

## Compilation of Comments by Section

### General Comments

#### Michigan

Michigan would like to see requirements for the letter granting/denying consent and would like the letter to include the felony conviction.

### Section 1: Introduction

#### Ohio

Subsection C: Due to the fact state departments of insurance can't enforce federal law, our organization would like to suggest paragraph C be deleted or amended to state "insurance entities who already employ a prohibited person who does not have a waiver take the necessary steps to have the individual apply for a 1033 waiver."

#### IIABA

Interstate Commerce Element of the Written Consent Requirement:

The draft template suggests written consent is required when a person otherwise barred by 18 U.S.C. 1033(e)(1) seeks to work in the business of insurance, but the federal statute actually provides that consent is only required when such a person's activities would affect interstate commerce. We urge the NAIC to offer clarity concerning the interstate commerce element of the written consent obligation and to address what, if any, impact it has in determining who must seek consent. Is it the position of the NAIC, for example, that all insurance producers and others working in the industry are engaging in interstate commerce given the inherent nature of the sector?

### Section 2: A prohibited person may seek written consent

#### California

A prohibited person ~~may~~ **must** seek written consent to engage in the business of insurance in [Insert Jurisdiction]. The process for obtaining consent is set forth in this document. The process is available ~~only~~ to a prohibited person seeking an insurance license or who wishes to be employed in the business of insurance in [Insert Jurisdiction Insurance Department] in a non-licensed capacity. [Insert Jurisdiction] resident who is seeking a [Insert Jurisdiction Insurance Department] insurance license or who wishes to be employed in the business of insurance in [Insert Jurisdiction Insurance Department] in a non-licensed capacity. A non-resident should consult her or his home state insurance department. The [Insert Jurisdiction Insurance Department] may require the prohibited person to ~~provide a copy of the home state's written consent release any information the [Insert Jurisdiction Insurance Department] may request as part of the investigation, including but not limited to, records of former employment, state and federal tax returns, business records, and banking records.~~

#### Ohio

Our organization believes it may be beneficial to amend this paragraph to explain what someone should do if their state doesn't issue 1033s or issues limited 1033s

## Oregon

In Section 2 of the draft, it was unclear if this template implies that non-resident applicants would not have to go through the 1033 process if their home state had already issued one. We would reserve the right for Oregon to still require nonresidents and residents to have to follow this process. However, section 5 seems to imply we can establish our own process? It was not very clear to me unfortunately.

Also in Section 2, in Oregon we would reserve the right to include the details of the crimes, as some states currently do not, and this seems to imply it is not needed. Again, just some clarity on each state being able to adapt this template to fit our separate laws and approaches would be great. Further, we have an affidavit process that we deem critical in securing a license in Oregon under these circumstances, and will reserve the right to continue this.

Also under section 2, in Oregon we allow individuals who are convicted of a serious misdemeanor involving dishonesty or breach of trust to apply for a 1033 waiver. In our statutes this is grounds to deny a license and section 2 seems to imply only felonies count or apply. Again, my suggestion would be to add some more flexibility for the differing states in their approach to this.

## Texas

Texas will also consider a 1033 Waiver for nonresidents whose home states have different interpretations of what crimes require a 1033 Waiver, or do not issue a 1033 Waiver at all. A Waiver issued by the Texas Commissioner of Insurance is limited to activity occurring in Texas.

### **Section 3: Definition of relevant terms**

#### Maine

“Convictions” are defined to include deferred dispositions (even those that result in dismissal of charges), and expunged convictions. This is in Section 3(c) of the document. I don’t think we include dismissed charges and expunged convictions as “convictions” for 1033 purposes. I think our stance has been that those actions should not be counted as convictions so this would be a big change and could lead to more work on our end.

#### Maryland

*C. Conviction. This term includes, but is not limited to: (a) a plea in abeyance or other similar agreement that defers a criminal judgment, regardless of whether the criminal charges were dismissed pursuant to the terms of the agreement; and (b) an expunged conviction.*

#### Michigan

We would like the definition of breach of trust to include crimes conducted at jobs other than ones of fiduciary nature, such as a caretaker.

Breach of Trust. A crime involving breach of trust includes, but is not limited to, an offense constituting or involving misuse, misapplication or misappropriation of: (a) anything of value held as a fiduciary (including, but not limited to, a trustee, administrator, executor, conservator, receiver, guardian, agent, employee, partner, officer director or public servant); or (b) anything of value of any public, private or charitable organization; [or \(c\) anything of value taken directly from a vulnerable client or patient while in the conduct of business, such as a caretaker, nurse, housekeeper, etc.](#)

Michigan disagrees that the definition of conviction should include expunged, dismissed, withheld or similar.

