is to shift or limit in any manner the potential liability of the person or firm for failure to adhere to applicable auditing or professional standards, whether or not resulting in part from knowing of other misrepresentations made by the insurer or its representatives.

- (7) "Independent board member" has the same meaning as described in paragraph (N) of this rule.
- (8) "Internal audit function" means a person or persons that 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, control and governance processes.
- (9) "Internal control over financial reporting" means a process effected by an entity's board of directors, management and other personnel designed to provide reasonable assurance regarding the reliability of the financial statements, i.e., those items specified in paragraphs (E)(2) to (E)(7) of this rule, and includes those policies and procedures that:
- (a) Pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets;
 - (b) Provide reasonable assurance that transactions are recorded as necessary to permit preparation of the financial statements, i.e., these items specified in paragraphs (E)(2) to (E)(7) of this rule, and that receipts and expenditures are being made only in accordance with authorizations of management and directors; and
 - (c) Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of assets that could have a material effect on the financial statements, i.e., these items specified in paragraphs (E)(2) to (E)(7) of this rule.
- (10) "SEC" means the United States securities and exchange commission.
- (11) "Section 404" means section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's rules and regulations promulgated thereunder.
- (12) "Section 404 Report" means management's report on "internal control over financial reporting" as defined by the SEC and the related attestation report of the independent certified public accountant as described in paragraph (C)(2) of this rule.
- (13) "SOX Compliant Entity" means an entity that either is required to be compliant with, all of the following provisions of the Sarbanes-Oxley Act of 2002: (i) the preapproval requirements of section 201 (section 10A(i) of the Securities Exchange Act of 1934); (ii) the audit committee independence requirements of section 301 (section 10A(m)(3) of the Securities Exchange Act of 1934); and

- (iii) the internal control over financial reporting requirements of section 404 (item 308 of SEC regulation S-K0).
- (14) "Insurer" means ~~a~~ an entity licensed insurer as defined in pursuant to Chapter ~~1738., 1739.,~~ 1751., 3907., 3909., 3911., 3925., 3929., 3931. or 3953. of the Revised Code.
- (15) "Group of Insurers" means those ~~licensed insurers~~ entities included in the reporting requirements of sections 3901.32 to 3901.37 of the Revised Code, or a set of insurers as identified by management, for the purpose of assessing the effectiveness of internal controls over financial reporting.
- (16) "Statutory accounting practices" has the meaning defined in the current editions of "Annual Statement Instructions" and the "Accounting Practices and Procedures Manual" published by the "National Association of Insurance Commissioners," or as otherwise prescribed by the insurance department of the insurer's state of domicile.
- (17) "Superintendent" means the superintendent of ~~insurance of the state of Ohio~~ the Ohio department of insurance.
- (18) "Workpapers" means the records kept by an independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to his or her audit of the financial statements of an insurer. Workpapers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules of commentaries prepared or obtained by the independent certified public accountant in the course of his or her audit of the financial statements of an insurer and, which support his or her opinion thereof.
- (D) General requirements related to filing and extensions for filing of audited financial reports and audit committee appointment

All insurers shall have an annual audit by an independent certified public accountant and shall file an audited financial report as a supplement to the annual statement with the superintendent on or before June first for the immediately preceding year ended December thirty-first. Extensions of the June first filing date may be granted in writing by the superintendent for thirty day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting such extension and determination by the superintendent of good cause for an extension. The request for an extension must be submitted in writing not less than ten days prior to the due

date in sufficient detail to permit the superintendent to make an informed decision with respect to the requested extension.

If an extension is granted, a similar extension of thirty days is granted to the filing of management's report of internal control over financial reporting.

Every insurer required to file an annual audited financial report pursuant to this rule shall designate a group of individuals as constituting its audit committee, as defined in paragraph (C)(4) of this rule. The audit committee of any entity that controls an insurer may be deemed to be the insurer's audit committee for purposes of this rule at the election of the controlling person.

The superintendent may require an insurer to file an audited financial report earlier than June first with ninety days advance notice to the insurer.

(E) Contents of audited financial report

The audited financial report shall report the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for the year then ended in conformity with statutory accounting practices. The audited financial report shall include the following items:

- (1) Report of independent certified public accountant;
- (2) Balance sheet reporting admitted assets, liabilities, capital and surplus;
- (3) Statement of operations;
- (4) Statement of cash flows;
- (5) Statement of changes in capital and surplus;
- (6) Notes to financial statements. These notes shall be those appropriate to a CPA audited financial report, based on applicability, materiality and significance, taking into account the subjects covered in the instructions to and illustrations of how to report information in the notes to financial statements section of the "NAIC" annual statement instructions and any other notes required by the "NAIC Accounting Practices and Procedures Manual" and shall include:
 - (a) A reconciliation of differences, if any, between the audited statutory financial statements and the annual financial statement filed with the superintendent including a written description of the nature of these differences; and

- (b) A narrative explanation of all significant intercompany transactions and balances; and
 - (c) A summary of ownership and relationships of the insurer and all affiliated companies.
- (7) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual financial statement of the insurer filed with the superintendent and:
- (a) The financial statements shall be comparative, presenting the amounts as of December thirty-first of the current year and amounts as of the immediately preceding year ending December thirty-first. (However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted); and
 - (b) Amounts may be rounded to the nearest thousand dollars.

