

COMMENTS ON TEMPLATE FOR 1033 CONSENT PROCESS
DRAFT OF SEPT. 29, 2022

CALIFORNIA

MAINE

MARYLAND

MICHIGAN

OHIO

OREGON

TEXAS

VIRGINIA

AMERICAN COUNCIL OF LIFE INSURERS

INDEPENDENT INSURANCE AGENTS AND BROKERS OF AMERICA

NATIONAL ASSOCIATION OF INSURANCE & FINANCIAL ADVISORS

CALIFORNIA COMMENTS

Draft: 9/29/22

California's edits are in blue text with ~~strikethroughs~~ and underlining.

DISCUSSION DRAFT

Template for 1033 Consent Process

Suggestion on How to Make 1033 Consent Process Effective and Efficient

Language 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.

2. A prohibited person may seek written consent

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

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

4. Applying 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 result in denial of the Application. An amendment to the Application must be filed immediately upon the occurrence of any event or discovery or recollection of any fact that would change any answer on the Application [and a copy of that amendment must be sent to other states where written consent was granted](#). Failure to file a timely amendment may result in denial of written consent or withdrawal of previously granted consent.

5. Process for granting or denying an Application

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

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~~ [the person](#) is sufficiently trustworthy to participate 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 [\[Insert Jurisdiction Insurance Department\] Commissioner](#) 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 judgement(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 a pardon from the sovereign that convicted ~~him or her~~ [the person](#), and the reason for it;
 - h. whether the prohibited person successfully completed parole or probation without incident and whether 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. the nature and strength of any letters of recommendation and other evidence of rehabilitation;
- l. the prohibited person's employment history before and after the commission of the crime(s);
- m. the nature of any consumer complaints in the Department's possession or reported by the prohibited person;
- n. 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. the prohibited person's proposed type of employment in the insurance industry;
- p. the extent to which the prohibited person will be supervised in that employment;
- q. 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
- r. whether the prohibited person has had any professional license revoked or suspended by any state or federal agency.

7. Ongoing duties of person who has an Application ~~is~~ granted

- A. An Application granted by the [\[Insert Jurisdiction Insurance Department\]](#) ~~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 [\[Insert Jurisdiction Insurance Department\]](#) ~~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~~ 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.**

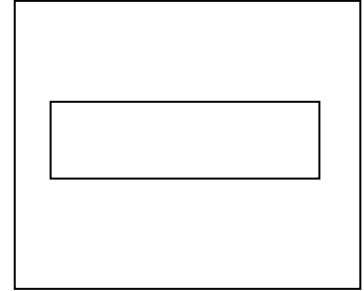
- (e)(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any regulatory official authorized to regulate the insurer, which consent specifically refers to this section.**

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.

PLEASE TYPE

SECTION I - APPLICANT INFORMATION



1. Full Name of Applicant:

Last Name First Name Middle Name

Have you ever been known by or used another name, including maiden name? Yes No

If yes, identify identify: _____

Home Address: _____
Street Address City State ZIP

Mailing Address: _____
P.O. Box or Street Address City State ZIP

Home Telephone Number: _____ Work Telephone Number: _____

Social Security No. _____

Have you ever used or been issued another social security number? _____

If so, provide an explanation and previous/other social security number(s) _____

Place and Date of Birth: _____

(Answer all questions fully and completely. Failure to answer the questions fully will result in delays in the application process. You are not limited to the space below. Attach additional pages if needed).

SECTION II - CRIMINAL HISTORY

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

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.

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:

SECTION III - PRESENT/PROPOSED INSURANCE EMPLOYMENT

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

2. Please describe in detail the office, position, and title to which the requested 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.

Notary Public, State at Large My Commission Expires:

[1033 Process](#)

Comments of Maine

From: Fenton, Hancock G <Hancock.G.Fenton@maine.gov>
Sent: Tuesday, January 24, 2023 8:56 AM
To: Cunningham, Tracy A <Tracy.A.Cunningham@maine.gov>
Subject: RE: NAIC Draft 1033 Template - Request for Comments

So there is something I want to flag.

