Subchapter C. Audit Coverages Required for Guaranty Associations
28 TAC §§31.202, 31.204 - 31.206
[~~§31.201 and §31.207~~]

INTRODUCTION. The Texas Department of Insurance (TDI) proposes to amend 28 TAC §§31.202 and 31.204 - 31.206, concerning audit coverages required for guaranty associations, and to repeal §31.201 and §31.207, concerning audit coverages required for guaranty associations. The amendments update the sections' citations and make plain language changes. The repealed sections are consolidated into the remaining sections.

EXPLANATION. The amendments and repeals are needed to update statutory citations made obsolete by the Texas Legislative Counsel (TLC) codification of the Insurance Code under Government Code §323.007 and update rule language to conform with current TDI plain language preferences and drafting practices. These amendments promote efficiency and effectiveness within TDI's processes, in line with the goals of its upcoming review under the Texas Sunset Act, Government Code Chapter 325.

Descriptions of the sections' proposed amendments follow.

Section 31.202. Three statutory citations that are obsolete due to the TLC's codification project are updated to Texas Insurance Code citations.

Section 31.204. The catchlines are removed in all paragraphs, four instances of "shall" are changed to "must," and the structure of the subparagraph lists under paragraphs (2), (3), and (4) are corrected to be consistent with current TDI drafting style preferences.

Section 31.205. The catchlines in all the subsections are removed; four instances of "shall" are changed to "will" or "must"; clarification that "commissioner" means commissioner of insurance; and a new subsection (d) is added, specifying that the entity required to be audited under Subchapter C is responsible for the audit's costs. A similar provision is currently included in §31.207, but that section is proposed for repeal, and this provision is proposed to be incorporated here to consolidate related provisions concerning audit into a single section.

Section 31.206. The catchlines in all the subsections are removed, three instances of "shall" are changed to "must" or "does," "Commissioner of Insurance" is lowercased, and the text "the following items" is removed in subsections (b) and (d).

Repeal of Section 31.201. This section is proposed for repeal because its contents are more succinctly addressed in §31.202. In addition, section 31.201 is a purpose statement with no operative effect.

Repeal of Section 31.207. This section is proposed for repeal because it contains a provision consisting of a single sentence. A subsection tracking that provision is proposed to be added to §31.205 to consolidate related provisions concerning audit into a single section.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Jamie Walker, deputy commissioner of the Financial Regulation Division, has determined that during each year of the first five years the sections as proposed are in effect, there will be no measurable fiscal impact on state and local governments as a result of enforcing or administering them, because they do not make substantive changes to the rules. Ms. Walker made this

determination because the sections as proposed do not add to or decrease state revenues or expenditures, and because local governments are not involved in enforcing or complying with them.

Ms. Walker does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the sections as proposed are in effect, Ms. Walker expects that administering them will have the public benefit of ensuring that TDI's rules conform with current agency standards and are clear, concise, and current.

Ms. Walker expects that the sections as proposed will not increase the cost of compliance with Insurance Code Chapters 462, 463, or 2602 because they do not make substantive changes to the rules. As a result, there is no cost associated with the enforcement or administration of the proposed sections.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS. TDI has determined that the sections as proposed will not have an adverse economic effect on small or micro businesses, or on rural communities. The proposed sections update obsolete statutory citations and conform the sections to current TDI drafting style. As a result, and in accordance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

EXAMINATION OF COSTS UNDER GOVERNMENT CODE §2001.0045. TDI has determined that this proposal does not impose a possible cost on regulated persons.

GOVERNMENT GROWTH IMPACT STATEMENT. TDI has determined that for each year of the first five years that the sections as proposed are in effect, the proposed rule:

- will not create or eliminate a government program;

- will not require the creation of new employee positions or the elimination of existing employee positions;

- will not require an increase or decrease in future legislative appropriations to the agency;

- will not require an increase or decrease in fees paid to the agency;

- will not create a new regulation;

- will expand, limit, or repeal an existing regulation;

- will not increase or decrease the number of individuals subject to the rule's applicability; and

- will not positively or adversely affect the Texas economy.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

RULE REVIEW. TDI reviewed all sections of Insurance Code Chapter 31 to assess whether the reasons for initially adopting the sections continue to exist in accordance with Government Code §2001.039. TDI determined that in most cases, the reasons for initially adopting the sections continue to exist. In the other cases, TDI is proposing to repeal those sections. Following review, TDI determined that the reasons for adopting §31.201 and §31.207 no longer exist, so those sections will be repealed.

