

## **NOTICE OF INTENT**

**Department of Insurance  
Office of the Commissioner**

### **Regulation 98—Annual Financial Reporting (LAC 37:XIII.Chapter 137)**

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., hereby gives notice of its intent to amend Regulation 98—Annual Financial Reporting by adding a definition for “internal audit function”, amending the provision for a hearing regarding qualification of an independent certified public accountant, adding a requirement for audit committees pertaining to internal audit functions, and adding §13728 pertaining to internal audit function requirements.

The purpose of the amendment to Regulation 98 is to implement and clarify annual financial reporting requirements which will improve the surveillance of the financial condition of insurers by the Department of Insurance and will further the National Association of Insurance Commissioners’ (NAIC) unified effort toward reciprocity among the states.

## Title 37

### INSURANCE

#### Part XIII. Regulations

#### Chapter 137. Regulation 98—Annual Financial Reporting

##### §13705. Definitions

A. ...

\* \* \*

*Audit Committee*—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 (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 Regulation 98 at the election of the controlling person. Refer to §13727.A.6 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.

\* \* \*

*Internal audit function*—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.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2454 (November 2009), amended LR\_\_\_\_\_:\_\_\_\_\_

##### §13713. Qualifications of Independent Certified Public Accountant

A. – E.3. ...

F. The insurer, as provided in accordance with the requirements of the Administrative Procedure Act, R.S. 49:950 et seq., may request a hearing to determine whether an independent certified public accountant is qualified.

G. – L.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2456 (November 2009), amended LR\_\_\_\_\_:\_\_\_\_\_

##### §13727. Requirements for Audit Committees

A. – A.1 ...

A.2. 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 §13728 of this Regulation.

A.3. 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 §13727.A.6 and as defined by §13705.

A.4. In order to be considered independent for 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 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 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.

A.5. 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 department, 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 no longer be independent.

A.6. To exercise the election of the controlling person to designate the audit committee for purposes of Regulation 98, the ultimate controlling person shall provide written notice to the 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 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.

A.7. The audit committee shall require the accountant that performs any audit for an insurer required by Regulation 98 to timely report to the audit committee in accordance with the requirements of SAS 61, *Communication with Audit Committees*, or its replacement as well as subsequent statements on auditing standards that may be issued requiring communications to audit committees or others charged with governance including:

- 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 management officials of the insurer, ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the accountant; and
- c. other material written communications between the accountant and the management of the insurer, such as any management letter or schedule of unadjusted differences.

A.8. If an insurer is a member of an insurance holding company system, the reports required by §13727.A.7 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.

A.9. The proportion of independent audit committee members shall meet or exceed the following criteria.

Prior Calendar Year Direct Written and Assumed Premiums		
\$0 - \$300,000,000	Over \$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.

Note A: The commissioner 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 Risk Based Capital (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 \$500,000,000 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.

A.10. An insurer with direct written and assumed premium, excluding premiums reinsured with the Federal Crop Insurance Corporation and the Federal Flood Program, of less than \$500,000,000 may make application to the commissioner for a waiver from the §13727 requirements based upon hardship. The insurer shall file, with its annual statement filing, the approval for relief from §13727 with the states that it is licensed in or doing business in and with 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.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the "Audited Financial Reports Law" R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act. R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner LR 35:2459 (November 2009), amended LR \_\_\_\_:\_\_\_\_.

## **§13728. Internal Audit Function Requirements**

A. Exemption – An insurer is exempt from the requirements of this section if:

1. 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 \$500,000,000; and

2. If the insurer is a member of a Group of insurers, the group 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 \$1,000,000,000.

Note: An insurer or Group of insurers exempt from the requirements of this section is encouraged, but not required, to conduct a review of the insurer business type, sources of capital, and other risk factors to determine whether an Internal audit function is warranted. The potential benefits of an Internal audit function should be assessed and compared against the estimated costs.

B. Function – 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.

C. Independence – 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.

D. Reporting – The head of the 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.

E. Additional Requirements – 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 this section at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:1 et seq., the “Audited Financial Reports Law” R.S. 22:671 et seq., more particularly R.S. 22:675 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR \_\_\_\_:\_\_\_\_\_ (October 2019).

## **FAMILY IMPACT STATEMENT**

### **Attachment to Amendment of Regulation 98**

#### **ANNUAL FINANCIAL REPORTING**

**I. Describe the effect of the proposed regulation on the stability of the family.**

The proposed amended regulation should have no measurable impact upon the stability of the family.

**II. Describe the effect of the proposed regulation on the authority and rights of parents regarding the education and supervision of their children**

The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

**III. Describe the effect of the proposed regulation on the functioning of the family.**

The proposed amended regulation should have no direct impact upon the functioning of the family.