“Convictions” are defined to include deferred dispositions (even those that result in dismissal of charges), and expunged convictions. This is in Section 3(c) of the document.

I don’t think we include dismissed charges and expunged convictions as “convictions” for 1033 purposes.

I think our stance has been that those actions should not be counted as convictions so this would be a big change and could lead to more work on our end.

WES MOORE
Governor

ARUNA MILLER
Lt. Governor



KATHLEEN A. BIRRANE
Commissioner

TAMMY R. J. LONGAN
Acting Deputy Commissioner

JOSEPH E. SMITH
Acting Associate Commissioner
Insurance Fraud & Producer
Enforcement

200 St. Paul Place, Suite 2700, Baltimore, Maryland 21202
Direct Dial: 410-468-2475 Fax: 410-468-5350
Email: joe.smith@maryland.gov
1-800-492-6116 TTY: 1-800-735-2258
www.insurance.maryland.gov

January 30, 2023

Re: Comments - Draft "Template for 1033 Consent Process"

Dear Mr. Mullen:

Thank you for the opportunity to provide comment on the NAIC draft 1033 Template. The Maryland Insurance Administration (the "Administration") has reviewed the proposed 1033 template, and has identified the following areas of concern:

3. *Definition of relevant terms*

...

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

And

SECTION II - CRIMINAL HISTORY

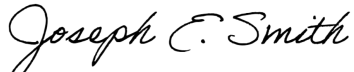
1. *List any felony(s) for which you have been arrested, charged, indicted, or convicted. Include details of any negotiated plea agreements and pleas of nolo contendere to an Information or Indictment. Attach a full description of your acts involved in the aforementioned matters. Include dates of charge,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

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

Another area of concern is the requirement for an applicant to disclose expunged convictions, which also may not align with State or Federal Laws.

Thank you again for the opportunity to provide comments on this topic.

Sincerely,

A handwritten signature in cursive script that reads "Joseph E. Smith".

Joseph E. Smith, III

Acting Associate Commissioner

Insurance Fraud & Producer Enforcement Division

MICHIGAN COMMENTS

Draft: 9/29/22

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- 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.

2. A prohibited person may seek written consent

- A. A prohibited person may seek written consent to engage in the business of insurance in [Insert Jurisdiction]. The process for obtaining consent is set forth in this document. The process is available only to a [Insert Jurisdiction] resident who is seeking a [Insert Jurisdiction Insurance Department] insurance license or who wishes to be employed in the business of insurance in [Insert Jurisdiction Insurance Department] in a non-licensed capacity. A non-resident should consult her or his home state insurance department. The [Insert Jurisdiction Insurance Department] may require the prohibited person to provide a copy of the home state’s written consent.

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.
- 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 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.

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

4. Applying 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 result in denial of the Application. An amendment to the Application must be filed immediately upon the occurrence of any event or discovery or recollection of any fact that would change any answer on the Application. 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 review of an Application. This may include incorporating the 1033 consent process into the process a jurisdiction uses to issue an insurance producer license.

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 is sufficiently trustworthy to participate in the business of insurance without being a risk to consumers and/or insurers. A prohibited person has the burden of satisfying this standard. Factors that may be considered by the Commissioner include, but are not limited to, the following:
 - 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 judgement(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 a 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 whether 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. the nature and strength of any letters of recommendation and other evidence of rehabilitation;
 - l. the prohibited person’s employment history before and after the commission of the crime(s);
 - m. the nature of any consumer complaints in the Department’s possession or reported by the prohibited person;

- n. 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. the prohibited person's proposed type of employment in the insurance industry;
- p. the extent to which the prohibited person will be supervised in that employment;
- q. 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
- r. whether the prohibited person has had any professional license revoked or suspended by any state or federal agency.

7. Ongoing duties of person who Application is granted

- 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.