### Ohio

3.B: Our organization believes this paragraph needs to be expanded to include individuals in a non-licensed capacity as the 1033 requirement applies to all individuals who engage in the business of insurance.

3.C: Our organization believes this definition should be revised as the two exceptions provided are not considered convictions. For consistency purposes, it may be beneficial to include the following language, taken from the NAIC Uniform Licensing Application: **“Convicted”** includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere or no contest, or having been given probation, a suspended sentence or a fine. As certain states may not consider a plea held in abeyance or diversion a conviction, further discussion and revisions may be warranted about those situations.

3.D: Felony. A “felony” is an offense that is specifically classified as such in the section defining it. ~~If there is no classification, an offense is a felony if the maximum term of authorized imprisonment authorized is more than one year, or if the maximum penalty is death.~~

Our recommendation is for states to rely on how the offense is classified in the statute of the state in which the conviction occurred.

### Texas

Texas appreciates the written definitions in Section 3. However, we would like to recognize individual state laws, that may have differing definitions, that each state will need to follow. For example:

- The “business of insurance” is specifically defined in Texas Insurance Code § 101.051 and includes a more comprehensive definition (specifically including the handling of claims, for example).
- Under Texas law, an individual currently completing or an individual that has successfully completed a deferred adjudication does not have a conviction and cannot be considered to have a conviction for the purposes of a 1033 Waiver under the plain language of the 1033 statute. Following the plain language of the 1033 statute, Texas only applies the necessity of a 1033 Waiver to an actual conviction.
- The definition of “felony” may need to be revised from “section” to “chapter in each state’s penal code.”

### Virginia

3.A: NAIC guidelines definition “Breach of trust” means a wrongful act, use, misappropriation, or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity or the misuse of one’s official or fiduciary position to engage in a wrongful act, use, misappropriation or omission.

3.B: Consultants, Surplus Lines Brokers, Viatical Settlement Brokers/Providers, TPAs, MGAs, etc. Title settlement agents?

3.C: Here if a felony is deferred and ultimately dismissed its not considered a conviction. Under state law some expungements/sealed convictions may not be required to be reported and applicants may not be required to disclose.

3.D: NAIC guidelines definition “Dishonesty” means directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or wrongfully to take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest. Common definition for dishonesty include, lie, cheat, deceive, or defraud. Untrustworthiness, lack of integrity, honesty, fairness, etc.

3.E: Some military convictions are considered equivalents of felony convictions. Virginia considers this when determining whether a 1033 should be issued.

#### ACLI

Definition of relevant terms

C. Conviction. This term includes, but is not limited to: (a) a plea in abeyance or other similar agreement that ~~defers, dismisses or overturns~~ a criminal judgment ~~, regardless of whether the criminal charges were dismissed~~ pursuant to the terms of the agreement; and (b) an expunged conviction.

ACLI is concerned that the proposal, as written, could lead to an increase in the number of applicants required to go through the 1033 process. The definition of “conviction” expressly includes pleas in abeyance and expungements. Currently, most states do not consider pleas in abeyance to be convictions requiring 1033 written consent. For example, even in Utah, whose process this template is based on, has a Criminal Procedure statute making explicit that “plea in abeyance” does not have a judgement of conviction against a defendant. To avoid unnecessary confusion among applicants, and to avoid having more candidates be required to undergo the 1033 process, we recommend that the language in section 3 (c) be amended to exclude an abeyance where the criminal judgment was dismissed or expunged.

#### IIABA

Treatment of Expungements:

The proposed template surprisingly would require written consent to be obtained in instances in which covered offenses have been expunged, and we urge the NAIC to reconsider and revise this position. The view expressed in the draft is inconsistent with the manner in which expungements operate and overlooks the fact that such an interpretation would impose unnecessary hiring and occupational barriers on those with expunged records. Requiring written consent to be obtained in cases in which covered offenses have been expunged also conflicts with the manner in which other financial services regulators enforce similar provisions of federal law. The banking world is subject to prohibitions and requirements that largely mirror 18 U.S.C. 1033, and those provisions require any person convicted of a criminal offense involving dishonesty or a breach of trust or other identified crimes to obtain written consent from the Federal Deposit Insurance Corporation (FDIC) in order to work in the banking industry.<sup>1</sup> The statutory requirements that apply to the banking and insurance industries are nearly identical, yet the FDIC (which has a longer history of acting in this area and has adopted formal regulations) excludes all covered offenses that have been expunged.

