

Draft: 5/16/24

Public Licensing (D) Task Force  
Virtual Meeting  
May 9, 2024

The Producer Licensing (D) Task Force met May 9, 2024. The following Task Force members participated: Larry D. Deiter, Chair (SD); Glenn Mulready represented by Erin Wainner and Courtney Khodabakhsh (OK); Lori K. Wing-Heier represented by Kayla Erickson (AK); Mark Fowler represented by Reyn Norman (AL); Ricardo Lara represented by Charlene Ferguson and Tyler McKinney (CA); Karima M. Woods represented by Sheila Parker-Johnson (DC); Doug Ommen represented by Robin Petersen (IA); Amy L. Beard represented by Samantha Aldridge (IN); Vicki Schmidt represented by Monicka Richmeier (KS); Sharon P. Clark represented by Lee Webb, Shaun Orme and Ron Kreiter (KY); represented by Matthew Stewart and Emily Lala (LA); Kathleen A. Birrane represented by Jeff Gross (MD); Chlora Lindley-Myers represented by Marjorie Thompson and Brenda Horstman (MO); Jon Godfread represented John Arnold (ND); Eric Dunning represented by Kevin Schlautman (NE); D.J. Bettencourt represented by Joan LaCourse (NH); Judith L. French represented by Karen Vourvopoulos, Holly Strane and Lindsey Jones (OH); Elizabeth Kelleher Dwyer represented by Rachel Chester (RI); Cassie Brown represented by Matt Tapp and Jon Huebner (TX); Jon Pike represented by Randy Overstreet (UT); Scott A. White represented by Richard Tozer (VA); Kevin Gaffney represented by Mary Block and Calley Rock (VT); Mike Kreidler represented by Todd Dixon and Jeff Baughman (WA); Nathan Houdek represented by Melody Esquivel and Rebecca Rebholz (WI); and Allan L. McVey represented by Robert Grishaber (WV). Also participating was David Buono (PA).

1. Discuss the Template for the 1033 Process

Director Deiter said the draft document distributed for the call today incorporates many of the comments that were submitted on the initial draft of 2022. Director Deiter reviewed the proposed edits.

- Section 1.C was revised to remind insurance entities which might employ a prohibited person who does not have a waiver to take the necessary steps to have the individual apply for a waiver.
- Section 2 edits include technical revisions, but the primary purpose of the edits is to emphasize the Home State is the primary state to consider a 1033 waiver unless an individual's Home State does not issue 1033 waivers. The section clarifies the type of information a state insurance department may request as part of the consideration of a 1033 waiver.
- The Definition of "Breach of Trust" was changed to the definition referenced in the NAIC's "Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994."
- The Definition of "Conviction" was changed to be consistent with the definition reflected on the NAIC's Uniform Individual Producer Licensing. At the same time, the section continues to recognize some states may include in the definition of "conviction" a plea in abeyance, a diversion, or an expunged conviction.
- The Definition of "Dishonesty" was changed to the definition referenced in the NAIC's "Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994."
- Section 4 was amended to recognize some states do not have a separate 1033 consent process.
- Section 5 was amended to create additional transparency regarding notification of the 1033 waiver process and a recommendation for states to submit their final waiver decisions to the NAIC 1033 State Decision Repository.
- Section 6 was amended to provide additional clarity regarding potential standards a state may use to evaluate a 1033 waiver request.
- The title of Section 7 was amended to better reflect the intent of the section.

Ferguson said subsection 1.C should be modified to state insurance entities which already employ a prohibited person who does not have a waiver must take the necessary steps to have the individual apply for a 1033 written consent. Ferguson said the reference to the types of information listed in subsection 2.A that a prohibited person may be required to disclose to an insurance department should be added to Section IV of the Short Form Application. McKinney said California has always interpreted the Federal *Violent Crime Control and Law Enforcement Act of 1994* to require a prohibited person to obtain a 1033 consent from each state in which a prohibited person intends to engage in the business of insurance.

Tozer said the short form application was initially used for existing licensees who had to retroactively obtain a 1033 consent after the adoption of the Federal *Violent Crime Control and Law Enforcement Act of 1994*. Tozer questioned whether the short form application is the correct application to use today. Tozer suggested keeping the language “a crime involving dishonesty includes, but is not limited to” in the definition of Dishonesty. Tozer suggested retaining subsection 6.J “whether other jurisdictions have granted or denied an 18 U.S.C. 1033 consent.”

Hearing no further comments, Director Deiter requested NAIC staff circulate the draft 1033 template for a 30-day comment period.

## 2. Hear Reports of the Task Force Working Groups

- Adjuster Licensing (D) Working Group

Chester said the Working Group is reviewing the Adjuster Licensing Chapter of the State Licensing Handbook. Chester said the Working Group will hold a conference call on May 15 to review the comments on the chapter.

- Producer Licensing Uniformity (D) Working Group

Khodabaskhsh said the Working Group is reviewing the 2018 proposed amendments to the Uniform Licensing Applications. Khodabaskhsh said the Working Group adopted its recommendations on the amendments to the initial licensing application for individuals and will begin reviewing the proposed amendments to the business entity application and the renewal applications for both individuals and business entities. Khodabaskhsh said the Working Group will hold its next meeting in June and plans to complete its recommendations on the applications prior to the NAIC Summer National Meeting.

- Public Adjuster Licensing (D) Working Group

Buono said the Working Group was given a charge to amend the NAIC Public Adjuster Licensing Model Act (#228) to enhance consumer protections for the following four issues: 1) individuals acting as unlicensed public adjusters; 2) contractors who are also acting as public adjusters on the same claim; 3) inappropriate Assignment of Benefit rights; and 4) excessive fees charged by public adjusters. Buono said the Working Group circulated draft revisions, has solicited two rounds of comments, and has held two open conference calls. The first call was held on April 5th and the second call was held on May 2nd. During the call on April 5th, Commissioner Navarro reviewed the proposed changes to the model act. The second call on May 2nd was devoted to the discussion of compensation caps for public adjusters. The current proposal amends section 14 of the model and places a compensation cap of 10% for catastrophe (CAT) claims and 15% for any claim settlement. Given the significance of this issue and the potential impact a fee cap may have on the marketplace, the Working Group continues to seek additional input from all parties. The Working Group will hold another call in May and is working to adopt a revised model for the Task Force’s consideration this year.

- Uniform Education (D) Working Group

Tozer said the Working Group held a regulator-only call on March 6 and an open call on May 8. During the March 6 call, the Working Group reviewed its priorities, including the development of CE Audit Guidelines, Guidelines for Course Introduction statements/forms, and the posting of exam pass rates. Tozer said the Working Group was informed about the NAIC Member's adoption of the CE Course Instructor Approval Guidelines, which have been posted to the Working Group's webpage. Tozer said the Working Group discussed developing CE course audit guidelines. Virginia shared its audit guidelines and forms with the Working Group. Tozer said the goal is for each state to audit courses for its Home State providers to avoid duplicative efforts by other states and thus increase the number of providers/courses audited. Tozer said states should share findings with each other so states can take appropriate action against providers not following NAIC guidelines. On the May 8<sup>th</sup> call, Tozer said the Working Group agreed to distribute a checklist of audit guidelines with additional questions on enforcement of CE violations. Tozer said the Working Group is conducting a survey to identify state pre-course student requirements for CE courses. Tozer said the Working Group received an update on the first-time test-taker pass rates for 2022 and has started to collect this data for 2023. Tozer said the Working Group will survey states to determine how many are following the NAIC State Licensing Handbook best practices by posting pass rates on their websites.