Michigan Comments:

1. Michigan would like to see requirements for the letter granting/denying consent and would like the letter to include the felony conviction.
2. We would like the definition of breach of trust to include crimes conducted at jobs other than ones of fiduciary nature, such as a caretaker.
Breach of Trust. A crime involving breach of trust includes, but is not limited to, an offense constituting or involving misuse, misapplication or misappropriation of: (a) anything of value held as a fiduciary (including, but not limited to, a trustee, administrator, executor, conservator, receiver, guardian, agent, employee, partner, officer director or public servant); or (b) anything of value of any public, private or charitable organization; or (c) anything of value taken directly from a vulnerable client or patient while in the conduct of business, such as a caretaker, nurse, housekeeper, etc.
3. Michigan disagrees that the definition of conviction should include expunged, dismissed, withheld or similar.
4. Standards by which an Application is evaluated:
 - a. Standard "e" – a state would not know of unpaid judgements without obtaining a copy of the credit report, which is not a requirement in the 1033 Short Form.
 - b. Standard "g" – submission of proof of pardon is not required in the 1033 Short Form and should be added as a requirement.
 - c. Standard "j" – should include pending as well.
 - d. Standard "k" – letters of recommendation are not a requirement in the 1033 Short Form and should be added as a requirement.

Current 1033 Long Form Required and Optional Attachments

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

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

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

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

Current 1033 Short Form Required Attachments

Attach the following documents to this Application for written consent. Applications without attachments, or applications with incomplete attachments, will be returned to the applicant.

1. Certified copy of the applicant's criminal history.
2. Certified copy of the indictment, criminal complaint, or docket sheet or other initiating documents for the charge(s) which is the subject of this Application.
3. A certified copy of the order of judgment and sentence of the court for the conviction that is the subject of this Application, including certification of completion and performance of all conditions imposed by the court.
4. An affidavit from the individual that seeks to employ you stating in detail the duties and responsibilities that you are performing or are to perform for them and for which you seek written consent and that it is that individual's opinion that the performance of these responsibilities does not constitute a threat to the public.

Suggested Changes to 1033 Short Form Attachments

Attach the following documents to this Application for written consent. Applications without attachments, or applications with incomplete attachments, will be returned to the applicant.

1. Certified copy of the applicant's criminal history.
2. Certified copy of the indictment, criminal complaint, or docket sheet or other initiating documents for the charge(s) which is the subject of this Application.
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5. A copy of any pardon.
6. Any other attachments that the insurance regulatory official deems appropriate.

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

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.**

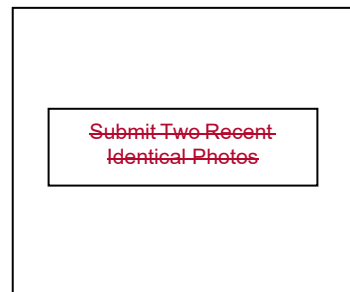
- (e)(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any regulatory official authorized to regulate the insurer, which consent specifically refers to this section.**

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.

PLEASE TYPE

SECTION I - APPLICANT INFORMATION



1. Full Name of Applicant:

Last Name	First Name	Middle Name
-----------	------------	-------------

Have you ever been known by or used another name, including maiden name? Yes No

If yes, Identify: _____

Home Address: _____

Street Address	City	State	ZIP
----------------	------	-------	-----

Mailing Address: _____

P.O. Box or Street Address	City	State	ZIP
----------------------------	------	-------	-----

Home Telephone Number: _____ Work Telephone Number: _____

Social Security No. _____

Have you ever used or been issued another social security number? _____

If so, provide an explanation and previous/other social security number(s) _____

Place and Date of Birth: _____

(Answer all questions fully and completely. Failure to answer the questions fully will result in delays in the application process. You are not limited to the space below. Attach additional pages if needed).

SECTION II - CRIMINAL HISTORY

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

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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:

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.

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.



Department
of Insurance

Mike DeWine, Governor | Judith L. French, Director
Jon Husted, Lt. Governor

50 West Town Street
Third Floor – Suite 300
Columbus, OH 43215-4186
(614) 644-2658
www.insurance.ohio.gov

January 27, 2023

National Association of Insurance Commissioners
Attention: Tim Mullen, Director, Market Regulation
1100 Walnut Street, Suite 1500
Kansas City, MO 64106-2197

Subject: Comments Regarding The Draft Template For 1033 Consent Process

Dear Mr. Mullen,

The Ohio Department of Insurance would like to submit the following comments in response to the NAIC's request for feedback regarding the draft Template For 1033 Consent Process.