(F) Designation of independent certified public accountant

- (1) Each insurer required by this rule to file an audited financial report must, within sixty days after becoming subject to such requirement, register with the superintendent, in writing, the name and address of the independent certified public accountant retained to conduct the annual audit required in this rule. Insurers not previously retaining an independent certified public accountant shall register the name and address of their retained independent certified public accountant not less than six months before the date when the first audited financial report is to be filed.
- (2) The insurer shall obtain a letter from such accountant, and file a copy of such letter with the superintendent, stating that the accountant is aware of the provisions of the insurance code and the rules and regulations of the insurance department of its state of domicile that relate to accounting and financial matters and affirming that he or she will express his or her opinion on the financial statements of the insurer in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by such insurance department, specifying such exceptions as he or she may believe appropriate. If an accountant, who was not the accountant for the insurer's most recently filed audited financial report, is engaged to audit the insurer's financial statements, the insurer shall, within thirty days of the date the accountant is engaged, notify the department of this event.

- (3) If an accountant who was the accountant for the immediately preceding filed audited financial report is dismissed or resigns, the insurer shall within five business days notify the department of insurance of this event. The insurer shall also furnish the superintendent with a separate letter within ten business days of the above notification stating whether in the twenty four months preceding such engagement there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him or her to make reference to the subject matter of the disagreement in connection with his or her opinion. Disagreements contemplated by this paragraph are those that occur at the decision-making level, i.e., between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. The insurer shall also request, in writing, such former accountant to furnish a letter, addressed to the insurer, stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he or she does not agree; and the insurer shall furnish such responsive letter from the former accountant to the superintendent, together with its own letter.

(G) Qualifications of independent certified public accountant

An insurer may not use any person or firm as an independent certified public accountant if such person or firm: (1) is not in good standing with the "American Institute of Certified Public Accountants" in all states in which the person or firm is licensed to practice or, for a Canadian or British company, that is not a chartered accountant; (2) has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as "indemnification") with respect to the audit of the insurer. Except as otherwise provided herein, an insurer may use a certified public accountant as its independent certified public accountant only if and for as long as such accountant conforms to the standards of his or her profession, as contained in the "Code of Professional Conduct" of the "American Institute of Certified Public Accountants" and "Rules of Professional Conduct" of the "Accountancy Board of Ohio," or similar code.

The lead (or coordinating) audit partner (having primary responsibility for the audit) may not act in that capacity for more than five consecutive years. The person shall be disqualified from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of five consecutive years. An insurer may make application to the superintendent of insurance for relief from the above rotation requirement on the basis of unusual circumstances. This application should be made at least thirty days before the end of the calendar year. The superintendent may consider the following factors in determining if the relief should be granted:

(a) number of partners, expertise of the partners or the number of insurance clients in the currently registered firm; (b) premium volume of the insurer; or (c) number of jurisdictions in which the insurer transacts business. The insurers shall file, with its annual statement filing, the proof of relief from the five years limitation with the states that it is licensed in or doing business in and with the "National Association of Insurance Commissioners." If the nondomestic state accepts electronic files with the NAIC, the insurer shall file the approval in an electronic format acceptable to the "National Association of Insurance Commissioners."

The superintendent shall not recognize as a qualified independent certified public accountant, nor accept any annual audited financial report, prepared in whole or in part by, any natural person who (1) has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. sections 1961-1968, or any dishonest conduct or practices under federal or state law; (2) has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this rule; or (3) has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this requirement.

The superintendent may hold a hearing to determine whether a certified public accountant is qualified and, considering the evidence presented, may rule that the accountant is not qualified for purposes of expressing his or her opinion on the financial statements in the annual audited financial report made pursuant to this requirement and require the insurer to replace the accountant with another whose relationship with the insurer is qualified within the meaning of this requirement.

- (1) The superintendent shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or in part by an accountant who provides to an insurer, contemporaneously with the audit, the following non-audit services:
- (a) Bookkeeping or other services related to the accounting records or financial statements of the insurer;
 - (b) Financial information systems design and implementation;
 - (c) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
 - (d) Actuarial-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist an insurer in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it

is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the insurer's financial statements. An accountant's actuary may also issue an actuarial opinion or certification ("opinion") on an insurer's reserves if the following conditions have been met:

- (i) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions:
 - (ii) The insurer has competent personnel (or engages a third party actuary) to estimate the reserves for which management takes responsibility:
 - (iii) The accountant's actuary tests the reasonableness of the reserves after the insurer's management has determined the amount of the reserves:
- (e) Internal audit outsourcing services:
 - (f) Management functions or human resources:
 - (g) Broker or dealer, investment advisor, or investment banking services:
 - (h) Legal services or expert services unrelated to the audit: or
 - (i) Any other services that the superintendent determines, by rule, are impermissible.
- (2) In general, the principles of independence with respect to services provided by the qualified independent certified public accountant are largely predicted on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit his or her own work, and cannot serve in an advocacy role for the insurer.