### 3. Receive Comments from ACLI, Finseca, NAIFA

Melissa Bova (Finseca) said industry has been working in partnership for the last two years to address recruitment, retention & diversity in the profession. Bova said the ACLI, Finseca, and NAIFA are seeking the following changes to the NAIC State Licensing Handbook:

- Clarify that while states may choose to have pre-licensing hours, there are no longer required nor is there a suggested minimum number of hours in the State Licensing Handbook. Bova said research shows that pre-licensing mandates do not produce candidates more prepared to pass the exam.
- Allow additional language licensing exams & materials.
- Recognize online access exams. Bova said proctored exams can offer equivalent security measures as applied to in-person exams, pass rates are virtually identical, and an online option makes the exam process more convenient for a wider variety of individuals.

Commissioner Deiter suggested these issues be referred to the Producer Licensing Uniformity (D) Working Group since that working group is charged with oversight of the State Licensing Handbook.

### 4. Any Other Matters

Deiter said Producer Licensing (D) Task Force will likely hold an in-person meeting on Aug. 13 during the NAIC Summer National Meeting.

Having no further business, the Producer Licensing (D) Task Force adjourned.

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*Revisions marks reflect proposed changes from Public Adjuster Model Act adopted by the NAIC in 2005.*

## PUBLIC ADJUSTER LICENSING MODEL ACT

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### Section 1. Purpose and Scope

This Act governs the qualifications and procedures for the licensing of public adjusters. It specifies the duties of and restrictions on public adjusters, which include limiting their licensure to assisting insureds in first party claims, [excluding claims for personal or commercial auto lines of insurance](#).

**Drafting Note:** It is recommended that any statute or regulation inconsistent with this Act be repealed or amended.

**Drafting Note:** This Act also requires a report to the insurance commissioner of any action in another jurisdiction against either the public adjuster license or licensee.

**Drafting Note:** [This Act is not intended to apply to the settlement of claims for personal or commercial auto lines of insurance.](#)

### Section 2. Definitions

- A. “Apprentice public adjuster” means the one who is qualified in all respects as a public adjuster except as to experience, education and/or training.
- B. “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.
- C. “Catastrophic disaster” according to the Federal Response Plan, means an event that results in large numbers of deaths and injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; and severely affects state, local and private

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sector capabilities to begin and sustain response activities. A catastrophic disaster shall be declared by the President of the United States or the Governor of the state or district in which the disaster occurred.

- D. “Fingerprints” for the purposes of this act, means an impression of the lines on the finger taken for purpose of identification. The impression may be electronic or in ink converted to electronic format.
- E. “Home state” means the District of Columbia and any state or territory of the United States in which the public adjuster’s principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare another state in which it becomes licensed and acts as a public adjuster to be the ‘home state.’
- F. “Individual” means a natural person.
- G. “Person” means an individual or a business entity.
- H. “Public adjuster” means any person who, for compensation or any other thing of value on behalf of the insured:
- (1) Acts or aids, solely in relation to first party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;
  - (2) Advertises for employment as a public adjuster of insurance claims or solicits business or represents himself or herself to the public as a public adjuster of first party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or
  - (3) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.
- I. “Uniform individual application” means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Individual Application for resident and nonresident individuals.
- J. [Optional] “Uniform business entity application” means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Business Entity Application for resident and nonresident business entities.

**Drafting Note:** Subsection J is optional and would apply only to those states that have a business entity license requirement.

**Drafting Note:** If any term is similarly defined in a relevant section of the state’s insurance code, do not include the definition of the term in this Act or, in the alternative, reference the statute: “[term] is defined in [insert appropriate reference to state law or regulation].”

### **Section 3. License Required**

- A. A person shall not act, ~~or~~ hold himself/herself out as a public adjuster, [solicit, or negotiate a contract for public adjusting services](#) in this state unless the person is licensed as a public adjuster in accordance with this Act.
- B. A person licensed as a public adjuster shall not misrepresent to a claimant that he or she is an adjuster

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representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster unless so appointed by an insurer in writing to act on the insurer's behalf for that specific claim or purpose. A licensed public adjuster is prohibited from charging that specific claimant a fee when appointed by the insurer and the appointment is accepted by the public adjuster.

- C. A business entity acting as a public adjuster is required to obtain a public adjuster license. Application shall be made using the Uniform Business Entity Application. Before approving the application, the insurance commissioner shall find that:
- (1) The business entity has paid the fees set forth in [insert appropriate reference to state law or regulation; and
  - (2) The business entity has designated a licensed public adjuster responsible for the business entity's compliance with the insurance laws, rules and regulations of this state.

**Drafting Note:** Subsection C is optional and would apply only to those states that have a business entity license requirement.

- D. Notwithstanding subsection A through C, a license as a public adjuster shall not be required of the following:
- (1) An attorney-at-law admitted to practice in this state, when acting in his or her professional capacity as an attorney;
  - (2) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;
  - (3) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including photographers, estimators, private investigators, engineers and handwriting experts;
  - (4) A licensed health care provider, or employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient; or
  - (5) A person who settles subrogation claims between insurers.

#### **Section 4. Application for License**

- A. A person applying for a public adjuster license shall make application to the commissioner on the appropriate uniform application or other application prescribed by the commissioner.
- B. The applicant shall declare under penalty of perjury and under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the applicant's knowledge and belief.
- C. In order to make a determination of license eligibility, the insurance commissioner is authorized to require fingerprints of applicants and submit the fingerprints and the fee required to perform the criminal history record checks to the state identification bureau (or state department of justice public state agency) and the Federal Bureau of Investigation (FBI) for state and national criminal history record checks; the insurance commissioner shall require a criminal history record check on each applicant in accordance with this Act. The insurance commissioner shall require each applicant to submit a full set of fingerprints in order for the insurance commissioner to obtain and receive National Criminal History Records from the FBI Criminal Justice Information Services Division.

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- (1) The insurance commissioner may contract for the collection, transmission and resubmission of fingerprints required under this section. If the commissioner does so, the fee for collecting, transmitting and retaining fingerprints shall be payable directly to the contractor by the person. The insurance commissioner may agree to a reasonable fingerprinting fee to be charged by the contractor.
- (2) The insurance commissioner may waive submission of fingerprints by any person that has previously furnished fingerprints and those fingerprints are on file with the Central Repository of the National Association of Insurance Commissioners (NAIC), its affiliates or subsidiaries.
- (3) The insurance commissioner is authorized to receive criminal history record information in lieu of the [insert reference to Department of Justice/Public Safety Agency] that submitted the fingerprints to the FBI.
- (4) The insurance commissioner is authorized to submit electronic fingerprint records and necessary identifying information to the NAIC, its affiliates or subsidiaries for permanent retention in a centralized repository. The purpose of such a centralized repository is to provide insurance commissioners with access to fingerprint records in order to perform criminal history record checks.

**Drafting Note:** The FBI requires that fingerprints be submitted to the state Department of Law Enforcement, Public Safety or Criminal Justice for a check of state records before the fingerprints are submitted to the FBI for a criminal history check. The FBI recommends all fingerprint submissions to be in an electronic format. The FBI has approved the language in Section 4 (C) to authorize a state identification bureau to submit fingerprints on behalf of its applicants in conjunction with licensing and employment.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

**Drafting Note:** This provision does not permit the sharing of criminal history record information with the NAIC or other insurance commissioners as such sharing of information is prohibited by 28 CFR 20.33.

## **Section 5. Resident License**

- A. Before issuing a public adjuster license to an applicant under this section, the commissioner shall find that the applicant:
  - (1) Is eligible to designate this state as his or her home state or is a nonresident who is not eligible for a license under Section 8;
  - (2) Has not committed any act that is a ground for denial, suspension or revocation of a license as set forth in Section 11;
  - (3) Is trustworthy, reliable, and of good reputation, evidence of which may be determined by the commissioner;
  - (4) Is financially responsible to exercise the license and has provided proof of financial responsibility as required in Section 12 of this Act;
  - (5) Has paid the fees set forth in [insert appropriate reference to state law or regulation]; and
  - (6) Maintains an office in the home state of residence with public access by reasonable appointment and/or regular business hours. This includes a designated office within a home state of residence.