Sincerely,

Michelle Rafeld



Department
of Insurance

Michelle Rafeld
Assistant Director
Fraud & Enforcement Division
50 W. Town Street, Suite 300
Columbus, OH 43215
(614) 728-1009 (Office)
(614) 387-0116 (Fax)
Michelle.Rafeld@insurance.ohio.gov



Ohio Department of Insurance Comments To Proposed Discussion Draft 1/27/23

Draft: 9/29/22

DISCUSSION DRAFT

Template for 1033 Consent Process

Suggestion on How to Make 1033 Consent Process Effective and Efficient

Language 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.

Commented [A1]: Due to the fact state departments of insurance can't enforce federal law, our organization would like to suggest paragraph C be deleted or amended to state "insurance entities who already employ a prohibited person who does not have a waiver take the necessary steps to have the individual apply for a 1033 waiver."

2. A prohibited person may seek written consent

- A. A prohibited person may seek written consent to engage in the business of insurance in [Insert Jurisdiction]. The process for obtaining consent is set forth in this document. The process is available ~~required only to for~~ 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 non-licensed capacity. A non-resident should consult her or his home state insurance department. The [Insert Jurisdiction Insurance Department] may require the prohibited person to provide a copy of the home state's written consent.

Commented [A2]: Our organization believes it may be beneficial to amend this paragraph to explain what someone should do if their state doesn't issue 1033s or issues limited 1033s

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.
- 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 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.

Commented [A3]: Our organization believes this paragraph needs to be expanded to include individuals in a non-licensed capacity as the 1033 requirement applies to all individuals who engage in the business of insurance.

Commented [A4]: Our organization believes this definition should be revised as the two exceptions provided are not considered convictions. For consistency purposes, it may be beneficial to include the following language, taken from the NAIC Uniform Licensing Application: "**Convicted**" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere or no contest, or having been given probation, a suspended sentence or a fine. As certain states may not consider a plea held in abeyance or diversion a conviction, further discussion and revisions may be warranted about those situations.

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.

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

E.

4. Applying 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. 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 review of an Application. ~~This may include incorporating the 1033 consent process into the process a jurisdiction uses to issue an insurance producer license.~~

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 ~~is sufficiently trustworthy to~~ may participate engage in the business of insurance ~~without being a risk to consumers and/or insurers~~. A prohibited person has the burden of satisfying this standard. Factors that may be considered by the Commissioner include, but are not limited to, the following:
- the nature and severity of the offense and sentence;
 - the date of conviction(s);
 - the age at the time of committing the crime(s);
 - the nature and extent of injury and/or loss caused by the act for which the prohibited person was convicted;
 - unpaid judgement(s);
 - 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;
 - whether the prohibited person received a pardon from the sovereign that convicted him or her, and the reason for it;
 - whether the prohibited person successfully completed parole or probation without incident and whether payment of all fines, penalties or other assessments were satisfied;
 - any aggravating or mitigating factors;
 - whether other jurisdictions have granted or denied an 18 U.S.C. § 1033 consent;
 - the nature and strength of any letters of recommendation and other evidence of rehabilitation;
 - the prohibited person's employment history before and after the commission of the crime(s);
 - the nature of any consumer complaints in the Department's possession or reported by the prohibited person;

Commented [A5]: Our organization would like to recommend this sentence be deleted. Our recommendation is for states to rely on how the offense is classified in the statute of the state in which the conviction occurred.

Commented [A6]: Due to the fact some states dismiss applications when information is not provided, our organization would like to recommend the word "dismissal" be included as an option so states can customize the instructions to reflect their process.

Commented [A7]: As the first sentence addresses the second sentence, we would like to recommend the second sentence be deleted.

Commented [A8]: Our organization would like to recommend the following words be deleted as the language noted is not included or a requirement in 18 USC 1033.

- n. 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. the prohibited person's proposed type of employment in the insurance industry;
- p. the extent to which the prohibited person will be supervised in that employment;
- q. 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
- r. whether the prohibited person has had any professional license revoked or suspended by any state or federal agency.