#### NAIFA

As NAIFA understands, the current definition used by most states is not to include the consideration of pleas in abeyance or deferred adjudication to be convictions requiring 1033 written consent. We believe that the proposed definition above would, in fact, expand the number of candidates requiring the 1033 waiver process, resulting in unnecessarily increasing the barrier of entry for many candidates. We recommend that the definition of conviction be removed from the document.

## Section 4: Applying for written consent

### California

A prohibited person has the responsibility to read the Application in its entirety and answer every question completely and accurately. Absolute and complete candor is required. Failure to complete the Application or submit any requested documentation shall result in denial of the Application. An amendment to the Application must be filed immediately upon the occurrence of any event or discovery or recollection of any fact that would change any answer on the Application [and a copy of that amendment must be sent to other states where written consent was granted](#). Failure to file a timely amendment may result in denial of written consent or withdrawal of previously granted consent.

### Ohio

4.B: A prohibited person has the responsibility to read the Application in its entirety and answer every question completely and accurately. Absolute and complete candor is required. Failure to complete the Application or submit any requested documentation [shall may](#) result in [the](#) denial [\[or dismissal\]](#) of the Application.

Due to the act some states dismiss applications when information is not provided, our organization would like to recommend the work “dismissal” be included as an option so states can customize the instructions to reflect their process.

### Oregon

More of a question than a comment, but in section 4, it references an electronic process for a 1033 waiver. Will this be built into NIPR/SBS? And will they be customizable to fit the differing states 1033 waiver requirements?

### Texas

In most cases, Texas contemplates the 1033 Waiver at the time of the licensing application. There is not a need for a separate application form for applicants who do not hold a current license. The need for a 1033 Waiver is determined at the time of the licensing application review. Texas laws on producer licensing require TDI to consider certain factors when reviewing an application with criminal history. However, Texas does not look at the 1033 process as a separate application analysis. The decision to grant or deny the 1033 Waiver is made alongside the licensing application decision. TDI issued 525 Waivers between 2019-2022. For currently licensed individuals, a separate request is required.

### Virginia

4.A: The NAIC 1033 Short Form requests much of the same information on the NAIC Uniform applications. For unlicensed individuals we use a form similar to the NAIC Uniform application. We do not require photos. In most cases the applicant does not know which felony convictions require a 1033. A separate 1033 application delays licensure especially if it is required to be approved prior to submitting the license application. Some states may bifurcate the licensing decision process by having the 1033 application reviewed by legal while the license application is reviewed by licensing, delaying the process further.

### NAIFA

4.B: NAIFA feels that this language is vague. It does not provide clear guidance on expectations for the required information to be provided by applicants and does not express the types of information needed to properly review 1033 waiver applications. In disclosing a criminal record, applicants could never truly provide full and absolute candor without providing every conceivable detail of every element of a crime,

proceedings, etc. Certain details must be selected or consolidated for clarity, memory, perspective, etc. We recommend that this language is removed. If the task force intends to express that the omission or obfuscation of material facts could negatively impact the application, then we recommend adopting language that more clearly expresses that sentiment while providing clear expectations. Alternatively, we believe that this sentiment is adequately expressed in the language included in Section 7, currently titled “Ongoing duties of Person who Application is Granted. “

## **Section 5: Process for granting or denying an Application**

### Ohio

Each jurisdiction will establish a process for the review of an Application. ~~This may include incorporating the 1033 consent process into the process a jurisdiction uses to issue an insurance producer license.~~

As the first sentence addresses the second sentence, we would like to recommend the second sentence be deleted.

### Virginia

VA does not require a separate application for the 1033 waiver. When the Commissioner reviews resident felony applications a 1033 review is conducted.

### NAIFA

NAIFA understands that each jurisdiction will establish its process for the review of an application. However, as the objective is to create a simplified and consistent approach to the application process, NAIFA would like to see the task force include more detailed recommendations on the 1033 waiver application process, including best practices. If each jurisdiction continues to adopt completely unique waiver review processes, then little can be expected to improve from adopting the guidelines. NAIFA recommends the inclusion of the following or similar language to strengthen the process's uniformity and transparency.

- B. Notification of 1033 waiver application availability should be clearly presented prior to and during the licensing application process.
- C. A jurisdiction’s process for review of a 1033 waiver application should be provided to an applicant at the time of submission.

## **Section 6: Standard by which an Application is evaluated**

### Ohio

6.A An Application provides a prohibited person with the opportunity to demonstrate that, notwithstanding the conviction(s), he or she ~~is sufficiently trustworthy to~~ ~~may participate~~ ~~engage~~ in the business of insurance ~~without being a risk to consumers and/or insurers~~. A prohibited person has the burden of satisfying this standard. Factors that may be considered by the Commissioner include, but are not limited to, the following:

Our organization would like to recommend the following words be deleted as the language noted is not included or a requirement in 18 USC 1033.