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- B. In addition to satisfying the requirements of Subsection A, an individual shall
- (1) Be at least eighteen (18) years of age; and
  - (2) Have successfully passed the public adjuster examination.
  - (3) Designate a licensed individual public adjuster responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state; and
  - (4) Designate only licensed individual public adjusters to exercise the business entity's license.

**Drafting Note:** Subsection C is optional and would apply only to those states that have a business entity license requirement. C's PLMA Section 6B.

- C. The commissioner may require any documents reasonably necessary to verify the information contained in the application.

## **Section 6. Examination**

- A. An individual applying for a public adjuster license under this act shall pass a written examination unless exempt pursuant to Section 7. The examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the commissioner.
- B. The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in [insert appropriate reference to state law or regulation].
- C. Each individual applying for an examination shall remit a non-refundable fee as prescribed by the commissioner as set forth in [insert appropriate reference to state law or regulation].
- D. An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

**Drafting Note:** A state may wish to prescribe by regulation limitations on the frequency of application for examination in addition to other preclicensing requirements.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

## **Section 7. Exemptions from Examination**

- A. An individual who applies for a public adjuster license in this state who was previously licensed as a public adjuster in another state based on a public adjuster examination shall not be required to complete any preclicensing examination. This exemption is only available if the person is currently licensed in that state or if the application is received within twelve (12) months of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records or records maintained by the NAIC, its affiliates, or subsidiaries, indicate that the public adjuster is or was licensed in good standing.
- B. A person licensed as a public adjuster in another state based on a public adjuster examination who moves to this state shall make application within ninety (90) days of establishing legal residence to become a



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resident licensee pursuant to Section 5. No prelicensing examination shall be required of that person to obtain a public adjuster license.

- C. An individual who applies for a public adjuster license in this state who was previously licensed as a public adjuster in this state shall not be required to complete any prelicensing examination. This exemption is only available if the application is received within twelve (12) months of the cancellation of the applicant's previous license in this state and if, at the time of cancellation, the applicant was in good standing in this state.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

## **Section 8. Nonresident License Reciprocity**

- A. Unless denied licensure pursuant to Section 11, a nonresident person shall receive a nonresident public adjuster license if:
- (1) The person is currently licensed as a resident public adjuster and in good standing in his or her home state;
  - (2) The person has submitted the proper request for licensure, has paid the fees required by [insert appropriate reference to state law or regulation] [NAIC's PLMA Section 8A(2)], and has provided proof of financial responsibility as required in Section 12 of this Act;
  - (3) The person has submitted or transmitted to the commissioner the appropriate completed application for licensure; and
  - (4) The person's home state awards non-resident public adjuster licenses to residents of this state on the same basis.
- B. The commissioner may verify the public adjuster's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.
- C. As a condition to continuation of a public adjuster license issued under this section, the licensee shall maintain a resident public adjuster license in his or her home state. The non-resident public adjuster license issued under this section shall terminate and be surrendered immediately to the commissioner if the home state public adjuster license terminates for any reason, unless the public adjuster has been issued a license as a resident public adjuster in his or her new home state. Notification to the state or states where non-resident license is issued must be made as soon as possible, yet no later than thirty (30) days of change in new state resident license. Licensee shall include new and old address. A new state resident license is required for non-resident licenses to remain valid. The new state resident license must have reciprocity with the licensing non-resident state(s) for the non-resident license not to terminate.

**Drafting Note:** If the state has adopted the PLMA, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

## **Section 9. License**

- A. Unless denied licensure under this Act, persons who have met the requirements of this Act shall be issued a public adjuster license.
- B. A public adjuster license shall remain in effect unless revoked, terminated or suspended as long as the

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- request for renewal and fee set forth in [insert appropriate reference to state law or regulation] is paid and any other requirements for license renewal are met by the due date.
- C. The licensee shall inform the commissioner by any means acceptable to the commissioner of a change of address, change of legal name, or change of information submitted on the application within thirty (30) days of the change.
- D. A licensed public adjuster shall be subject to [cite state's Unfair Claims Settlement Act and state's Trade Practices and Fraud sections of the Insurance Code].
- E. A public adjuster who allows his or her license to lapse may, within twelve (12) months from the due date of the renewal, be issued a new public adjuster license upon the commissioner's receipt of the request for renewal. However, a penalty in the amount of double the unpaid renewal fee shall be required for the issue of the new public adjuster license. The new public adjuster license shall be effective the date the commissioner receives the request for renewal and the late payment penalty.
- F. Any public adjuster licensee that fails to apply for renewal of a license before expiration of the current license shall pay a lapsed license fee of twice the license fee and be subject to other penalties as provided by law before the license will be renewed. If the Department receives the request for reinstatement and the required lapsed license fee within sixty (60) days of the date the license lapsed, the Department shall reinstate the license retroactively to the date the license lapsed. If the Department receives the request for reinstatement and the required lapsed license fee after sixty (60) days but within one year of the date the license lapsed, the Department shall reinstate the license prospectively with the date the license is reinstated. If the person applies for reinstatement more than one year from date of lapse, the person shall reapply for the license under this Act.
- G. A licensed public adjuster that is unable to comply with license renewal procedures due to military service, a long-term medical disability, or some other extenuating circumstance, may request a waiver of those procedures. The public adjuster may also request a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures.

**Drafting Note:** References to license "renewal" should be deleted in those states that do not require license renewal.

- H. The license shall contain the licensee's name, city and state of business address, personal identification number, the date of issuance, the expiration date, and any other information the commissioner deems necessary. I. In order to assist in the performance of the commissioner's duties, the commissioner may contract with non-governmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees and data, related to licensing that the commissioner may deem appropriate. ]

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

## **Section 10.      Apprentice Public Adjuster License [Optional]**

- A. The apprentice public adjuster license is an optional license to facilitate the training necessary to ensure reasonable competency to fulfill the responsibilities of a public adjuster as defined in [insert state statute].
- B. The apprentice public adjuster license shall be subject to the following terms and conditions:
- (1) An attestation/certification from a licensed public adjuster (licensee) shall accompany an application for an initial apprentice public adjuster license assuming responsibility for all actions

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- of such applicant;
- (2) The apprentice public adjuster is authorized to adjust claims in the state that has issued licensure only;
  - (3) The apprentice public adjuster shall not be required to take and successfully complete the prescribed public adjuster examination;
  - (4) The licensee shall at all times be an employee of a public adjuster and subject to training, direction, and control by a licensed public adjuster;
  - (5) The apprentice public adjuster license is for a period not to exceed twelve (12) months, the license shall not be renewed;
  - (6) The licensee is restricted to participation in factual investigation, tentative closing and solicitation of losses subject to the review and final determination of a licensed public adjuster;
  - (7) Compensation of an apprentice public adjuster shall be on a salaried or hourly basis only; and
  - (8) The licensee shall be subject to suspension, revocation, or conditions in accordance with [Insert State Laws].

## **Section 11. License Denial, Non-renewal or Revocation**

- A. The commissioner may place on probation, suspend, revoke or refuse to issue or renew a public adjuster's license or may levy a civil penalty in accordance with [insert appropriate reference to state law] or any combination of actions, for any one or more of the following causes:
- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
  - (2) Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner;
  - (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
  - (4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;
  - (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
  - (6) Having been convicted of a felony;
  - (7) Having admitted or been found to have committed any insurance unfair trade practice or insurance fraud;
  - (8) Using fraudulent, coercive or dishonest practices; or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
  - (9) Having an insurance license, or its equivalent, denied, suspended, or revoked in any other state,

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*Adopted by the Public Adjuster Licensing (D) Working Group, July 17, 2024*

*Revisions marks reflect proposed changes from Public Adjuster Model Act adopted by the NAIC in 2005.*

- province, district or territory;
- (10) Forging another's name to an application for insurance or to any document related to an insurance transaction;
  - (11) Cheating, including improperly using notes or any other reference material, to complete an examination for an insurance license;
  - (12) Knowingly accepting insurance business from an individual who is not licensed but who is required to be licensed by the commissioner;
  - (13) Failing to comply with an administrative or court order imposing a child support obligation; or
  - (14) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

**Drafting Note:** Paragraph (14) is for those states that have a state income tax.

- B. In the event that the action by the commissioner is to deny an application for or not renew a license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the non-renewal or denial of the applicant's or licensee's license. The applicant or licensee may make written demand upon the commissioner within [insert appropriate time period from state's administrative procedure act] for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within [insert time period from state law] and shall be held pursuant to [insert appropriate reference to state law].
- C. The license of a business entity may be suspended, revoked or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the commissioner nor corrective action taken.
- D. In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine according to [insert appropriate reference to state law].
- E. The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this Act and Title [insert appropriate reference to state law] against any person who is under investigation for or charged with a violation of this Act or Title [insert appropriate reference to state law] even if the person's license or registration has been surrendered or has lapsed by operation of law.

