

Director Larry Deiter
South Dakota Division of Insurance
National Association of Insurance Commissioners (NAIC)
Chair, Producer Licensing (D) Task Force

April 15, 2024

Re: Proposed Revisions to the Public Adjuster Licensing Model Act -- Adjuster Licensing Working Group (Producer Licensing Task Force).

Sent via electronic mail to Tim Mullen: TMullen@naic.org.

Dear Director Deiter and members of the Task Force,

Thank you for the opportunity to comment on the National Association of Insurance Commissioners (NAIC) Public Adjuster Licensing Act. Representing nearly 65 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, protecting families, communities, and businesses in the U.S. and across the globe.

APCIA and its insurer members would like to thank the NAIC Producer Licensing Task Force for accepting comments on proposed revisions to the Public Adjuster Model Act. We strongly support the NAIC and the Task Force's effort to strengthen the standards used to manage public adjuster conduct and protect consumers.

APCIA and its members strongly believe that there is significant need bring clarity and openness to the interaction between consumers and public adjusters through effective licensing, clear communication of the financial interest of adjusters and third parties, proper management of assigned benefits, transparent contracting, and appropriate fee structuring.

Licensing

Integral to the protection of consumers interacting with public adjusters and third parties is clear communication between the parties, defining their roles in claims adjustment, recovery, and rebuilding. The first and most significant step in providing clarity to consumers is that of licensing to public adjusters to exclude potentially bad acting third parties misrepresenting themselves to exploit the insurance claims process to their benefit. Therefore, we are supportive of the proposed limitation offered in Section 3: License Required, that will prohibit non-public adjusters from negotiating a contract for public adjuster services unless so licensed.

In furtherance of the importance of clear communication and consumer understating of public adjuster licensing, APCIA also supports the proposed changes to Section 16. Unlicensed Actors which brings within the definition of a “fraudulent insurance acts” unlicensed persons representing themselves as public adjusters or conducting business for which a license is required.

Fees

Primary to the consideration of fees related to the services provided by public adjusters is that such fees are fair and appropriate to the services being provided. The proposed elevation and prioritization of fee caps, in Section 14: Public Adjuster Fees, through the removal of the term “Optional” designation is supported by APCIA.

While fee caps remain a minority provision amongst the states, there is a strong correlation between states that have adopted such caps and the occurrence of catastrophic events producing significant loss. This relationship, APCIA believes, is the result of regulators and decision makers taking affirmative action to protect consumers in instances where regular and significant abuses by bad actors have been recorded. We support the NAIC adopting the lessons learned in these states to disincentivize bad actors through inclusion of the fee caps proposed to be added to the Model Act.

Contracting

The contract governing the relationship between public adjusters and policyholders is integral to transparency and fair dealing on the part of adjusters and to limit the influence of bad actors attempting to take advantage of policyholders.

Of particular importance is the matter of assignability of benefits under the insurance contract between the insurers and insured. It is essential to fair dealing in the claim’s adjustment process that the rights of the insured be retained by the insured and that assigned rights be allowed in a manner understood by the insured. APCIA supports the proposed changes under Section 15: Contract Between Public Adjuster and Insured that allow for the express prohibition of assignment of rights under the insurance agreement. Additionally, APCIA agrees that exceptions to the prohibition for a person named to hold power of attorney is necessary and to the benefit of the insureds. Essential to these protections is that they cannot be subverted by third parties via alternative agreements or improper creation of a power of attorney.

Because contractual agreements governing the claims process, rebuilding, and restoration are implemented on an ongoing basis, the need for clear communication between the insurers and insureds is essential to effective management of the process. APCIA believes that an affirmative statement in Section 15, either via language adopted or a drafting note, that expressly protects the ability of the insurer to communicate with the insured would serve to improve the claims process and protect the insured.

We would like to thank the Producer Licensing Task Force for the good work it is doing, and for consideration of our comments. APCIA and its members look forward to working with the NAIC

Producer Licensing Task Force in the future to improve claims adjustment, consumer protections, and insurance availability across the nation.

Sincerely,

Michael Richmond-Crum

Michael Richmond-Crum
Director, Personal Lines & Counsel
American Property Casualty Insurance Association