**IV. Describe the effect of the proposed regulation on family earnings and budget.**

The proposed amended regulation should have no direct impact upon family earnings and budget.

**V. Describe the effect of the proposed regulation on the behavior and personal responsibility of children.**

The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

**VI. Describe the effect of the proposed regulation on the ability of the family or a local government to perform the function as contained in the rule.**

The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the rule.

## **POVERTY IMPACT STATEMENT**

### **Attachment to Amendment of Regulation 98**

#### **ANNUAL FINANCIAL REPORTING**

**I. Describe the effect on household income, assets, and financial security.**

The proposed amended regulation should have no effect on household income assets and financial security.

**II. Describe the effect on early childhood development and preschool through postsecondary education development.**

The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

**III. Describe the effect on employment and workforce development.**

The proposed amended regulation should have no effect on employment and workforce development.

**IV. Describe the effect on taxes and tax credits.**

The proposed amended regulation should have no effect on taxes and tax credits.

**V. Describe the effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.**

The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

## **PROVIDER IMPACT STATEMENT**

### **Attachment to Amendment of Regulation 98**

#### **ANNUAL FINANCIAL REPORTING**

- I. Describe the effect on the staffing level requirements or qualifications required to provide the same level of service.**

The proposed amended regulation will have no effect.

- II. The total direct and indirect effect on the cost to the provider to provide the same level of service.**

The proposed amended regulation will have no effect.

- III. The overall effect on the ability of the provider to provide the same level of service.**

The proposed amended regulation will have no effect.

## **SMALL BUSINESS STATEMENT**

### **Attachment to Amendment of Regulation 98**

#### **ANNUAL FINANCIAL REPORTING**

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

**I. Identification and estimate of the number of the small businesses subject to the proposed rule.**

The proposed amended regulation should have no measurable impact upon small businesses.

**II. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.**

The proposed amended regulation should have no measurable impact upon small businesses.

**III. A statement of the probable effect on impacted small businesses.**

The proposed amended regulation should have no measurable impact upon small businesses.

**IV. Describe any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule.**

The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

### **Public Comments**

Interested persons who wish to make comments may do so by writing to Lisa Henson, Staff Attorney, Louisiana Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804-9214, or by faxing comments to (225) 342-1632. Comments will be accepted through the close of business, 4:30 p.m., November 20, 2019.

James J. Donelon  
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES

Person Preparing Statement:	Anita R. Robert	Department:	Louisiana Department of Insurance
Phone:	(225) 219-0609	Office:	Management & Finance
Return Address:	P. O. Box 94214	Rule Title:	Annual Financial Reporting
	Baton Rouge, LA 70804-9214	Effective Date:	Upon Publication

SUMMARY  
(Use Complete Sentences)

In accordance with Section 953 of Title 49 of the Louisiana Revised Statutes, there is hereby submitted a fiscal and economic impact statement on the rule proposed for adoption, repeal or amendment. THE FOLLOWING STATEMENTS SUMMARIZE ATTACHED WORKSHEETS, I THROUGH IV AND WILL BE PUBLISHED IN THE LOUISIANA REGISTER WITH THE PROPOSED AGENCY RULE.

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENTAL UNITS. (Summary)

The proposed rule will not result in additional costs or savings for state or local governmental units.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS. (Summary)

The proposed rules will not affect revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS. (Summary)

There are no estimated costs and/or economic benefits to directly affected persons or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT. (Summary)

The proposed rules will not affect competition or employment.

Lance Herrin, Assistant Commissioner  
Office of Management and Finance  
La. Department of Insurance

Legislative Fiscal Officer or Designee

Date of Signature

Date of Signature

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES**

The following information is required in order to assist the Legislative Fiscal Office in its review of the fiscal and economic impact statement and to assist the appropriated legislative oversight subcommittee in its deliberations on the proposed rule.

- A. Provide a brief summary of the content of the rule (if proposed for adoption or repeal) or a brief summary of the change in the rule (if proposed for amendment). Attach a copy of the Notice of Intent and a copy of the rule proposed for initial adoption or repeal (or, in the case of a rule change, copies of the current and proposed rules with amended portions indicated).**

The proposed rule adds a definition for “internal audit function”, amends the provision for a hearing regarding qualification of an independent certified public accountant, adds a requirement for audit committees pertaining to internal audit functions, and adds §13728 pertaining to internal audit function requirements. The purpose of the amendment to Regulation 98 is to make changes in order to comport with NAIC’s Annual Financial Reporting Model Regulation

- B. Summarize the circumstances which require this action. If the action is required by federal regulations, attach a copy of the applicable regulation.**

The Department of Insurance is tasked with administering the Insurance Code, which regulates the business of insurance in all of its phases. The proposed amendment to Regulation 98 will align it with the NAIC’s Annual Financial Reporting Model Regulation as modified and updated.