**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. The state may want to amend its relevant insurance producer statute to include public adjusters.

## **Section 12. Bond or Letter of Credit**

Prior to issuance of a license as a public adjuster and for the duration of the license, the applicant shall secure evidence of financial responsibility in a format prescribed by the insurance commissioner through a security bond or irrevocable letter of credit:

- A. A surety bond executed and issued by an insurer authorized to issue surety bonds in this state, which bond:

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- (1) Shall be in the minimum amount of \$20,000;
  - (2) Shall be in favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in his or her capacity as a public adjuster; and
  - (3) Shall not be terminated unless at least thirty (30) days' prior written notice will have been filed with the commissioner and given to the licensee.
- B. An irrevocable letter of credit issued by a qualified financial institution, which letter of credit:
- (1) Shall be in the minimum amount of \$20,000;
  - (2) Shall be to an account to the commissioner and subject to lawful levy of execution on behalf of any person to whom the public adjuster has been found to be legally liable as the result of erroneous acts, failure to act, fraudulent acts, or unfair practices in his or her capacity as a public adjuster; and
  - (3) Shall not be terminated unless at least thirty (30) days' prior written notice will have been filed with the commissioner and given to the licensee.
- C. The issuer of the evidence of financial responsibility shall notify the commissioner upon termination of the bond or letter of credit, unless otherwise directed by the commissioner.
- D. The commissioner may ask for the evidence of financial responsibility at any time he or she deems relevant.
- E. The authority to act as a public adjuster shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired.

### **Section 13. Continuing Education**

- A. An individual, who holds a public adjuster license and who is not exempt under Subsection B of this section, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, including ethics, reported on a biennial basis in conjunction with the license renewal cycle.
- B. This section shall not apply to:
- (1) Licensees not licensed for one full year prior to the end of the applicable continuing education biennium; or
  - (2) Licensees holding nonresident public adjuster licenses who have met the continuing education requirements of their home state and whose home state gives credit to residents of this state on the same basis.
- C. Only continuing education courses approved by the commissioner shall be used to satisfy the continuing education requirement of Subsection A.

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## Section 14. Public Adjuster Fees

- ~~A. [Optional] A public adjuster may charge the insured a reasonable fee as determined by state law [insert appropriate reference to state law or regulation].~~

~~Drafting Note: This model designates Section 14A as optional. A majority of the states do not require a cap on fees of public adjusters.~~

- ~~BA.~~ A public adjuster shall not pay a commission, service fee or other valuable consideration to a person for investigating or settling claims in this state if that person is required to be licensed under this Act and is not so licensed.
- ~~CB.~~ A person shall not accept a commission, service fee or other valuable consideration for investigating or settling claims in this state if that person is required to be licensed under this Act and is not so licensed.
- ~~DC.~~ A public adjuster may pay or assign commission, service fees or other valuable consideration to persons who do not investigate or settle claims in this state, unless the payment would violate [insert appropriate reference to state law, i.e. citation to anti-rebating statute or sharing commission statute, if applicable].
- ~~ED.~~ ~~[Optional] In the event of a catastrophic disaster, t~~here shall be limits on ~~e~~atastrophic fees. ~~n~~No public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal ~~to~~of more than ten percent (10%) ~~of any insurance settlement or proceeds for any catastrophic insurance claim settlement, and no more than fifteen percent (15%) for any insurance claim settlement.~~ No public adjuster shall require, demand or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of a claim.

~~Drafting Note: This model designates Section 14E, as optional. It is recommended that the states that establish catastrophic fees utilize the recommended language in this model.~~

## Section 15. Contract Between Public Adjuster and Insured

- A. Public adjusters shall ensure that all contracts for their services are in writing and contain the following terms:
- (1) Legible full name of the adjuster signing the contract, as specified in Department of Insurance records;
  - (2) Permanent home state business address and phone number;
  - (3) Department of Insurance license number;
  - (4) Title of “Public Adjuster Contract”;
  - (5) The insured’s full name, street address, insurance company name and policy number, if known or upon notification;
  - (6) A description of the loss and its location, if applicable;
  - (7) Description of services to be provided to the insured;
  - (8) Signatures of the public adjuster and the insured;
  - (9) Date contract was signed by the public adjuster and date the contract was signed by the insured;

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- (10) Attestation language stating that the public adjuster is fully bonded pursuant to state law; and
  - (11) Full salary, fee, commission, compensation or other considerations the public adjuster is to receive for services.
- B. The contract may specify that the public adjuster shall be named as a co-payee on an insurer's payment of a claim.
- (1) If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.
  - (2) Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses first approved by the insured.
  - (3) Compensation provisions in a public adjusting contract shall not be redacted in any copy of the contract provided to the commissioner. Such a redaction shall constitute an omission of material fact in violation of [insert reference to relevant state law].
- C. If the insurer, not later than seventy-two (72) hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:
- (1) Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;
  - (2) Inform the insured that loss recovery amount might not be increased by insurer; and
  - (3) Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.
- D. A public adjuster shall provide the insured a written disclosure concerning any direct or indirect financial interest that the public adjuster has with any other party who is involved in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, including but not limited to any ownership of, other than as a minority stockholder, or any compensation expected to be received from, any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm which that provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged. The word "firm" shall include any corporation, partnership, association, joint-stock company or person.
- E. A public adjuster contract may not contain any contract term that:
- (1) Allows the public adjuster's percentage fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as percentage of each check issued by an insurance company;
  - (2) Requires the insured to authorize an insurance company to issue a check only in the name of the

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- public adjuster;
- (3) Imposes collection costs or late fees; or
  - (4) Precludes a public adjuster from pursuing civil remedies.
- F. Prior to the signing of the contract the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:
- (1) Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. There are three (3) types of adjusters that could be involved in that process. The definitions of the three types are as follows:
    - (a) “Company adjuster” means the insurance adjusters who are employees of an insurance company. They represent the interest of the insurance company and are paid by the insurance company. They will not charge you a fee.
    - (b) “Independent adjuster” means the insurance adjusters who are hired on a contract basis by an insurance company to represent the insurance company’s interest in the settlement of the claim. They are paid by your insurance company. They will not charge you a fee.
    - (c) “Public adjuster” means the insurance adjusters who do not work for any insurance company. They work for the insured to assist in the preparation, presentation and settlement of the claim. The insured hires them by signing a contract agreeing to pay them a fee or commission based on a percentage of the settlement, or other method of compensation.
  - (2) The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy, but has the right to do so.
  - (3) The insured has the right to initiate direct communications with the insured’s attorney, the insurer, the insurer’s adjuster, and the insurer’s attorney, or any other person regarding the settlement of the insured’s claim.
  - (4) The public adjuster is not a representative or employee of the insurer.
  - (5) The salary, fee, commission or other consideration is the obligation of the insured, not the insurer.
- G. The contracts shall be executed in duplicate to provide an original contract to the public adjuster, and an original contract to the insured. The public adjuster's original contract shall be available at all times for inspection without notice by the commissioner.
- H. The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured’s interest. [The insurer shall verify the public adjuster holds a valid license with the Department of Insurance.](#)
- I. The public adjuster shall give the insured written notice of the insured’s right as provided in [cite the state consumer protection laws].
- J. The insured has the right to rescind the contract within three (3) business days after the date the contract was signed. The rescission shall be in writing and mailed or delivered to the public adjuster at the address in the contract within the three (3) business day period.



