

TITLE 13 INSURANCE
CHAPTER 2 INSURANCE COMPANY LICENSING AND OPERATION
PART 10 CORPORATE GOVERNANCE ANNUAL DISCLOSURE

13.2.10.1 ISSUING AGENCY: New Mexico Office of Superintendent of Insurance (“OSI”).
[13.2.10.1 NMAC – N, 10/19/2020]

13.2.10.2 SCOPE: This rule applies to all insurers and insurance groups domiciled in this state.
[13.2.10.2 NMAC – N, 10/19/2020]

13.2.10.3 STATUTORY AUTHORITY: Sections 59A-1-18 and 59A-2-9, NMSA 1978, Chapter 59A Article 4, NMSA 1978, and Chapter 59A Article 37, NMSA 1978 (“the Insurance Holding Company Law”).
[13.2.10.3 NMAC – N, 10/19/2020]

13.2.10.4 DURATION: Permanent.
[13.2.10.4 NMAC – N, 10/19/2020]

13.2.10.5 EFFECTIVE DATE: October 19, 2020 unless a later date is cited at the end of a section.
[13.2.10.5 NMAC – N, 10/19/2020]

13.2.10.6 OBJECTIVE: The purpose of this rule is: to require an insurer or insurance group subject to the requirements of this rule to provide the superintendent with a summary of its corporate governance structure, policies and practices; to outline the requirements for completing and submitting a corporate governance annual disclosure; and to provide for the confidential treatment of the corporate governance annual disclosure and related information.
[13.2.10.6 NMAC – N, 10/19/2020]

13.2.10.7 DEFINITIONS: The following terms have the meaning given, unless the context otherwise requires. Other terms used in this rule have the meanings given in the New Mexico Insurance Code, the Insurance Holding Company Law, or other OSI rules.

A. “Corporate Governance Annual Disclosure (“CGAD”) means a confidential report submitted by an insurer or insurance group made in accordance with the requirements of this rule.

B. “Insurance group” means, for purposes of this rule, those insurers and affiliates included within an insurance holding company system as defined in the Insurance Holding Company Law.

C. “Insurer” has the same meaning given in the Insurance Holding Company Law.

D. “Lead State” means the state where the parent company is domiciled or, if there is no insurance parent, the state where the largest (by direct written premium volume as shown by the last filed annual statement) insurance subsidiary is domiciled.

E. “ORSA Summary Report” means a report filed in accordance with the National Association of Insurance Commissioners Risk Management and Own Risk and Solvency Assessment Model Act (“ORSA”).

F. “Senior Management” means any corporate officer responsible for reporting information to the board of directors at regular intervals or providing information to shareholders or regulators and shall include, for example and without limitation, the Chief Executive Officer (“CEO”), Chief Financial Officer (“CFO”), Chief Operations Officer (“COO”), or any other chief executive.

G. “Superintendent” means the New Mexico superintendent of insurance.

[13.2.10.7 NMAC – N, 10/19/2020]

13.2.10.8 CORPORATE GOVERNANCE ANNUAL DISCLOSURE FILING PROCEDURES

A. An insurer, or an insurance group of which an insurer is a member, shall, no later than June 1 of each calendar year, submit to the superintendent a CGAD that contains the information described in this rule.

B. The CGAD must include a signature of a member of the insurer’s or insurance group’s senior management attesting that, to the best of that individual’s belief and knowledge, the insurer or insurance group has implemented the corporate governance practices and that a copy of the CGAD has been provided to the insurer’s or insurance group’s board of directors (“board”) or the appropriate committee thereof.

C. The insurer or insurance group shall have discretion regarding the appropriate format for providing the information required by this rule and is permitted to customize the CGAD to provide the most relevant

information necessary to permit the superintendent to gain an understanding of the corporate governance structure, policies and practices utilized by the insurer or insurance group.

D. For purposes of completing the CGAD, the insurer or insurance group may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level or the individual legal entity level, depending upon how the insurer or insurance group has structured its system of corporate governance. The insurer or insurance group is encouraged to make the CGAD disclosures at the level at which the insurer's or insurance group's risk appetite is determined, or at which the earnings, capital, liquidity, operations, and reputation of the insurer or insurance group are overseen collectively and at which the supervision of those factors is coordinated and exercised, or the level at which legal liability for failure of general corporate governance duties would be placed. If the insurer or insurance group determines the level of reporting based on these criteria, it shall indicate which of the three criteria was used to determine the level of reporting and explain any subsequent changes in level of reporting.