REQUEST FOR PUBLIC COMMENT. TDI will consider any written comments on the proposal and rule review that are received by TDI no later than 5:00 p.m., central time, on January 6, 2027. Consistent with Government Code §2001.024(a)(8), TDI requests public comments on the proposal, including information related to the cost, benefit, or effect of the proposal and any applicable data, research, and analysis. Send your comments to ChiefClerk@tdi.texas.gov or to the Office of the Chief Clerk, MC: GC-CCO, Texas Department of Insurance, P.O. Box 12030, Austin, Texas 78711-2030.

The commissioner of insurance will also consider written and oral comments on the proposal in a public hearing under Docket No. 2879 at 2:00 p.m., central time, on December 11, 2026. TDI will hold the public hearing remotely using online resources and in person at the Barbara Jordan State Office Building, 1601 Congress Avenue, Austin Texas 78701 in Room 2.035. Details of how to view and participate virtually in the public hearing will be made available on TDI's website at www.tdi.texas.gov/alert/event/index.html.

Subchapter C. Audit Coverages Required for Guaranty Associations
28 TAC §§31.202 and 31.204 - 31.206

STATUTORY AUTHORITY. TDI proposes amendments to §§31.202 and 31.204 - 31.206 under Insurance Code §§462.014, 463.006, 2602.010, and 36.001 and Government Code §2001.039.

Insurance Code §462.014 provides that the commissioner may adopt reasonable rules necessary to implement and supplement Insurance Code Chapter 462.

Insurance Code §463.006 provides that the commissioner may adopt reasonable rules necessary to carry out and supplement Insurance Code Chapter 463 and its purposes.

Insurance Code §2602.010 provides that the commissioner may adopt reasonable rules necessary to supplement and implement Insurance Code Chapter 2602.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Government Code §2001.039 provides that a state agency review each of its rules every four years and either readopt, readopt with amendments, or repeal each rule.

CROSS-REFERENCE TO STATUTE. Sections 31.202 and 31.204 - 31.206 implement Insurance Code §§462.107, 463.110, and 2602.103.

TEXT.

§31.202. Audit Coverages Applicability.

The provisions of this subchapter apply to any guaranty association established under [~~the~~] Insurance Code Chapter 462, 463, or 2602. [~~, Articles 9.48, 21.28-C, and 21.28-D.~~]

§31.204. Nature of Audits.

Audits applicable to the guaranty associations subject to the provisions of this subchapter must [~~shall~~] take the form of financial, performance or operational audits, and may include, but not be limited to, the types of audits which are described in paragraphs (1) - (4) of this section.

(1) Financial audits must [. ~~The financial audit shall~~] be undertaken annually by an independent certified public accountant to determine whether the financial statements of the audited entity present fairly the financial position and the results of financial operations in accordance with generally accepted accounting principles. The

financial audits must [~~shall~~] be conducted in accordance with generally accepted auditing standards.

(2) [~~Compliance audit.~~] A compliance audit may be undertaken to determine whether the following objectives are being met.[~~:~~]

(A) The [~~the~~] audited entity has obligated, expended, received, and used funds in accordance with the purpose for which those funds have been authorized by law.[~~;~~]

(B) The [~~the~~] audited entity has obligated, expended, received, and used funds in accordance with any limitations, restrictions, conditions, or mandatory directions imposed by law on those obligations, expenditures, receipts, or uses.[~~;~~]

(C) The [~~the~~] audited entity has maintained its books, records, and accounts in a manner which accurately reflects its financial and fiscal operations relating to the obligation, receipt, expenditure, and use of funds including, but not limited to, funds collected for a public purpose.[~~;~~]

(D) The [~~the~~] audited entity has collected all revenues and receipts in accordance with the applicable laws and regulations of this state.[~~; and~~]

(E) The [~~the~~] audited entity has properly and legally handled or administered any money, negotiable securities, or similar assets received in accordance with the entity's governing statute.

(3) [~~Economy and efficiency audit.~~] An economy and efficiency audit may be undertaken to determine whether the objectives set out in subparagraphs (A) and (B) of this paragraph are being met and such audit must [~~shall~~] make the identifications set out in subparagraph (C) of this paragraph, as follows.[~~:~~]

(A) The [~~the~~] audited entity is managing or utilizing its resources, including funds, personnel, contractors and subcontractors, consultants, procurement of

professional services, property, equipment, and space, in an economical and efficient manner.[;]

(B) The [~~the~~] audited entity has presented financial, program, and statistical reports in a fair manner, and such reports contain useful data.[; ~~and~~]

(C) The [~~the~~] causes of inefficiencies or uneconomical practices, including inadequacies in management information systems, internal and administrative policies and procedures, purchasing, procurement and contracting practices, organizational structure, use of personnel, contractors, equipment and other resources, have been identified.