Insurers having direct written and assumed premiums of less than one hundred million dollars in any calendar year may request an exemption from this paragraph. The insurer shall file with the superintendent a written statement discussing the reasons why the insurer should be exempt from these provisions. If the superintendent finds, upon review of this statement, that compliance with this rule would constitute a financial or organizational hardship upon the insurer, an exemption may be granted.

- (3) A qualified independent certified public accountant who performs the audit may engage in other non-audit services for an insurer, including tax services, that

are not described in paragraph (G)(1) of this rule or that do not conflict with paragraph (G)(2) of this rule, only if the activity is approved in advance by the audit committee for the insurer, in accordance with paragraph (G)(4) of this rule.

- (4) All auditing services and non-audit services provided to an insurer by the qualified independent certified public accountant of the insurer shall be preapproved by the audit committee of the insurer. The preapproval requirement is waived with respect to non-audit services if the insurer is a "SOX" compliant entity or a direct or indirect wholly-owned subsidiary of a "SOX" compliant entity or;
- (a) The aggregate amount of all such non-audit services provided to the insurer constitutes not more than five per cent of the total amount of fees paid by the insurer to its qualified independent certified public account during the fiscal year in which the non-audit services are provided;
 - (b) The services were not recognized by the insurer at the time of the engagement to be non-audit services; and
 - (c) The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee or by one or more members of the audit committee who are members of the board of directors to whom authority to grant such approvals has been delegated by the audit committee.
- (5) The audit committee of an insurer may delegate to one or more designated members of the audit committee the authority to grant the preapprovals required by paragraph (G)(4) of this rule. The decisions of any member to whom this authority is delegated shall be presented to the full audit committee at each of its scheduled meetings.
- (6) The superintendent shall not recognize an independent certified public accountant as qualified for particular insurer if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for that insurer, was employed by the independent certified public accountant and participated in the audit of that insurer during the one year period preceding the date that the most current statutory opinion is due. This section shall only apply to partners and senior managers involved in the insurer's preceding audit. An insurer may make an application to the superintendent for relief from the requirement on the basis of unusual circumstances.

- (7) The insurer shall file, with its annual statement filing, the approval for relief from paragraph (G)(6) of this rule with the states that it is licensed in or doing business in and the NAIC. If the nondomestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(H) Consolidated or combined audits

An insurer may make an annual written application to the superintendent for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements if the insurer is part of a group of insurance companies which utilizes a pooling or one hundred percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report, as follows:

- (1) Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;
- (2) Amounts for each insurer subject to this rule shall be stated separately;
- (3) Non-insurance operations may be shown on the worksheet on a combined or individual basis;
- (4) Explanations of consolidating and eliminating entries shall be included; and
- (5) A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the financial statements of the insurers.

(I) Scope of audit and report of independent certified public accountant

Financial statements furnished pursuant to paragraph (E) of this rule shall be examined by an independent certified public accountant. The audit of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards. In accordance with AU section 319 of the professional standards of the accountants "American Institute of Certified Public Accountants," consideration of internal control in a financial statement audit, the independent certified public accountant should obtain an understanding of internal control sufficient to plan the audit. To the extent required by AU section 319, for those insurers required to file a management's report of internal control over financial reporting pursuant to paragraph (Q) of this rule, the independent certified public accountant should consider (as that term is defined in Statement on Auditing Standards (SAS) No. 102, defining professional requirements in statements on

auditing standards or its replacement) the most recently available report in planning and performing the audit of the statutory financial statements. Consideration should be given to such other standards illustrated in the "Financial Condition Examiner's Handbook" promulgated by the "National Association of Insurance Commissioners" as the independent certified public accountant deems necessary.

(J) Notification of adverse financial condition

- (1) The insurer required to furnish the annual audited financial report shall require the independent certified public accountant to report in writing within five business days to the board of directors or its audit committee any determination by the independent certified public accountant that the insurer has materially misstated its financial condition as reported to the superintendent as of the balance sheet date currently under audit or that the insurer does not meet the minimum capital and surplus requirement of the Revised Code as of that date. An insurer who has received a report pursuant to this paragraph shall forward a copy of the report to the superintendent within five business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the superintendent. If the independent certified public accountant fails to receive such evidence within the required five business day period, the independent certified public accountant shall furnish to the superintendent a copy of its report within the next five business days.
- (2) No independent certified public accountant shall be liable in any manner to any person for any statement made in connection with the above paragraph if such statement is made in good faith in compliance with the above paragraph.
- (3) If the accountant, subsequent to the date of the audited financial report filed pursuant to this rule, becomes aware of facts which might have affected his or her report, the department shall note the obligation of the accountant to take such action as prescribed in volume one, section AU five hundred sixty one of the "Professional Standards of the American Institute of Certified Public Accountants," as amended.