- C. Compliance with Act 11 of the 1986 First Extraordinary Session:**

- (1) **Will the proposed rule change result in any increase in expenditure of funds? If so, specify the amount and the source.**  
No increase in expenditure of funds is anticipated as a result of the proposed regulation.
- (2) **If the answer to (1) above is yes, has the Legislature specifically appropriated the funds necessary for the associated expenditure increase?**  
\_\_\_\_\_ **Yes. If yes, provide documentation.**  
\_\_\_\_\_ **No. If no, provide justification as to why this rule change should be published at this time.**

**FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET**

**I. A. COSTS OR SAVINGS TO STATE AGENCIES RESULTING FROM ACTION PROPOSED.**

1.

**What is the anticipated increase (decrease) in costs to implement the proposed action?**

LDI does not anticipate any implementation costs (savings) as a result of the proposed regulation.

<b>COSTS</b>	<b>FY 18/19</b>	<b>FY 19/20</b>	<b>FY 20/21</b>
<b>OPERATING EXPENSES</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>PROFESSIONAL SERVICES</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>OTHER CHARGES</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>EQUIPMENT</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>1.1.1.1 MAJOR REPAIR/CONSTR</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>POSITIONS (Number)</b>	<b>0</b>	<b>0</b>	<b>0</b>

2. Provide a narrative explanation of the costs or savings shown in “A.1” above, including the increase or reduction in workload or additional paperwork (number of new forms, additional documentation, etc.) anticipated as a result of the implementation of the proposed action. Describe all data, assumptions, and methods used in calculating these costs.

3. Sources of funding for implementing the proposed rule or rule change.

<b>SOURCE</b>	<b>FY 18/19</b>	<b>FY 19/20</b>	<b>FY 20/21</b>
<b>STATE GENERAL FUND</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>AGENCY SELF-GENERATED</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>DEDICATED</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>FEDERAL FUNDS</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>OTHER (SPECIFY)</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>

4. Does your agency currently have sufficient funds to implement the proposed action? If not, how and when do you anticipate obtaining such funds?

No additional funding is necessary to implement the proposed regulation.

**B. COSTS OR SAVINGS TO LOCAL GOVERNMENTAL UNITS RESULTING FROM THE ACTION PROPOSED.**

**1.**

**Provide an estimate of the anticipated impact of the proposed action on local governmental units, including adjustments in workload and paperwork requirements. Describe all data, assumptions and methods used in calculating this impact.**

The proposed regulation will have no impact on local governmental revenues.

**2.**

**Indicate the sources of funding of local governmental unit(s) which will be affected by these cost or savings.**

No source of funding is necessary; there is no impact on local governmental units as a result of the proposed regulation.

**FISCAL AND ECONOMIC IMPACT STATEMENT  
WORKSHEET  
(Continued)**

**II. EFFECT ON REVENUE COLLECTIONS OF STATE AND LOCAL GOVERNMENTAL UNITS**

**A. What increase (decrease) in revenues can be anticipated from the proposed action?**

The proposed regulation will not affect revenue collections for state or local governmental units.

<b>SOURCE</b>	<b>FY 18/19</b>	<b>FY 19/20</b>	<b>FY 20/21</b>
<b>STATE GENERAL FUND</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>AGENCY SELF-GENERATED</b>	<b>0</b>	<b>0</b>	0
<b>DEDICATED</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>FEDERAL FUNDS</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>OTHER (SPECIFY)</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b><i>TOTAL</i></b>	<b>0</b>	<b>0</b>	<b>0</b>

**B. Provide a narrative explanation of each increase or decrease in revenues shown in "A". Describe all data, assumptions and other methods used in calculating these increases or decreases.**

**III. COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NON-GOVERNMENTAL GROUPS.**

**A. What persons or non-governmental groups would be directly affected by the proposed action? For each, provide an estimate and a narrative description of any effect on costs, including workload adjustments and additional paperwork (number of new forms, additional documentation, etc.) they may have to incur as a result of the proposed action.**

**B. Also provide an estimate and a narrative description of any impact on receipts and/or income resulting from this rule or rule change to these groups.**

**IV. EFFECTS ON COMPETITION AND EMPLOYMENT.**

**Identify and provide estimates of the impact of the proposed action on competition and employment in the public and private sectors. Include a summary of any data, assumptions and methods used in making these estimates.**

The proposed rules will not affect competition or employment.