(4) [~~Effectiveness audit.~~] An effectiveness audit may be undertaken to determine whether the following objectives are being met.[:]

(A) The [~~the~~] audited entity is attaining program objectives established pursuant to statutes and regulations, or by program criteria or program evaluation standards applicable to it, in an efficient and effective manner.[;]

(B) The [~~the~~] audited entity is contributing to achievement of those benefits intended by program design in an efficient and effective manner.[;]

(C) The [~~the~~] audited entity is discharging its duties and responsibilities under statutes and regulations or according to program performance criteria or program evaluation standards applicable to it in an efficient and effective manner.[; ~~and~~]

(D) The [~~the~~] audited entity is performing its duties and responsibilities in connection with a program which does not duplicate, overlap, or conflict with the duties, functions, and responsibilities of another entity with respect to the same program, or with another program designed and intended to be applied to the same persons served by the audited entity.

§31.205. Scope and Frequency of Audits.

(a) [~~Annual audit required.~~] Each guaranty association subject to the provisions of this subchapter must [~~shall~~] undergo an annual financial audit at the end of each calendar year as required by §31.204(1) of this title (relating to Nature of Audits).

(b) [~~Audit plan.~~] The boards of directors of each guaranty association subject to the provisions of this subchapter must [~~shall~~] annually adopt an audit plan. In developing the plan, the boards will [~~shall~~] consider utilizing the audits described in §31.204(2) - (4) of this title. The plan may be modified at the discretion of the boards. The plan and any modifications of the plan must [~~shall~~] be filed with the commissioner of insurance.

(c) [~~Commissioner may order audit.~~] No provision of this subchapter prohibits or precludes the commissioner from ordering any entity subject to the provisions of this subchapter to submit to one or more audits at a frequency determined by the commissioner, based upon facts and circumstances.

(d) The cost of audits required by this subchapter must be paid by the audited entity.

§31.206. Audit Reporting Requirements.

(a) [~~Report required.~~] A written report must [~~shall~~] be prepared in connection with any audit authorized or required pursuant to this subchapter.

(b) [~~Contents of report.~~] The written report must include a management letter containing [~~the following items~~], as applicable:

(1) the criteria selected to measure effectiveness and efficiency;

(2) internal controls;

(3) compliance with state or federal laws;

(4) conditions found by auditors and the effects of such conditions; and

(5) any recommendations for improving operations or program effectiveness.

(c) [~~Required opinion.~~] The report also must include an opinion on fair presentation of financial statements when included as part of the scope of the audit.

(d) [~~Supplemental items to be reported.~~] The auditing entity's report should also include, to the extent necessary[~~, each of the following items~~]:

(1) an analysis of the overall performance of the entity being audited;

(2) an analysis of the audited entity's financial operations and condition; and

(3) an analysis of receipts and expenditures made by each audited entity.

(e) [~~Filing requirements for audits.~~] Copies of the auditing entity's report must [~~shall~~] be filed with the commissioner of insurance [~~Commissioner of Insurance~~] no later than 30 days after the audits are presented to the board of directors of the audited guaranty association. Any response to the report by the board of directors must be submitted to the commissioner no later than the next meeting of the board of directors.

(f) [~~Audits excluded.~~] This subchapter does [~~shall~~] not apply to audits made by the Office of the State Auditor.

Subchapter C. Audit Coverages Required for Guaranty Associations 28 TAC [~~§31.201 and §31.207~~]

STATUTORY AUTHORITY. TDI proposes the repeal of §31.201 and §31.207 under Insurance Code §§462.014, 463.006, 2602.010, and 36.001.

Insurance Code §462.014 provides that the commissioner may adopt reasonable rules necessary to implement and supplement Insurance Code Chapter 462.

Insurance Code §463.006 provides that the commissioner may adopt reasonable rules necessary to carry out and supplement Insurance Code Chapter 463 and its purposes.

Insurance Code §2602.010 provides that the commissioner may adopt reasonable rules necessary to supplement and implement Insurance Code Chapter 2602.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

CROSS-REFERENCE TO STATUTE. The proposed repeal of §31.201 and §31.207 implements Insurance Code §§462.107, 463.110, and 2602.103.

TEXT.

§31.201. Purpose.

§31.207. Cost of Audits.

CERTIFICATION. The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Issued in Austin, Texas, on November 13, 2026.

Signed by:
Jessica Barta
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Jessica Barta, General Counsel
Texas Department of Insurance