(K) Communication of internal control related matters noted in an audit

In addition to the annual audited financial report, each insurer shall furnish the superintendent with a written communication as to any unremediated material weakness in its internal controls over financial reporting noted during the audit. Such communication shall be prepared by the accountant within sixty days after the filing of the annual audited financial report, and shall contain:

- (1) A description of any unremediated material weakness (as the term material weakness is defined by statement on auditing standard sixty, communication of internal control related matters noted in an audit, or its replacement) as of December thirty-first immediately preceding (so as to coincide with the audited financial report discussed in paragraph (D) of this rule) in the insurer's internal control over financial reporting noted by the accountant during the course of their audit of the financial statements. If no unremediated material weaknesses are noted, the communication should so state.
- (2) The insurer is required to provide a description of remedial action taken or proposed to correct unremediated material weaknesses, if the actions are not described in the accountant's communications.

(L) Accountant's letter of qualifications

The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

- (1) That he or she is independent with respect to the insurer and conforms to the standards of his or her profession as contained in the "Code of Professional Ethics" and pronouncements of the "American Institute of Certified Public Accountants" and the "Rules of Professional Conduct" of the "Accountancy Board of Ohio" or other state board of public accountancy that performs the same licensing function.
- (2) The background and experience in general, and the experience in audits of insurers of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this requirement shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where such use is consistent with the standards prescribed by generally accepted auditing standards.
- (3) That the accountant understands the annual audited financial report and his or her opinion thereon will be filed in compliance with this requirement and that the superintendent will be relying on this information in the monitoring and regulation of the financial position of insurers.
- (4) That the accountant consents to the requirements of paragraph (M) of this rule and that the accountant consents and agrees to make available for review by the superintendent his or her designee or his or her appointed agent, the workpapers, as defined in paragraph (C)(18) of this rule.

(5) A representation that the accountant is properly licensed by ~~the "Accountancy Board of Ohio" and that he or she~~ an appropriate state licensing authority and is a member in good standing in the "American Institute of Certified Public Accountants."

(6) A representation that the accountant is in compliance with the requirements of paragraph (G) of this rule.

(M) Availability and maintenance of independent certified public accountant workpapers

Every insurer required to file an audited financial report pursuant to this rule shall require the accountant to make available for review by department examiners the workpapers prepared in the conduct of his or her audit and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the department, or at any other reasonable place designated by the superintendent. The insurer shall require that the accountant retain the workpapers and communications until the domiciliary department has filed a report on examination covering the period of the audit, but for no longer than seven years from the date of the audit report.

In the conduct of the aforementioned periodic review by the domiciliary department examiners, it shall be agreed that photocopies of pertinent audit workpapers may be made and retained by the domiciliary department. Such reviews by the domiciliary department examiners shall be considered investigations and all workpapers and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the domiciliary department.

(N) Requirements for audit committees

This section shall not apply to foreign or alien insurers 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.

The audit committee shall be directly responsible for the appointment, compensation and oversight of the work of any accountant (including resolution of disagreements between management and the accountant regarding financial reporting) for the purpose of preparing or issuing audited financial report or related work pursuant to this regulation. Each accountant shall report directly to the audit committee.

The audit committee of an insurer or group of insurers shall be responsible for overseeing the insurer's internal audit function and granting the person or persons

performing the function suitable authority and resources to fulfill their responsibilities if required by paragraph (O) of this rule.

Each member of the audit committee shall be a member of the board of directors of the insurer or a member of the board of directors of an entity elected pursuant to this paragraph and paragraph (C)(4) of this rule.

In order to be considered independent for purposes of this rule, 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 committee, accept any consulting, advisory or other compensatory fee from the entity or be an affiliated person of the entity or any subsidiary thereof. However, if law requires the board participation by otherwise non-independent members, that law shall prevail and 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.

If a member of the audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the responsible entity to the domiciliary state, may remain an audit committee member of the responsible entity until the earlier of the next annual meeting of the responsible entity or one year from the occurrence of the event that caused the member to be no longer independent.

To exercise the election of the controlling person to designate the audit committee for purposes of this rule, the ultimate controlling person shall provide written notice to the domiciliary commissioners of the affected insurers. Notification shall be made timely prior to the issuance of the statutory audit report and include a description of the basis for the election. The election can be changed through notice to the domiciliary commissioner by the insurer, which shall include a description of the basis for the change. The election shall remain in effect for perpetuity, until rescinded.

The audit committee shall require the accountant that performs for an insurer any audit required by this regulation to timely report to the audit committee in accordance with the requirements of "SAS" No. 61, "Communication with Audit Committees," or its replacement, including: All significant accounting policies and material permitted practices; All material alternative treatments of financial information within statutory accounting principles that have been discussed with management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

If an insurer is a member of an insurance holding company system, the reports required above may be provided to the audit committee on an aggregate basis for insurers in the holding company system, provided that any substantial differences among insurers in the system are identified to the audit committee.

The portion of independent audit committee members shall meet or exceed the following criteria:

Prior Calendar Year Direct Written and Assumed Premiums

\$0- \$300,000,000	\$300,000,000- \$500,000,000	Over \$500,000,000
No minimum requirements. See also note A and B.	Majority (50% or more) of members shall be independent. See also note A and B.	Supermajority of members (75% or more) shall be independent. See also Note A and B.

Note A: The superintendent has authority afforded by state law to require the entity's board to enact improvements to the independence of the audit committee membership if the insurer is in a "RBC" action level event, meets one or more of the standards of an insurer deemed to be in hazardous financial condition, or otherwise exhibits qualities of a troubled insurer.