## Michigan

Standards by which an Application is evaluated:

- a. Standard “e” – a state would not know of unpaid judgements without obtaining a copy of the credit report, which is not a requirement in the 1033 Short Form.
- b. Standard “g” – submission of proof of pardon is not required in the 1033 Short Form and should be added as a requirement.
- c. Standard “j” – should include pending as well.
- d. Standard “k” – letters of recommendation are not a requirement in the 1033 Short Form and should be added as a requirement.

## Texas

Texas recommends revising the last sentence of section A to: “Factors that may be considered by the commissioner may be determined by each state jurisdiction’s rules, and may include, but are not limited to the following:”

## Virginia

Additional factors Virginia uses:

1. Civil Rights restored.
2. The applicant has a pattern of unlawful activity.
3. Extent insurance license offers opportunity to engage in further criminal activity.
4. Applicant has not completed all the court requirements (parole, probation, restitution, community service, addiction treatment, etc.)
5. The cooperativeness or uncooperativeness of the applicant during the application process.

6.J: Not all states issue or report 1033s. Some states only issue a 1033 on request by the licensee. Add requirement for states to report 1033s to the NAIC.

6.I: This factor is often used to determine the issuance of a 1033 for an unlicensed individual to work in the insurance industry.

## ACLI

We believe that Section 6(A) should include “expungement” as one of the factors available for consideration in evaluating 1033 waivers. Currently, Sec. 6(A)(g) includes pardons, but not expungements. While not directly related to 1033, in November 2022, New York sent a [circular letter](#) disallowing insurers from using expunged criminal histories in underwriting, following expungement reforms related to marijuana convictions. As many states have recently engaged in criminal justice reform, including the legalization or decriminalization of cannabis, we believe this is a necessary step for the insurance industry and regulatory community to catch up with the recent changes.

## NAIFA

6.A: We believe that the list should include consideration of “expungement” and the current status of the laws on which the conviction was based. As more states continue to legalize cannabis and undergo criminal justice reform related to cannabis-related convictions, these are increasingly important considerations.

## **Section 7**

### Virginia

Virginia usually issues blanket 1033s. However, on occasion a 1033 is issued with restrictions such as to a particular agency/insurer, or duties that do not involve the handling of monies.

7.B: Virginia has in its 1033's the following compliance requirements:

1. Any subsequent felony conviction or failure to notify the Bureau of Insurance of any subsequent felony conviction involving dishonesty, breach of trust, or a violation of 18 U.S.C. §1033.
2. The filing of an administrative sanction against you by this state or any other state.
3. Failure to amend your application for written consent upon a change in job duties.
4. Failure to notify your employer of your status as a Prohibited Person under 18 U.S.C. §1033.
5. Making materially false or misleading statements, or failure to disclose material information on your application for written consent.

### ACLI

We believe that Section 7 is attempting to vaguely define an ongoing duty, but Section 7(A) is not creating any actual duty but recognizing that any materially false statements are grounds for revocation. It may be clearer to label Section 7 "Conditions of Written Consent."

### NAIFA

7.A: We support the inclusion of this language, but we are unclear on how this language creates an ongoing duty or what that duty entails. NAIFA requests further clarification on the intent and details of the ongoing duty, or if this is not the intent, amend the Section 7 Title to "Conditions of Written Consent," or similar.



## 1033 Application

### Maryland

#### SECTION II - CRIMINAL HISTORY

1. List any felony(s) for which you have been arrested, charged, indicted, or convicted. Include *details of any negotiated plea agreements and pleas of nolo contendere to an Information or Indictment. Attach a full description of your acts involved in the aforementioned matters. Include dates of charge, location, and nature of offense. Attach additional pages if needed.*

The Administration's concerns are that the requisite reportable criteria and definition of "Conviction," including plea in abeyance, deferred judgment, dismissal, or an expungement is overly-broad and may not align with State and Federal Law. Specific to question one, which asks for a list of felonies for which the applicant has "been arrested, charged, [or] indicted" may conflict with an applicant's due process rights. Another area of concern is the requirement for an applicant to disclose expunged convictions, which also may not align with State or Federal Laws.

### Michigan

#### **Current 1033 Long Form Required and Optional Attachments**

Attach the following documents to this Application for Written Consent. Applications without attachments, or Applications with incomplete attachments, will be returned to the applicant. However, if you have previously completed and submitted the Short Form Application for written Consent to Engage in the Business of Insurance, you do not need to provide duplicate photos or attachments.

