

**WSR 21-21-101
PROPOSED RULES
OFFICE OF THE
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2021-22—Filed October 19, 2021, 5:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-18-091.

Title of Rule and Other Identifying Information: Audited financial statements.

Hearing Location(s): On November 29, 2021, at 1 p.m., Zoom meeting. Detailed information for attending the Zoom meeting posted on the office of the insurance commission (OIC) website <https://www.insurance.wa.gov/actuarial-designations-r-202111>. Due to the COVID-19 public health emergency, this meeting will be held via Zoom platform.

Date of Intended Adoption: December 1, 2021.

Submit Written Comments to: Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, email rulescoordinator@oic.wa.gov, fax 360-586-3109, by November 29, 2021.

Assistance for Persons with Disabilities: Contact Melanie Watness, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email MelanieW@oic.wa.gov, by November 24, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, WAC 284-38-200 phrasing provides a timeline only to filers of consolidated audited statements, it does not mention those that are filing as a single entity. This was not the intent as originally drafted, therefore OIC needs to amend WAC 284-38-200 to provide a uniform timeline for submission of audited financial statements by entities authorized to issue charitable gift.

Reasons Supporting Proposal: Charitable gift annuity certificate of exemption holders are required to submit annual reports to OIC. One component of those reports is an audited financial statement. Depending on the makeup of the organization, some of the audited reports are consolidated, combining multiple companies into one financial statement, while others are specific to only one entity.

Statutory Authority for Adoption: RCW 48.02.060, 48.38.010(10).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Tabba Alam, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7170; Implementation: Molly Nollette, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000; and Enforcement: Charles Malone, P.O. Box 40260, Olympia, WA 98504-0260, 360-725-7000.

Rule is not necessitated by federal law, federal or state court decision.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Legal obligations: The Washington Administrative Procedure Act (APA)¹ requires that "significant legislative rules" be evaluated to determine if the probable benefits of a proposed rule making exceed its probable costs. Considering both quantitative and qualitative information and analysis². A draft of this determination must be available at the time the filing for the rule's preproposal or CR-102. The final

version of this document must be completed prior to final rule adoption and included in the rule-making file.

¹ Chapter 34.05 RCW.

² RCW 34.05.328 (1)(c).

Determination of exemption: OIC has determined that under RCW 34.05.328 (5) (b) (iv), this rule making will only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect and is exempt from RCW 34.05.328 (1)(c).

Determination: OIC determines that this rule (is/is not) [is] exempt from cost-benefit analysis requirements.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.310 (4) (d).

Explanation of exemptions: Legal obligations: Chapter 19.85 RCW states that "... an agency shall prepare a small business economic impact statement: (i) If the proposed rule will impose more-than-minor costs on businesses in an industry³..." The small business economic impact statement (SBEIS) must include "... a brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rule, and the kinds of professional services that a small business is likely to need in order to comply with such requirements ... To determine whether the proposed rule will have a disproportionate cost impact on small businesses⁴".

³ RCW 19.85.030 <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.030>.

⁴ RCW 19.85.040 <http://app.leg.wa.gov/RCW/default.aspx?cite=19.85.040>.

This rule proposal, or portions of the proposal, are exempt from requirements of the Regulatory Fairness Act under RCW 19.85.025(3) - provides exclusions under RCW 34.05.310 (4) (d), it corrects/clarifies existing language.

Determination: OIC determines that this rule is exempt from SBEIS requirements.

October 19, 2021

Mike Kreidler

Insurance Commissioner

OTS-3398.1

AMENDATORY SECTION (Amending WSR 14-05-017, filed 2/10/14, effective 3/15/14)

WAC 284-38-200 Annual reporting requirements. (1) Every certificate holder must electronically file with the commissioner a completed annual report within ((sixty)) 60 days of its fiscal year end. A copy of the annual report form and instructions for completing and filing the annual report are available on the commissioner's website at www.insurance.wa.gov.

(2) As an ongoing statement of financial condition, required under RCW 48.38.010(10), the certificate holder must annually electronically file the following financial reports:

(a) (i) An audited financial statement specific to the certificate holder prepared in accordance with generally accepted accounting principles for the fiscal year immediately preceding; or

(ii) A consolidated audited financial statement prepared in accordance with generally accepted accounting principles for the fiscal year immediately preceding, which includes a supplemental schedule specific to the certificate holder. (~~The audited financial statement must be filed within fifteen days of its release date following the certificate holder's fiscal year end.~~)

(b) Unless permanently exempt in accordance with Internal Revenue Service regulations, file a complete public inspection copy of the certificate holder's IRS Form 990 within fifteen days of its filing with the IRS.

(c) Any other financial information required by the commissioner.

(3) The audited financial statement must be filed within 15 days of the release date following the certificate holder's fiscal year end.

(4) The failure by a certificate holder to file an audited financial statement within nine months following its most recent fiscal year end, and when applicable its IRS Form 990 within (~~fifteen~~) 15 days of its filing with the IRS, will constitute a finding as referenced under RCW 48.38.050 that the certificate holder failed to provide a satisfactory statement of financial condition as required under RCW 48.38.010(10). The finding may subject the certificate holder to disciplinary action as allowed under RCW 48.38.050.

~~((4))~~ (5) An encrypted or password protected filing or transmission is not considered filed under RCW 48.38.010(10) and this section.

~~((5))~~ (6) For purposes of determining whether a filing deadline has been met, a document is considered received if electronically submitted on or before the date it is due.

[Statutory Authority: RCW 48.38.075, 48.38.010 (9) and (10), and 48.38.030. WSR 14-05-017 (Matter No. R 2013-24), § 284-38-200, filed 2/10/14, effective 3/15/14.]