Note B: All insurers with less than five hundred million dollars in prior year direct written and assumed premiums are encouraged to structure their audit committees with at least a supermajority of independent audit committee members.

Note C: Prior calendar year direct written and assumed premiums shall be the combined total of direct premiums and assumed premiums from non-affiliates for the reporting entities.

An insurer with direct written and assumed premium, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, less than five hundred million dollars may make application to the superintendent for a waiver from these requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from paragraph (N) of this rule with the states that it is licensed in or doing business in and the NAIC. If the non-domestic state accepts electronic filing with the NAIC, the insurer shall file the approval in an electronic format acceptable to the NAIC.

(O) Internal audit function requirements

(1) An insurer is exempt from the requirements of paragraph (O) of this rule if:

- (a) The insurer has annual direct written and unaffiliated assumed premium, including international direct and assumed premium but excluding premiums reinsured with the "Federal Crop Insurance Corporation" and "Federal Flood Program," less than five hundred million dollars; and
 - (b) If the insurer is a member of a group of insurers that has an annual direct written and unaffiliated assumed premium including international direct and assumed premium, but excluding premiums reinsured with the "Federal Crop Insurance Corporation" and "Federal Flood Program," less than one billion dollars.
- (2) The insurer or group of insurers shall establish an internal audit function providing independent, objective and reasonable assurance to the audit committee and insurer management regarding the insurer's governance, risk management and internal controls. This assurance shall be provided by performing general and specific audits, reviews and tests and by employing other techniques deemed necessary to protect assets, evaluate control effectiveness and efficiency, and evaluate compliance with policies and regulations.
- (3) In order to ensure that internal auditors remain objective, the internal audit function must be organizationally independent. Specifically, the internal audit function will not defer ultimate judgment on audit matters to others, and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the board of directors. Organizational independence does not preclude dual-reporting relationships.
- (4) The head of internal audit function shall report to the audit committee regularly, but no less than annually, on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits and the appropriateness of corrective actions implemented by management as a result of audit findings.
- (5) If an insurer is a member of an insurance holding company system or included in a group of insurers, the insurer may satisfy the internal audit function requirements set forth in paragraph (O) of this rule at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level.
- (P) Conduct of insurer in connection with the preparation of required reports and documents

No director or officer of an insurer shall, directly or indirectly:

- (1) Make or cause to be made a materially false or misleading statement to an accountant in connection with any audit, review or communication required under this rule; or
- (2) Omit to state, or cause another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which the statements were made, not misleading to an accountant in connection with any audit, review or communication required under this rule.

No officer or director of an insurer, or any other person acting under the direction thereof, shall directly or indirectly take any action to coerce, manipulate, mislead or fraudulently influence any accountant engaged in the performance of an audit pursuant to this rule if that person knew or should have known that the action, if successful, could result in rendering the insurer's financial statements materially misleading.

Actions that, "if successful, could result in rendering the insurer's financial statements materially misleading" include, but are not limited to, actions taken at any time with respect to the professional engagement period to coerce, manipulate, mislead or fraudulently influence an accountant:

- (a) To issue or reissue a report on an insurer's financial statements that is not warranted in the circumstances (due to material violations of statutory accounting principles prescribed by the commissioner, generally accepted auditing standards, or other professional or regulatory standards):
 - (b) Not to perform audit, review or other procedures required by generally accepted auditing standards or other professional standards;
 - (c) Not to withdraw an issued report; or
 - (d) Not to communicate matters to an insurer's audit committee.

(Q) Management's report of internal control over financial reporting

Every insurer required to file an audited financial report pursuant to this rule that has annual direct written and assumed premiums, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, of five hundred million dollars or more shall prepare a report of the insurer's or group of insurer's internal control over financial reporting as these terms are defined in paragraph (C) of this rule. The report shall be filed with the superintendent along with the communication of internal control related matters noted in an audit described in paragraph (K) of this

rule. Management's report of internal control over financial reporting shall be as of December thirty-first immediately preceding.

Notwithstanding the premium threshold, as stated above, the superintendent may require an insurer to file management's report of internal control over financial reporting if the insurer is in any "RBC" level event, or meets any one or more of the standards of an insurer deemed to be in hazardous financial condition as defined in sections ~~3903.01 to 3903.59~~ 3903.09 and 3903.71 of the Revised Code and rule 3901-3-04 of the Administrative Code.

An insurer or a group of insurers that is:

- (1) Directly subject to "Section 404";
- (2) Part of a holding company system whose parent is directly subject to "Section 404";
- (3) Not directly subject to "Section 404" but is a "SOX" compliant entity; or
- (4) 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 parents "Section 404" report on internal control and an addendum in satisfaction of this paragraph's requirement provided that those internal controls of the insurer or group of insurers having a material impact on the preparation of the insurer or group of insurers' its audited statutory financial statements were included in the scope of the "Section 404" reports. The addendum shall be a positive statement by management that there are no material processes with respect to the preparation of the insurer's or group of insurers' audited statutory financial statements excluded from the "Section 404" report. 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' audited statutory financial statements and those internal controls were not included in the scope of the "Section 404" report, the insurer or group of insurers may either file (a) a report as required by paragraph (Q) of this rule, or (b) the "Section 404" report and a report as required by paragraph (Q) of this rule for those internal controls that have a material impact on the insurer's or group of insurers' audited statutory financial statements not covered by the "Section 404" report.