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- K. If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within fifteen (15) business days following the receipt by the public adjuster of the cancellation notice.
- L. Subject to its terms relating to assignability, a property insurance policy, whether heretofore or hereafter issued, under the terms of which the policy and its rights and benefits are assignable, may provide that the rights and benefits under the insurance may only be assigned to a person who has the legal authority to represent the named insured or to a subsequent owner of the property to whom title is transferred, and may explicitly prohibit assignment of rights and benefits to any other person, including a property repair contractor. For purposes of this subsection, having “legal authority to represent the named insured” includes the person named by the named insured as having the named insured’s power of attorney, the person who is the named insured’s licensed public adjuster, or any other comparable person. Property repair contractors operating in this State may not subvert the public adjuster licensing requirements of [insert appropriate reference to state law] through the acquisition of a power of attorney from the named insured.

**Drafting Note:** The details in this section should comply with your state’s consumer protection contract rescission law.

## **Section 16.      Unlicensed Actors**

A person or entity commits a fraudulent insurance act if he or she:

- A. Represents or advertises themselves to be a public adjuster who has not met the requirements of licensure under [insert appropriate reference to state law].
- B. Conducts business for which a license is required under this Act without a license.

## **~~Section 16~~17.      **Escrow or Trust Accounts****

A public adjuster who receives, accepts or holds any funds on behalf of an insured, towards the settlement of a claim for loss or damage, shall deposit the funds in a non-interest bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the public adjuster’s home state or where the loss occurred.

## **~~Section 17~~18.      **Record Retention****

- A. A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section shall include the following:
- (1) Name of the insured;
  - (2) Date, location and amount of the loss;
  - (3) Copy of the contract between the public adjuster and insured;
  - (4) Name of the insurer, amount, expiration date and number of each policy carried with respect to the loss;
  - (5) Itemized statement of the insured’s recoveries;
  - (6) Itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss;

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- (7) A register of all monies received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees transfers and disbursements from a trust account and all transactions concerning all interest bearing accounts;
  - (8) Name of public adjuster who executed the contract;
  - (9) Name of the attorney representing the insured, if applicable, and the name of the claims representatives of the insurance company; and
  - (10) Evidence of financial responsibility in a format prescribed by the insurance commissioner.
- B. Records shall be maintained for at least five (5) years after the termination of the transaction with an insured and shall be open to examination by the commissioner at all times.
- C. Records submitted to the commissioner in accordance with this section that contain information identified in writing as proprietary by the public adjuster shall be treated as confidential by the commissioner and shall not be subject to [insert reference to open record laws] of this state.

#### **Section ~~18~~19. Standards of Conduct of Public Adjuster**

- A. A public adjuster is obligated, under his or her license, to serve with objectivity and complete loyalty the interest of his client alone; and to render to the insured such information, counsel and service, as within the knowledge, understanding and opinion in good faith of the licensee, as will best serve the insured's insurance claim needs and interest.
- B. A public adjuster shall not solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract.
- ~~C.~~ A public adjuster shall not advertise or infer damage unless an inspection of the property has been completed.
- ~~D.~~ A public adjuster shall not offer to pay an insured's deductible, or claim the insured's deductible will be waived, as an inducement to using the services of a public adjuster.
- ~~E.~~ A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this Act.
- ~~F.~~ A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured; ~~unless full written disclosure has been made to the insured as set forth in Section 15G.~~
- ~~G.~~ A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer as set forth in Section 15G.
- ~~F~~H. The public adjuster shall abstain from referring or directing the insured to get needed repairs or services in connection with a loss from any person; ~~unless disclosed to the insured:~~
- (1) With whom the public adjuster has a financial interest; or

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- (2) From whom the public adjuster may receive direct or indirect compensation for the referral.

**Drafting Note:** Optional language for Subsection F: "Licensees may not solicit a client for employment between the hours of \_\_\_ pm and \_\_\_ am."

~~G. The public adjuster shall disclose to an insured if he or she has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other firm that performs any work in conjunction with damages caused by the insured loss. The word "firm" shall include any corporation, partnership, association, joint stock company or individual as set forth in Section 15A(4).~~

~~H.~~ Any compensation or anything of value in connection with an insured's specific loss that will be received by a public adjuster shall be disclosed by the public adjuster to the insured in writing including the source and amount of any such compensation.

~~I.~~ Public adjusters shall adhere to the following general ethical requirements:

- (1) A public adjuster shall not undertake the adjustment of any claim if the public adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the public adjuster's current expertise;
- (2) A public adjuster shall not knowingly make any oral or written material misrepresentations or statements which are false or maliciously critical and intended to injure any person engaged in the business of insurance to any insured client or potential insured client;
- (3) No public adjuster, while so licensed by the Department, may represent or act as a company adjuster, or independent adjuster on the same claim;

**Drafting Note:** If a state only allows licensure in one class of adjuster licensing, the adjuster may not represent another type of licensure in any circumstance.

- (4) The contract shall not be construed to prevent an insured from pursuing any civil remedy after the three-business day revocation or cancellation period;
- (5) A public adjuster shall not enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work; and
- (6) A public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement.

~~J.~~ A public adjuster may not agree to any loss settlement without the insured's knowledge and consent.

## **Section ~~19~~20. Reporting of Actions**

- A. The public adjuster shall report to the commissioner any administrative action taken against the public adjuster in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.
- B. Within thirty (30) days of the initial pretrial hearing date, the public adjuster shall report to the commissioner any criminal prosecution of the public adjuster taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

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**Drafting Note:** If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

### **Section ~~20~~21. Regulations**

The commissioner may, in accordance with [insert appropriate reference to state law], promulgate reasonable regulations as are necessary or proper to carry out the purposes of this Act.

### **Section ~~21~~22. Severability**

If any provisions of this Act, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

### **Section ~~22~~23. Effective Date**

This Act shall take effect [insert date]. Provided, however that the provision of Section 4 do not become effective until a state participates in the NAIC's central repository for the purpose of obtaining criminal background information.

**Drafting Note:** A minimum of six months to one-year implementation time for proper notice of changes, fees, and procedures is recommended.

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*Chronological Summary of Action (all references are to the Proceedings of the NAIC).*

*2005 Proc. 2<sup>nd</sup> Quarter 698 (adopted by parent committee).*

*2005 Proc. 3<sup>rd</sup> Quarter 26, 35-49 (amended and adopted by Plenary).*

*Adopted by the Executive Committee and Plenary, XX, 2024*  
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**NAIC Public Insurance Adjuster Surety Bond Sample**

BOND NO. \_\_\_\_\_

**Know All Persons by These Presents:**

That we, \_\_\_\_\_ as Principal, whose address is \_\_\_\_\_  
\_\_\_\_\_ and \_\_\_\_\_ as Surety, being a surety company authorized  
to do business in the State of \_\_\_\_\_ re bound to the \_\_\_\_\_ Department of Insurance in the sum of \$10,000.00 as specified  
at [ insert reference to state law or regulation]. The specified sum is payable to the [insert state] Department of Insurance for  
the use and benefit of any customer of the above described Principal and as defined by the [insert state] Insurance Code,  
[insert citation] in acceptable currency of the United States in accordance with the statutory provision cited above. By this  
instrument, we jointly and severally firmly bind ourselves, our heirs, executors, administrators, successors and assigns.