E. If the CGAD is completed at the insurance group level, then it shall be filed with the lead state of the insurance group as determined by the procedures outlined in the most recent Financial Analysis Handbook adopted by the National Association of Insurance Commissioners ("NAIC"). In these instances, a copy of the CGAD shall also be provided to the chief regulatory official of any state in which the insurance group has a domestic insurer, upon request.

F. An insurer or insurance group may comply with this section by referencing other existing documents (e.g., ORSA Summary Report, Holding Company Form B or F Filings, Securities and Exchange Commission (SEC) Proxy Statements, foreign regulatory reporting requirements, etc.) if the documents provide information that is substantially similar to the information described in this rule. The insurer or insurance group shall clearly reference the location of the relevant information within the CGAD and attach the referenced document if it is not already filed or available to the regulator.

G. Each year following the initial filing of the CGAD, the insurer or insurance group shall file an amended version of the previously filed CGAD indicating where changes have been made. If no changes were made in the information or activities reported by the insurer or insurance group, the filing should so state.

[13.2.10.8 NMAC – N, 10/19/2020]

13.2.10.9 CONTENTS OF CORPORATE GOVERNANCE ANNUAL DISCLOSURE

A. The insurer or insurance group shall be as descriptive as possible in completing the CGAD, with inclusion of attachments or example documents that are used in the governance process, since these may provide a means to demonstrate the strengths of their governance framework and practices.

B. The CGAD shall describe the insurer's or insurance group's corporate governance framework and structure including consideration of the following;

(1) The board and various committees thereof ultimately responsible for overseeing the insurer or insurance group and the level(s) at which that oversight occurs (e.g., ultimate control level, intermediate holding company, legal entity, etc.). The insurer or insurance group shall describe and discuss the rationale for the current board size and structure; and

(2) The duties of the board and each of its significant committees and how they are governed (e.g., bylaws, charters, informal mandates, etc.), as well as how the board's leadership is structured, including a discussion of the roles of CEO and chairman of the board within the organization.

C. The insurer or insurance group shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:

(1) How the qualifications, expertise and experience of each board member meet the needs of the insurer or insurance group.

(2) How an appropriate amount of independence is maintained on the board and its significant committees.

(3) The number of meetings held by the board and its significant committees over the past year as well as information on director attendance.

(4) How the insurer or insurance group identifies, nominates and elects members to the board and its committees. The discussion should include, for example:

(a) Whether a nomination committee is in place to identify and select individuals for consideration.

(b) Whether term limits are placed on directors.

(c) How the election and re-election processes function.

(d) Whether a board diversity policy is in place and if so, how it functions.

(5) The processes in place for the board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any board or committee training programs that have been put in place).

D. The insurer or insurance group shall describe the policies and practices for directing senior management, including a description of the following factors:

(1) Any processes or practices (i.e., suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including:

(a) Identification of the specific positions for which suitability standards have been developed and a description of the standards employed; and

(b) Any changes in an officer's or key person's suitability as outlined by the insurer's or insurance group's standards and procedures to monitor and evaluate such changes.

(2) The insurer's or insurance group's code of business conduct and ethics, the discussion of which considers, for example:

(a) Compliance with laws, rules, and regulations; and

(b) Prompt reporting of any illegal or unethical behavior.

(3) The insurer's or insurance group's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the superintendent to understand how the organization ensures that compensation programs do not encourage or reward excessive risk taking. Elements to be discussed may include, for example:

(a) The board's role in overseeing management compensation programs and practices.

(b) The various elements of compensation awarded in the insurer's or insurance group's compensation programs and how the insurer or insurance group determines and calculates the amount of each element of compensation paid;

(c) How compensation programs are related to both company and individual performance over time;

(d) Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels;

(e) Any clawback provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted;

(f) Any other factors relevant in understanding how the insurer or insurance group monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.

(4) The insurer's or insurance group's plans for CEO and senior management succession.