1. A certified copy of the applicant's criminal history.
2. A certified copy of the indictment, criminal complaint or other initiating document for the charge(s) which is(are) the subject of this Application.
3. A certified copy of the order of judgment and sentence of the Court for the conviction which is the subject of this Application (including certification of performance of all conditions imposed by the Court) and/or a certified copy of the Court docket.
4. A current financial statement and list of sources of income (as described in Section VI).
5. A current or certified copy of applicant's credit report.
6. Copies of any and all current or proposed agreements between you and any entity engaged in the business of insurance.
7. A sworn affidavit from the president, or other designated officer or director of the insurer, that states: the basis under which the Affiant is authorized to execute and attest to the statements made in the affidavit; the applicant will in fact perform only those insurance activities as fully described in the Application; the Application is to the best of his/her knowledge and belief, true and correct; the applicant will not be placed in a position in which his/her activities will constitute a risk or threat to insurance consumers or the insurer.
8. A copy of any pardon.
9. Any other attachments that the insurance regulatory official deems appropriate.

The applicant may include the following evidence of rehabilitation for the Commissioner's consideration:

1. Post-conviction community service.
2. Post-conviction charitable activity.

3. Any other information the applicant believes will assist the Commissioner in determining whether to grant written consent.
4. Letters of recommendation, addressed to the insurance regulatory official in the state where the Application is being submitted, attesting to the character and reputation of the applicant. The statement shall indicate the length of time the writer has known the applicant, their business or social relationship, and should include a description of the applicant's character traits and reputation in the community. The recommendation shall also verify that the writer knows of the applicant's criminal history.

#### Michigan

Add the following to the list of attachments for the Short Form

5. A copy of any pardon.
6. Any other attachments that the insurance regulatory official deems appropriate.

The applicant may include the following evidence of rehabilitation for the Commissioner's consideration:

1. Post-conviction community service.
2. Post-conviction charitable activity.
3. Any other information the applicant believes will assist the Commissioner in determining whether to grant written consent.
4. Letters of recommendation, addressed to the insurance regulatory official in the state where the Application is being submitted, attesting to the character and reputation of the applicant. The statement shall indicate the length of time the writer has known the applicant, their business or social relationship, and should include a description of the applicant's character traits and reputation in the community. The recommendation shall also verify that the writer knows of the applicant's criminal history.

#### Ohio

As many states do not utilize or accept the short form application, our organization would like to suggest the working groups review the long form in its entirety to determine if specific questions should be deleted.

#### Virginia

- (e)(1)(A): In most cases the applicant does not know which felony convictions require a 1033.
- (e)(1)(B): Not all insurers or agency owners are aware of the 1033 requirement, or not sure when an application should be submitted.
- Remove Photo Requirement.
- Section II – Criminal History – Subpoint 2: The determination should be with the Commissioner. Applicants often do not know which felony convictions warrant a 1033.
- Section IV – Attachments: Virginia does not require certified documents.
- Section IV – Attachments – Subpoint 4: Comment regarding the attestation.
- Remove the requirement for the applicant to insert their name and the jurisdiction in which the applicant is applying. Amend the language as follows:

“...by the Insurance Commissioner, ~~of the State of~~ Director, or Superintendent of Insurance, or other appropriate party, in the jurisdiction for which this application is made the execution of their duties...”

“For purposes of this Application, I do not contest the validity of any felony conviction upon which this request would be granted. By signing this Application, I ~~acknowledge that the Insurance Department, for the State of~~ may conduct an independent investigation grant permission to the Commissioner, Director or Superintendent of Insurance, or other appropriate party in the jurisdiction for which this application is made to verify information with any federal, state or local government agency, current or former employer, or insurance company, to confirm the information in this Application and I expressly consent and authorize any person, business or agency to release any information the Insurance Department may request as part of the investigation, including but not limited to, records of my former employment, state and federal tax returns, business records, and banking records.”

- Virginia does not have notary requirement.

#### IIABA

##### Notarization of Consent Applications:

The proposed template includes a drafting note indicating that “[s]ome jurisdictions may require applications to be notarized.” We urge the NAIC to delete the drafting note and to expressly indicate that notarization of 18 U.S.C. 1033 consent applications should not be required by state insurance departments. Federal law imposes no duty on an applicant to notarize such requests, and we can think of no conceivable reason or public policy rationale for imposing such a mandate. Establishing an unnecessary and unwarranted notarization requirement only adds to the hiring barriers, costs, and burdens that a person required to submit such an application must overcome in order to work in the insurance industry. It is also noteworthy that the FDIC does not require notarization of similar requests by those seeking consent to work in the banking industry.