***The conditions of the above obligations are:***

**Whereas** the above named Principal has applied to the [insert state] Department of Insurance for a license as a Public  
Insurance Adjuster to engage in or continue the business of insurance as a Public Insurance Adjuster in accordance with the  
[insert state] Insurance Code;

**Now, Therefore,** should the Principal discharge losses that result from any final judgment recovered against the Principal by  
any customer, this obligation will become void. If this obligation is not void, it remains in full force and effect, subject to the  
following conditions:

1. As of \_\_\_\_\_, 20\_\_\_\_, this bond will be in full force and effect indefinitely. Continuation or renewal  
certificates are unnecessary.
2. The surety may, at any time, terminate this bond by submitting written notice to the [insert state] Department of  
Insurance thirty (30) days prior to the termination date. The surety, however, remains liable for any defaults under this bond  
committed prior to the termination date.
3. In no event will the aggregate liability of the Surety under this bond, for any or all damages to one or more  
claimants, exceed the penal sum of this bond.

**In Witness Whereof** said Principal and Surety have executed this bond this \_\_\_\_\_ day of \_\_\_\_\_  
, 20\_\_ to be effective the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
BY

\_\_\_\_\_  
ADDRESS

\_\_\_\_\_  
SURETY

*Revision marks reflect proposed changes to the draft of Sept. 29, 2022.*

**DISCUSSION DRAFT**

**Template for 1033 Consent Process**

*Suggestion on How to Make 1033 Consent Process Effective and Efficient*

Initial Draft of Sept. 29, 2022 - Based on Utah Process for Written Consent  
<https://insurance.utah.gov/licensee/producers/exam/1033-consent-process>

**1. Introduction**

- A. Federal law provides penalties for a person who: (a) has been convicted of a felony involving dishonesty or breach of trust; and (b) willfully engages in the business of insurance affecting interstate commerce, unless the person receives written consent from the state insurance regulatory official with appropriate jurisdiction. See, Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. §§1033 and 1034.
- B. A person who has not obtained written consent and who has been convicted of a felony involving dishonesty or breach of trust is a “prohibited person.” A prohibited person who engages in the business of insurance faces possible federal criminal and civil action.
- C. The federal law also penalizes those in the insurance industry who willfully allow prohibited persons to engage in the business of insurance. They must notify the [Insert Jurisdiction Insurance Department] (“the Department”) in writing of an employee or agent who is a prohibited person. [Insurance entities which already employ a prohibited person who does not have a waiver shall take the necessary steps to have the individual apply for a 1033 written consent.](#)

**2. A prohibited person may seek written consent**

- A. A prohibited person ~~may~~ must seek written consent prior to engageing in the business of insurance in ~~[Insert Jurisdiction] their Home State~~. The process for obtaining consent is set forth in this document. The process is available ~~only~~ to a ~~[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~~ prohibited person seeking an insurance license or who wishes to be employed in the business of insurance in a non-licensed capacity in [Insert Jurisdiction]. ~~A non-resident should consult her or his home state insurance department.~~ Nonresident applicants should not have to apply for a 1033 waiver. However, states may issue a nonresident 1033 waiver if the Home State did not issue a 1033 written consent or when the Home State does not issue 1033 written consents on the same basis. 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, banking records.

### 3. Definition of relevant terms

- A. 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~~ A wrongful act, use, misappropriation, or omission with respect to any property or fund which has been committed to a person in a fiduciary, official capacity or some other relationship based on trust, or the misuse of one's official fiduciary, or other position based on trust to engage in a wrongful act, use, misappropriation, or omission. (For example, a fiduciary relationship is present in a lawyer/client relationship, physician/patient relationship), or caregiver/elder adult relationship.
- B. Business of Insurance. This term means the writing of insurance or the reinsuring of risks, by an insurer, including all acts necessary or incidental to such writing or reinsuring and the activities of persons who act as, or are, officers, directors, agents, or other licensed or unlicensed employees of insurers or who are other persons authorized to act on behalf of such persons.
- 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~~ 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.

States may include in the definition of "Conviction" a plea in abeyance, a diversion, or an expunged conviction.

- D. Dishonesty. ~~A crime involving dishonesty includes, but is not limited to, an offense constituting or involving perjury, bribery, forgery, counterfeiting, false or misleading oral or written statements, deception, fraud, theft, schemes or artifices to deceive or defraud, material misrepresentations and the failure to disclose material facts.~~ 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 includes, lie, cheat, deceive, or defraud. Untrustworthiness, lack of integrity, honesty, fairness, etc.
- E. Felony. A "felony" is an offense that is specifically classified as such in ~~the section defining it~~ [insert appropriate reference to state law]. 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.

### 4. Applying for written consent (This section is not applicable in jurisdictions that incorporate the 1033 consent process into the producer licensing process and do not require a separate Application for Written Consent.)

- A. Each prohibited person seeking written consent must submit a completed Application for Written Consent to Engage in the Business of Insurance ("Application") addressed to [Insert Individual Name to review request]. An Application shall be electronically submitted to [Insert Jurisdiction email address].
- 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. 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.

## 5. Process for granting or denying an Application

- A. Each jurisdiction will establish a process for the receipt and review of an Application. This may include incorporating the 1033 consent process into the process a jurisdiction uses to issue an insurance producer license.
- B. Notification of a 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.
- D. A jurisdiction should submit its final decision to grant or deny a 1033 waiver to the NAIC's 1033 State Decision Repository.

## 6. Standard by which an Application is evaluated

- A. An Application provides a prohibited person with the opportunity to demonstrate that, notwithstanding the conviction(s), ~~he or she~~ they is sufficiently trustworthy to participate may 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 may be determined by each jurisdiction's rules, and may include, but are not limited to, the following:
  - a. the nature and severity of the offense and sentence;
  - b. the date of conviction(s);
  - c. the age at the time of committing the crime(s);
  - d. the nature and extent of injury and/or loss caused by the act for which the prohibited person was convicted;
  - e. unpaid judgment(s);
  - f. whether the crime was related to the business of insurance or the exercise of any professional or other license or authority conferred by a federal, state or local governmental agency;
  - g. whether the prohibited person received an expungement or pardon from the sovereign that convicted him or her, and the reason for it;
  - h. whether the prohibited person successfully completed parole or probation without incident and all court requirements, including, parole or probation without incident but not limited to, and whether completion of community service, court ordered treatment and payment of all fines, penalties or other assessments ~~were satisfied~~;
  - i. any aggravating or mitigating factors;  
~~j. whether other jurisdictions have granted or denied an 18 U.S.C. § 1033 consent;~~
  - ~~k.~~ j. the nature and strength of any letters of recommendation and other evidence of rehabilitation;
  - ~~l.~~ k. the prohibited person's employment history before and after the commission of the crime(s);
  - ~~m.~~ l. the nature of any consumer complaints in the Department's possession or reported by the prohibited person;
  - ~~n.~~ m. whether and to what extent the prohibited person has made materially false statements in any license application or in any other documents filed with the Department;
  - ~~o.~~ n. the prohibited person's proposed type of employment in the insurance industry;
  - ~~p.~~ o. the extent to which the prohibited person will be supervised in that employment;
  - ~~q.~~ p. whether and to what extent the prohibited person has made materially false statements in any application or in other documents filed with any other state or federal agency; and
  - q. whether the prohibited person has had any professional license revoked or suspended by any state or federal agency.



- r. [whether the prohibited person's civil rights have been restored;](#)
- s. [whether the prohibited person has a pattern of unlawful activity;](#)
- t. [extent an insurance license offers opportunity to engage in further criminal activity;](#)
- r.u. [level of cooperativeness of the prohibited person during the application process.](#)

7. ~~Ongoing duties of person who Application is granted~~ [Conditions of Written Consent](#)

- A. An Application granted by the Commissioner is conditioned on the truth of the documents and information submitted by or on behalf of the prohibited person. If a prohibited person has made materially false or misleading statements, has presented materially false or misleading information, or has failed to disclose material information, that may constitute a separate violation of law.
- B. A person whose Application is granted has the Commissioner's consent to engage in the business of insurance according to the terms and conditions of the written consent.

Proposed changes to Short Form Application are noted with revision marks.