E. The insurer or insurance group shall describe the processes by which the board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the insurer's or insurance group's business activities, including a discussion of:

(1) How oversight and management responsibilities are delegated between the board, its committees and senior management;

(2) How the board is kept informed of the insurer's strategic plans, the associated risks, and steps that senior management is taking to monitor and manage those risks;

(3) How reporting responsibilities are organized for each critical risk area. The description should allow the superintendent to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the board. This description may include, for example, the following critical risk areas of the insurer:

(a) risk management processes (An ORSA summary report filer may refer to its ORSA summary report pursuant to the risk management and Own Risk and Solvency Assessment Model Act);

(b) actuarial function;

(c) investment decision-making processes;

(d) reinsurance decision-making processes;

(e) business strategy/finance decision-making processes;

(f) compliance function;

(g) financial reporting/internal auditing; and

(h) market conduct decision-making processes.

F. The insurer or insurance group shall retain and make available, upon examination or upon request of the superintendent, all documentation and other information supporting the CGAD.
[13.2.10.9 NMAC – N, 10/19/2020]

13.2.10.10 CONFIDENTIALITY

A. Documents, materials and other information, including the CGAD, that are in the possession or control of OSI and that were submitted to OSI pursuant to this rule are confidential as provided by Chapter 59A Article 4, NMSA 1978.

B. To assist in the performance of the superintendent's regulatory duties, the superintendent:

(1) May, upon request, share documents, materials or other CGAD-related information including otherwise confidential, privileged, proprietary and trade secret documents and materials, with other state, federal and international financial regulatory agencies, including members of any supervisory college as defined in the Insurance Holding Company System rule, 13.2.2 NMAC, with the NAIC, and with third party consultants pursuant to 13.2.10.11 NMAC, provided that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, material or other information and has verified in writing the legal authority to maintain confidentiality; and

(2) May receive documents, materials or other CGAD-related information, including otherwise confidential, privileged, proprietary and trade secret documents and materials, from regulatory officials of other state, federal and international financial regulatory agencies, including members of any supervisory college as defined in the Insurance Holding Company System rule, 13.2.2 NMAC, and from the NAIC, and shall maintain as confidential or privileged any documents, materials or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

[13.2.10.10 NMAC –N, 10/19/2020]

13.2.10.11 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS AND THIRD-PARTY CONSULTANTS

A. The superintendent may retain, at the insurer's or insurance group's expense, third-party consultants, including attorneys, actuaries, accountants and other experts not otherwise a part of the superintendent's staff as may be reasonably necessary to assist the superintendent in reviewing the CGAD and related information or the insurer's or insurance group's compliance with this rule.

B. Any persons retained pursuant to Subsection A shall be under the direction and control of the superintendent.

C. The NAIC and third-party consultants shall be subject to the same confidentiality standards and requirements as the superintendent.

D. As part of the retention process, a third-party consultant shall verify to the superintendent that it is free of a conflict of interest and that it has internal procedures in place to comply with the confidentiality standards and requirements of this rule.

E. A written agreement with the NAIC or a third-party consultant governing sharing and use of information provided pursuant to this rule shall contain the following provisions:

(1) Specific procedures and protocols for maintaining the confidentiality and security of CGAD-related information shared with the NAIC or a third-party consultant pursuant to this rule.

(2) Procedures and protocols for sharing by the NAIC only with other state regulators from states in which the insurance group has domiciled insurers. The agreement shall provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the CGAD-related documents, materials or other information and has verified in writing the legal authority to maintain confidentiality.

(3) A provision specifying that ownership of the CGAD-related information shared with the NAIC or a third-party consultant remains with the OSI and the NAIC's or third-party consultant's use of the information is subject to the direction of the superintendent;

(4) A provision that prohibits the NAIC or a third-party consultant from storing the information shared pursuant to this rule in a permanent database after the underlying analysis is completed;

(5) A provision requiring the NAIC or third-party consultant to provide prompt notice to the superintendent and to the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer's CGAD-related information; and

(6) A requirement that the NAIC or a third-party consultant to consent to intervention by an insurer or insurance group in any judicial or administrative action in which the NAIC or a third-party consultant may be required to disclose confidential information about the insurer or insurance group shared with the NAIC or a third-party consultant pursuant to this rule.
[13.2.10.11 NMAC – N, 10/19/2020]

13.2.10.12 SANCTIONS

Any insurer or insurance group failing to timely file the CGAD may be subject to the penalty provisions of Section 59A-1-18, NMSA 1978 and other enforcement actions provided by law.
[13.2.10.12 NMAC – N, 10/19/2020]