Management's report of internal control over financial reporting shall include:

- (a) A statement that management is responsible for establishing and maintaining adequate control over financial reporting;

- (b) A statement that management has established internal control over financial reporting and an assertion to the best of 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 process by which management 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) Disclosure of any unremediated material weaknesses in internal control over financial reporting identified by management as of December thirty-first immediately preceding. Management is not permitted to 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 is one or more unremediated material weakness in its internal controls over financial reporting;
- (f) A statement regarding the inherent limitations of internal control systems; and
- (g) Signatures of the chief executive officer and the chief financial officer (or equivalent position/title).

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

- (i) Management shall have discretion as to the nature of the internal control framework used, and the nature and extent of documentation, in order to make its assertion in a cost effective manner, as such, may include assembly of or reference to existing documentation.
- (ii) Management's report on internal control over financial reporting, required above, and any documentation provided in support thereof

during the course of a financial condition examination, shall be kept confidential by the superintendent.

(R) Exemptions and effective dates

- (1) Upon written application of any insurer, the superintendent may grant an exemption from compliance with any and all provisions this rule if the superintendent finds, upon review of the application, that compliance with this rule would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for any specified period. Domestic insurers retaining an independent certified public accountant on the effective date of this rule shall comply with this rule for the year ending December 31, 2008, and each year thereafter unless the superintendent permits otherwise. Domestic insurers not retaining an independent certified public accountant on the effective date of this rule shall meet the following schedule for compliance, unless the superintendent gives his or her written permission otherwise.
 - (a) For the year ending December 31, 2008, file with the superintendent an audited financial report:
 - (b) For the year ending December 31, 2009, and each year thereafter, such insurers shall file with the superintendent all reports and communications required by this rule.
- (2) Foreign insurers shall comply with this rule for the year ending December 31, 2009, and each year thereafter, unless the superintendent gives his or her written permission otherwise.
- (3) The requirements of paragraph (G) of this rule shall be in effect for audits of the year beginning January 1, 2010 and thereafter.
- (4) The requirements of paragraph (N) of this rule are to be in effect January 1, 2010. An insurer or group of insurers that is not required to have independent audit committee members or only a majority of independent audit committee members (as opposed to a supermajority) because the total written and assumed premium is below the threshold and subsequently becomes subject to one of the independence requirements due to changes in premium shall have one year following the year threshold is exceeded (but not earlier than January 1, 2010) to comply with the independence requirements. Likewise, an insurer that becomes subject to one of the independence requirements as a result of a business combination shall have one calendar year following the date of acquisition or combination to comply with the independence requirements.

(5) The requirements of paragraph (O) of this rule are to be in effect January 1, 2016. If an insurer or group of insurers that is exempt from paragraph (O) of this rule requirements no longer qualifies for the exemption, it shall have one year after the threshold is exceeded to comply with the requirements of paragraph (O) of this rule.

~~(5)(6)~~ The requirements of paragraph (Q) of this rule ~~and other modified sections (identify modified sections)~~, except for paragraph (N) of this rule covered above, are effective beginning with the reporting period December 31, 2010 and each year thereafter. An insurer or group of insurers that is not required to file a report because the total written premium is below the threshold and subsequently becomes subject to the reporting requirements shall have two years following the year the threshold is exceeded (but not earlier than December 31, 2010) to file a report. Likewise, an insurer acquired in a business combination shall have two calendar years following the date of acquisition or combination to comply with the reporting requirements.

(S) Canadian and British companies

In the case of Canadian and British insurers, the audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their domiciliary supervision authority duly audited by an independent chartered accountant. For such insurers, the letter required in paragraph (F)(2) of this rule shall state that the accountant is aware of the requirements relating to the audited financial report filed with the superintendent pursuant to paragraph (Q) of this rule and shall affirm that the opinion expressed is in conformity with such requirements.

(T) Severability

If any paragraph, term or provision of this rule is adjudged invalid for any reason, the judgment shall not affect, impair or invalidate any other paragraph, term or provision of this rule, but the remaining paragraphs, terms and provisions shall be and continue in full force and effect.

Effective:

Five Year Review (FYR) Dates: 2/22/2021

Certification

Date

Promulgated Under: 119.03
Statutory Authority: 3901.041
Rule Amplifies: 3901.07, 3901.77
Prior Effective Dates: 04/05/1990, 10/31/1992, 04/13/2006, 12/27/2008,
11/18/2010, 10/29/2015



Common Sense
Initiative

EXHIBIT 9

Mike DeWine, Governor

Jon Husted, Lt. Governor

Carrie Kuruc, Director

Business Impact Analysis

Agency Name: Ohio Department of Insurance
 Rule Contact Name: Loretta Medved
 Rule Contact Information: Loretta.Medved@insurance.ohio.gov
614-644-0239

Regulation/Package Title (a general description of the rules' substantive content):
2020 FYR Access to Confidential Personal Information and Annual Financial Reports Rules

Rule Number(s): 3901-1-02 and 3901-1-50

Date of Submission for CSI Review: January 8, 2021
 Public Comment Period End Date: January 26, 2021 12:00AM

Rule Type/Number of Rules:

- New/ rules No Change/ rules (FYR?)
 Amended/ 2 rules (FYR? 2020) Rescinded/ rules (FYR?)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

Reason for Submission

1. R.C. 106.03 and 106.031 requires agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.

Which adverse impact(s) to businesses has the Agency determined the rule(s) create?