**SHORT FORM APPLICATION  
FOR WRITTEN CONSENT TO ENGAGE IN THE BUSINESS OF INSURANCE  
PURSUANT TO 18 U.S.C. §§ 1033 ~~AND 1034~~**

**Notice to Applicant: 18 U.S.C. § 1033 prohibits certain activities by or affecting persons engaged, or proposing to become engaged, in the business of insurance:**

- (e)(1)(A) Any individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than five (5) years, or both.**
  
- (B) Any individual who is engaged in the business of insurance whose activities affect interstate commerce and who willfully permits the participation described in subparagraph (A) shall be fined as provided in this title or imprisoned not more than five (5) years, or both.**
  
- (e)(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any regulatory official authorized to regulate the insurer, which consent specifically refers to this section.**

**This Application will be reviewed by the chief insurance regulatory official in this state to determine whether the Applicant should be given written consent to engage in the business of insurance or participate in the business pursuant to 18 U.S.C. § 1033(e)(2).**

**You must answer every question on the Application. If a question does not apply, indicate N/A in the space provided for the answer. Your answers are not limited to the space provided on the Application. Attach additional pages as needed. The Department of Insurance will not process incomplete Applications. Additional information may be requested.**



2. Provide details of the conviction for which you are seeking written consent and the final disposition of these matter(s); including sentence; dates of incarceration; dates of probation/parole (if you are currently under probation/parole, include the name and phone number of person supervising your parole or probation; restitution paid; fines/costs ordered: fines/costs paid; and pardons granted. Include information as to whether or not your civil and political rights have been restored. Attach additional pages if needed.

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3. Have you ever applied for consent from an insurance regulatory authority?  Yes  No  
If yes, provide details below:

State(s): \_\_\_\_\_

- Granted  
 Denied  
 Other \_\_\_\_\_

Please provide details of outcome of prior or pending applications for Consent:

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### SECTION III - PRESENT/PROPOSED INSURANCE EMPLOYMENT

1. Please specify the name and address of your current or proposed employer to which the requested ~~exemption~~-consent will apply.

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2. Please describe in detail the office, position, and title to which the requested ~~exemption~~-consent will apply and a complete description of the activities, duties and responsibilities. Please attach or describe any proposed or current written or oral agreements, contracts, or understandings with any entity engaged in the business of insurance as defined by 18 U.S.C. § 1033. (If consent is given, it will be applicable to the activities described herein.) Please include your date of employment or proposed date of employment.

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**1033 Comments**  
**As of June 21, 2024**

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**Maine – Hanock Fenton/Tracy Cunningham**

My main concern is that applicants will be able to apply for 1033s from seemingly any US jurisdiction even if they've already been denied by their home state.

Page 1: "The federal law also penalizes those in the insurance industry who willfully allow prohibited persons to engage in the business of insurance. They must notify the [Insert Jurisdiction Insurance Department] ("the Department") in writing of an employee or agent who is a prohibited person."

- I don't believe state regulators can oblige "those in the insurance industry who willfully allow prohibited persons to engage in the business of insurance" to notify us in writing of the employee or agent who is a prohibited person by just citing to the federal Crime Act. There may be state law that would apply from the PLMA but I think this needs to be discussed and we shouldn't assume the federal law gives us that power.

Page 1: "Nonresident applicants should not have to apply for a 1033 waiver. However, states may issue a nonresident 1033 waiver if the Home State did not issue a 1033 written consent or when the Home State does not issue 1033 written consents on the same basis."

- A policy issue here. The NAIC Licensing Handbook states that "The Working Group determined that the resident state bears responsibility for consideration of applications for consent waivers. Nonresident applicants should not be subject to additional procedures, nor should producers seeking nonresident licenses have to go through the 1033 process in all states after the producer's resident state has issued a waiver." This new proposal seems to run counter to the idea that only the resident state will issue 1033s. I get that the new proposal is meant to deal with those prohibited persons who live in states that don't issue 1033s or are tight in handing them out...but I think this proposal would open up the 1033 process to chaos. People will be able to apply far and wide for a 1033.

Page 1: "The [Insert Jurisdiction Insurance Department] may require the prohibited person to 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, banking records."

- Another policy issue. This ability to "require" "any information" is I think really broad. I think we'd want to constrain ourselves a bit concerning what information we should be able to request. I'm thinking in a number of years maybe regulators might say "give us your phone" and the applicant would have to turn over the phone or be denied a 1033. I may be over thinking this one but Maine typically doesn't require fingerprinting for instance when it comes to licensing boards.

Page 1: the definition of "felony." Maybe they'd want to account for those sentenced to "life imprisonment" as well?

Page 2: "conviction" definition.

- So, this seems to veer from traditional notions of what constitutes a "conviction" into stuff that typically is not thought to constitute a "conviction." Such as "having been given probation, a suspended sentence or a fine" and "a plea in abeyance, a diversion, or an expunged conviction."
- We don't consider expunged convictions to even be reportable as I recall. The definition says "states may include..." Isn't the point of the exercise to provide uniformity? Why then have inexact definitions? It doesn't make sense to me and I think it's bad policy. I also don't think there's enough in the federal law to even allow state regulators to define "conviction" as it is defined in the document. For instance, how can successful completion of a diversion program and avoidance of a conviction be considered to be a "conviction"?

Page 2: "dishonesty" definition. I don't know where this comes from but "dishonesty" is something that I'm not sure requires such a specific definition.

### **North Carolina – Joe Wall**

With respects to suggestions for the 1033 Short Form, one recommendation is for something that we require from an applicant for written consent in North Carolina; and that is character references. We ask for at least five (5) character references relating to the applicant's honesty, trustworthiness, and financial responsibility. These reference letters are to be signed (not just a typed name) and they would be required attachments to the Application for written consent, in addition to the affidavit from the future employer.

Other than that, North Carolina does not have any further comments as to the draft 1033 Template. Please feel free to contact me directly if you have any questions.

### **Ohio – Lindsey Jones**

2.A.

Need the waiver, so if applicant does not have one, should say that they'd need to apply.

Add something about NR providing a copy of the consent?

### **Oklahoma – Erin Wainner**

- **Section II-Criminal History:** Add the highlighted portions for questions 1 and 2:
  - 1. List any felony(s) for which you have been 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 following must be provided for each felony conviction: a) a written statement explaining the circumstances of each incident and b) a court certified copy of the charging document, c) certified final resolution document from the court.**
  - 2. Provide details of the conviction for which you are seeking written consent and the final disposition of these matter(s): including sentence; dates of incarceration; dates of probation/parole (if you are currently under probation/parole, include the name and phone number of person supervising your parole or probation; restitution paid; fines/costs ordered: fines/costs paid; and pardons granted. Include information as to whether or not your civil and political rights have been restored. Attach additional pages if needed. **A copy of the official**

**disposition document from the court, which demonstrates the resolution of the charges or any final judgment must be provided.**

### **Texas – Jodie Delgado**

3.B

Should we include language to indicate this also applies to adjusters? (even if they are not employees of companies) same question regarding title/escrow

### **Virginia – Richard Tozer**

5.A

Strike “producer” since 1033 applies to all insurance licenses.

7.B

Suggests adding the following:

If the conditions of the Written Consent are not continually met, [Insert Jurisdiction Insurance Department] may withdraw its consent under 18 U.S.C. §1033(e)(2). Failure of a "Prohibited Person" to comply with all the terms and conditions will result in the termination of the Written Consent and revocation of the license to transact the business of insurance. Violations of the terms and conditions include, but are not limited to the following:

- a. Any subsequent felony conviction or failure to notify the [Insert Jurisdiction Insurance Department] of any subsequent felony conviction involving dishonesty, breach of trust, or a violation of 18 U.S.C. §1033.
- b. The filing of an administrative sanction against you in your Home State or any other state.
- c. Failure to amend your application for written consent upon a change in job duties.
- d. Failure to notify your employer of your status as a Prohibited Person under 18 U.S.C. §1033.
- e. Making materially false or misleading statements, or failure to disclose material information on your application for written consent.

### **West Virginia – Rob Grishaber**

The West Virginia Offices of the Insurance Commissioner is opposed to changing the 1033 consent process to require states to engage in the 1033 consent process for nonresident applicants for several reasons.

1) The West Virginia OIC currently only has legislative authority to consider 1033 waivers for resident applicants. We would have to petition our legislature to change the rule granting authority, which could take a few years to change. The West Virginia OIC suggests that the NAIC encourage states without authority to consider 1033 waivers to petition their respective legislatures to grant them authority.

2) However, if the NAIC moves forward with these changes as promulgated, there are some issues that need to be clarified. Beginning with fifth sentence in Section 2.A: "However, states may issue a nonresident 1033 waiver *if the Home State did not issue a 1033 written consent or when the Home State does not issue 1033 written consents on the same basis.*" We believe that the emphasized language suggests a nonresident state can issue a 1033 written consent when the Home State has not issued the 1033 written consent for any reason (i.e. consideration and denial of the applicant's 1033 application). If this is the intended meaning of this language, it ruins the spirit of uniformity and reciprocity between the



states. We suggest that the sentence be reworded: "However, states may issue a nonresident 1033 waiver when the Home State *does not have the authority under state law to issue* 1033 written consents." It may also be helpful if home states were required to issue some notice to nonresident states that a 1033 waiver was required and the state did not have the authority to act.

3) The proposed language suggests all nonresident states grant 1033 waivers when the resident state has not considered the 1033 requirement. Can it be clarified whether one nonresident jurisdiction may grant a 1033 waiver upon which all other jurisdictions can rely, similar to the current system?

4) If so, is there a way to determine which nonresident state will lead in the 1033 consent process? There is potential for nonresident jurisdictions to put off the 1033 process until another jurisdiction has ruled on the waiver. Perhaps judging which application was filed first is the clearest indicator of what jurisdiction should begin the 1033 process.

5) How will nonresident states honor other nonresident waivers? Will a second state be required to honor the waiver, or can the second state begin its own process and make its own determination? Similarly, can nonresident states re-evaluate a candidate for a 1033 waiver, despite a recent denial of a waiver in another nonresident state?

6) Moving on to Section 3. C. the "Conviction" definition. We would suggest that the separate sentence setting forth additional definitions of "conviction" (a plea in abeyance, so on) be deleted. Pleas in abeyance or diversions are not convictions. While it may be concerning if an applicant is involved in these legal processes, the applicant is required to report current criminal charges in the application process. Thus, these non-convictions should still be discovered and considered. Further, if the applicant is later convicted (such as in the case of a plea held in abeyance) the applicant would then be required to obtain a waiver. However, if this definition is not changes, the application should be altered. As amended, Section II. 1. of the applications requires applicants to report felonies of which the applicant has been "convicted." A plea in abeyance or diversion are not convictions within the common understanding of this word and there is nothing in the application to suggest that these situations should be reported. So some change would be necessary for fairness to the applicants.

7) Finally, it is our opinion that section 6.A.j. should not be deleted. If multiple jurisdictions will be considering 1033 waivers for a single applicant, we think this factor is more important than before when only the home state considered the waiver.

#### **Wyoming – Becky McFarland/Lisa Hastings**

2.A: Specific language for reference: *Nonresident applicants should not have to apply for a 1033 waiver. However, states may issue a nonresident 1033 waiver if the Home State did not issue a 1033 written consent or when the Home State does not issue 1033 written consents on the same basis.*

This statement negates consistency in issuing 1033 waivers for nonresidents. First, states issue 1033's for many different reasons with limited consistency. Second, there is a difference between a home state that does not issue a 1033 waiver as a matter of course, and a home state that did not issue a 1033 after review of the information and determination that a 1033 was not necessary. Should there be further clarification here?

### 3.A

This definition would omit any crimes that are committed as an individual, i.e. not in a fiduciary or special relationship capacity, up to and including insurance fraud, theft, forgery, etc. This definition would also eliminate all violent crimes from consideration despite the 1033 waiver originating within the Violent Crime Control and Law Enforcement Act of 1994.

### 4.B

Saying that amendments must be filed immediately or timely can present problems of implementation and interpretation. Specifically, immediately filing an amendment may not be possible if the discovery or recollection of information occurs outside business hours of the regulatory agency. The term "Timely" can be vague and subject to interpretation. Should a statement such as "time is of the essence with regard to filing of amendments" be included instead?

June 18, 2024

Commissioner Glen Mulready  
Oklahoma Insurance Department  
400 NE 50<sup>th</sup> Street  
Oklahoma City, OK 73105

Director Larry D. Deiter  
Department of Labor and Regulation  
South Dakota Division of Insurance  
124 S. Euclid Ave, 2nd Floor, Pierre, SD 57501

Re: Comments on the May 9, 2024 Draft Template for 1033 Consent Process

CC: Tim Mullen, Director, Market Regulation, National Association of Insurance Commissioners

Dear Director Deiter and Commissioner Mulready:

The three trade associations that are signatories to this letter appreciate the opportunity to provide additional comment on the exposed Template for 1033 Consent Process. With our ongoing commitment to expanding access to financial security products and closing the coverage gap for middle class and lower income families, we believe this discussion on 1033 consent reform is a step in the right direction. While we support Section 1033 and believe only morally fit and competent individuals should be granted licenses, we believe the removal of unnecessary barriers to licensure is in society's best interest. We believe that states, insurance producers and consumers will benefit from a consistent and transparent process for 1033 consents while also preserving the important protections for our customers, including vulnerable adults. Recruitment and retention of well-qualified and well-vetted candidates is a common goal for our associations, and we believe for the NAIC as well.

We support the efforts of the Task Force to exploring how criminal convictions may affect producer licensing applicants, and to review of the NAIC's Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994 to create a more simplified and consistent approach in how states review 1033 consent requests. We appreciate the task force looking to improve the consent process.

We support the NAIC's goal of simplifying the 1033 waiver form process and developing uniformity and a consistent approach, for states to adopt. However, we do have several suggestions in connection with the Template for 1033 Consent Process language in the exposed discussion draft:

We are concerned that the proposal's definition of "Conviction" in Sec. 3(C), as written, could lead to an increase in the number of applicants required to go through the 1033 consent process. While we appreciate the change to the definition making pleas in abeyance and expungements optional, we still would note the inclusion of these pleas is largely out of line with most states current law. 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 was originally based on, there is 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.

Similarly, the definition of Conviction does still affirmatively include other non-conviction pleas like Nolo Contendere and no contest. Nolo contendere and no contest pleas or other pleas are often required for "pre-trial" diversion programs. These pleas are generally only available to first time offenders charged with lesser offences. Operationally, these pleas of Nolo and no contest are required to enter these diversionary program, which if successfully completed expunges an individuals record and therefore no "conviction" has ever occurred as no judgement was entered.

We believe that most states do not view these types of pleas as "Convictions", and by defining a "Conviction" for 1033 processes to include non-conviction please could potentially significantly increase the numbers of applicants required to go through a 1033 waiver process and would run counter to the broader goals of diversion programs and reducing unnecessary barriers to licensure. We would further note that applicants are already required to disclose to Departments of Insurance Nolo and no contest pleas as part of the uniform application, so Departments are already receiving disclosure of these pleas.

We appreciate that Section 6(A) has been amended to include "expungement" as one of the factors available for consideration in evaluating 1033 consents. We believe this this change is consistent with New York's 2022 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.

We greatly appreciate the opportunity to provide comments on the 1033 consent discussion draft. We stand ready to answer any questions you may have and look forward to working with you on this and other aspects of the producer licensing process.

Sincerely,



David Leifer  
Vice President & Associate  
General Counsel  
American Council of Life  
Insurers



Melissa Bova  
Senior Vice President, State  
Affairs & Policy  
Finseca



Roger Moore  
Policy Director  
NAIFA