The rule(s):

- a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.
- b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.
- c. Requires specific expenditures or the report of information as a condition of compliance.
- d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.

Regulatory Intent

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

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

Rule 3901-1-02, access to confidential personal information, implements requirements statutorily mandated by section 1347.15 of the Revised Code, the rule sets forth how department staff must handle any personal information gathered in the normal course of business. Due to amendments to the applicable ORC, the rule is being amended to include two additional requirements.

Rule 3901-1-50, sets procedures for insurers to file annual financial reports to facilitate the department's ability and statutory requirement to review and analyze the financial condition of insurers. This rule is based upon a National Association of Insurance Commissioners (NAIC) accreditation standard. Proposed amendments to this rule include an addition to the NAIC model enacted in 2016, this simply clarifies that entities whom were exempt from paragraph (O) of this rule and no longer qualify for the exemption shall have one year after the threshold is exceeded to comply with the requirements of paragraph (O) of this rule. Amendments to paragraph (L)(5) of this rule, broaden accountants authority to file annual audited financial reports by not requiring Ohio specific license authority but rather their respective state licensing authority. Various technical amendments are also proposed.

3. Please list the Ohio statute(s) that authorize the Agency to adopt the rule(s) and the statute(s) that amplify that authority.

Rule 3901-1-02: Sections 1347.15(B), 3901.041, and 1347.99 of the Revised Code.

Rule 3901-1-50: Sections 3901.041, 3901.07, and 3901.77 of the Revised Code.

4. 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.

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

Not applicable.

6. 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)?

3901-1-02: The purpose of this rule is to protect the information gathered by the agency that is confidential. By administering this rule, the department is safeguarding the confidential personal information that is gathered in the process of insurance regulation.

3901-1-50: The purpose of this rule is to allow regular and thorough review of insurers' financial condition, and to ensure there are adequate funds and financial structures in place to pay policyholders' claims.

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

3901-1-02: Successful regulation would mean the continued protection of confidential personal information and appropriate handling of that information.

3901-1-50: To allow regular and thorough review of insurers' financial condition, and to ensure there are adequate funds and financial structures in place to pay policyholders' claims.

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931? Yes No

If yes, please specify the rule number(s), the specific R.C. section requiring this submission, and a detailed explanation.

Not applicable.

Development of the Regulation

9. 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.*

In June and October 2020, an email requesting comment on the rule was sent to various stakeholders, interested parties, trade associations and companies. Specifically, the department reached out to the Ohio Insurance Institute (OII), the Association of Ohio Life Insurance Companies (AOLIC), the American Council of Life Insurance (ACLI), the National Association of Insurance and Financial Advisors (NAIFA), Ohio Association of Health Plans (OAHP) and the Professional Independent Agents Association (PIAA), among others. Additionally, these rules were also posted on the department's web site for review.

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

The department received no comments on the rules from industry or the general public during the comment period.

11. 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?

3901-1-02: Rule was developed in accordance with state statute that outlines the necessary procedures to be adhered to by state agencies to adequately safeguard consumer personal information.

3901-1-50: Rule mirrors a national model adopted by the NAIC. When developing a model, the NAIC works with a subgroup consisting of representatives from multiple states. Stakeholders also provide comment as to find the right balance between consumer protection and ease of compliance.

12. 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?

3901-1-02: Rule was based on statute that requires all state agencies follow standard best practices and procedures to assure consumer personal information is protected. Alternative regulation is not appropriate.

3901-1-50: Rule is modeled upon current NAIC guidance and publications which represent nationwide industry standards. These rules provide consistent regulatory requirements for insurance carriers. Therefore, no other alternatives were considered.

13. 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.*

3901-1-02: Rule establishes a set of requirements for the department to follow in regard to the handling and protection of confidential personal information, as required by statute. Performance based regulations is not appropriate.

3901-1-50: Rule follows a national model that industry has complied with and is applied consistently across state insurance regulators.

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

The department, which serves as the sole regulator of the insurance industry in Ohio, reviewed Ohio statutes and rules and determined that it does not duplicate other regulations.

15. 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 agency's implementation of this regulation has been in place for many years the department is quite familiar with the requirements. This rule is applied consistently, as it is required all department employees when accessing confidential personal information.

Adverse Impact to Business

16. 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.

3901-1-02: There is no business impact imposed by this rule on Ohio businesses as it is a requirement impacting state agencies. Only the department, not regulated entities in the insurance industry, must adhere to this rule.

3901-1-50: Implements a national model that requires certain insurers to file forms under certain conditions.

b.

3901-1-02: There is no adverse impact to the business community as the rules pertain to how the Department must internally handle confidential information.

3901-1-50: Insurers must have internal practices in place to ensure that compliance is met. These standards are currently in place within the existing rule and provide guidance for filings.

c.

3901-1-02: There is no quantifiable impact on business as there is no impact on the business community.

3901-1-50: The proposed amendments were included in the 2016 national model and will not increase cost to those already in compliance.

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

3901-1-02: This rule sets internal guidelines on managing confidential information gathered by the department. Therefore, there is no adverse impact as there is no applicable impact on the business community.

3901-1-50: Ohio Law requires insurers to file annually with the department, and requires the department's regular and ongoing financial review. Regular financial review is vital to the department's ability to regulate and monitor the financial conditions of insurers doing business in this state and providing services to Ohio policyholders. Conducting the audit creates savings for the companies when filing with the department, because department staff can leverage the audit information while examining the financial records.

Regulatory Flexibility

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

3901-1-02: Rule does not impact businesses as it is solely a requirement on the department and is already in practice.

3901-1-50: Rule enacts an NAIC model that is a requirement of accreditation from the NAIC which is fundamental in the regulation of insurance in Ohio.

19. 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?

Section 119.14 of the Revised Code does not apply to these rules as there is no impact to the regulated community. Department staff found in violation of these rules could be subject to action from the department or authorities depending on the circumstance.

For rule 3901-1-50, the department will apply section 119.14 of the Revised Code into the implementation of this regulation by working with businesses on first-time violations of this rule.

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

Department staff is available to answer questions, regardless of the size of business. Furthermore, the department provides filing information and instructions on its web site. The department intends to continue dialogue with stakeholders through the implementation process to ensure compliance and facilitate questions.



Common Sense Initiative

EXHIBIT 10

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Loretta Medved, Ohio Department of Insurance

FROM: Jacob Ritzenthaler, Regulatory Policy Advocate

DATE: February 19, 2021

RE: CSI Review – 2020 Five Year Review (OAC 3901-1-02 and 3901-1-50)

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Department as provided for in ORC 107.54.

Analysis

This rule package consists of two amended rules proposed by the Ohio Department of Insurance (ODI). This rule package was submitted to the CSI Office on January 8, 2021 and the public comment period was held open through January 26, 2021. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on January 8, 2021.

Ohio Administrative Code (OAC) 3901-1-02 establishes requirements for employees accessing confidential personal information. The rule sets forth procedures that establish the criteria and valid reasons for accessing information, accessing confidential information electronically and lists the confidentiality statutes related to each type of confidential information. The rule is amended to include two additional types of confidential information and their authorizing statutes, including personal information under ORC Chapter 149 and records and documents related to Family and Medical Leave Act certifications, recertifications, and medical histories of employees' family members. OAC 3901-1-50 applies to all insurers and requires an annual audit of an insurer's financial status by an independent certified public accountant, communication of internal control-

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIPublicComments@governor.ohio.gov

3901-1-50 ANNUAL FINANCIAL REPORTS 063

related matters noted in an audit, and management's report over internal control over financial reporting. The rule is amended to include a one-year extension for insurers previously exempted from internal audit function requirements to comply with the requirements after they are no longer eligible for exemption. The rule also includes updates that allow an accountant to be licensed through their home state licensing authority, as well as other updates to terms and titles.

During early stakeholder outreach, ODI sent the proposed rules to industry stakeholders for feedback, including insurance Ohio and national industry professional organizations and associations. No comments were received during that time. One comment was received during the CSI public comment period that suggested notification of improper access should only be handled via mail, instead of allowing email or telephone notification. Following conversations between ODI and the stakeholder, no further amendments were suggested.

The business community impacted by these rules includes insurers operating in Ohio. The adverse impacts created by the rules include the time and effort spent by an insurer to adhere to annual report creation and submission requirements, as well as maintaining internal auditing and control over financial reporting. ODI states that the amendments are part of the 2016 National Association of Insurance Commissioners accreditation standard update and impose no new burdens on businesses. ODI states that the burden created by these rules is necessary to ensure that the financial condition of insurers is adequate in order to pay the claims made by the business' policyholders.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Department should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.

EXHIBIT 11

MEMORANDUM

To: Jacob Ritzenhaler, Regulatory Policy Advocate, Common Sense Initiative Office (CSI)
CC: Carrie Kuruc, Director of the Common Sense Initiative Office (CSI)
From: Loretta Medved, Policy Analyst
Date: February 19, 2021
Re: Response to CSI Review – (2020 FYR – OAC 3901-1-02 and 3901-1-50)

On February 19, 2021, the Ohio Department of Insurance (the Department) received the Recommendation Memorandum (CSI Recommendation) from the Common Sense Initiative Office for rule(s) 3901-1-02 Access to confidential personal information and 3901-1-50 Annual financial reports.

The CSI Recommendation stated that the office does not have any recommendations regarding this rule package, and therefore should proceed with a formal filing of the rule package.

At this time, the Department plans to move forward with the filing of this rule package with the Joint Committee on Agency Rule Review.

If you have any questions please contact Loretta Medved at 614-644-0239 or Loretta.Medved@insurance.ohio.gov.