7. Ongoing duties of person who Application is granted

- 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~~**

Commented [A9]: As many states do not utilize or accept the short form application, our organization would like to suggest the working groups review the long form in its entirety to determine if specific questions should be deleted. A copy of the long form has been attached as a reference.

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.**

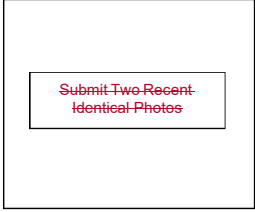
- (e)(2) A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any regulatory official authorized to regulate the insurer, which consent specifically refers to this section.**

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.

PLEASE TYPE

SECTION I - APPLICANT INFORMATION



1. Full Name of Applicant:

Last Name First Name Middle Name

Have you ever been known by or used another name, including maiden name? Yes No

If yes, Identify: _____

Home Address: _____
 Street Address City State ZIP

Mailing Address: _____
 P.O. Box or Street Address City State ZIP

Home Telephone Number: _____ Work Telephone Number: _____

Social Security No. _____

Have you ever used or been issued another social security number? _____

If so, provide an explanation and previous/other social security number(s) _____

Place and Date of Birth: _____

(Answer all questions fully and completely. Failure to answer the questions fully will result in delays in the application process. You are not limited to the space below. Attach additional pages if needed).

SECTION II - CRIMINAL HISTORY

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

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.

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:

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.

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.

SECTION IV - ATTACHMENTS

Attach the following documents to this Application for written consent. Applications without attachments, or applications with incomplete attachments, will be returned to the applicant.

1. Certified copy of the applicant's criminal history.
2. Certified copy of the indictment, criminal complaint, ~~or~~ docket sheet, or other initiating documents for the charge(s) which ~~that~~ is the subject of this Application.
3. ~~A~~ Certified copy of the order of judgment and sentence of the court for the conviction(s) that is the subject of this Application, including certification of completion and performance of all conditions imposed by the court.
4. An affidavit from the individual that seeks to employ you stating in detail the duties and responsibilities that you are performing or are to perform for them and for which you seek written consent and that it is that individual's opinion that the performance of these responsibilities does not constitute a threat to the public.

I, _____ (name of applicant), swear under penalty of law that my statements in the attached Application, and the documents appended thereto, are true and correct and complete. I understand that my statements in the Application and the attachments to my Application will be relied upon by the Insurance Commissioner of the State of _____ in the execution of his or her duties under the Insurance Code, and 18 U.S.C. § 1033, in making a decision on this Application. I understand that if I have made any false statement in this Application, or if there are any false statements included in the attachments to this Application, I may be criminally prosecuted under any state criminal or administrative remedies available and that any insurance license(s) that I currently hold, or for which I have applied, will be subject to suspension or revocation. I further understand that these false statement(s) would also constitute a violation of 18 U.S.C. § 1033. For purposes of this Application, I do not contest the validity of any felony conviction upon which this request would be granted. *By signing this Application, I acknowledge that the Insurance Department, for the State of _____ may conduct an independent investigation to confirm the information in this Application and I expressly consent and authorize any person, business or agency to release any information the Insurance Department may request as part of the investigation, including but not limited to, records of my former employment, state and federal tax returns, business records, and banking records.*

Signature of Applicant

Date

Drafting Note: Some jurisdictions may require application to be notarized.

STATE OF _____)
)
COUNTY OF _____)

Subscribed, sworn to, and acknowledged before me by _____ to be his/her free act
and deed this ____ day of _____, 1920.

Notary Public, State at Large My Commission Expires:

**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 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 5 years, or both.

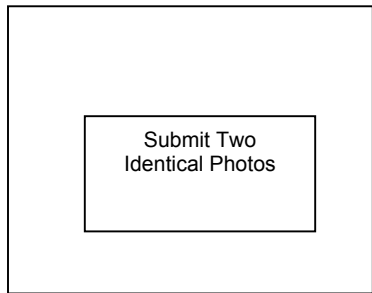
- (e)(2)** A person described in paragraph (1)(A) may engage in the business of insurance or participate in such business if such person has the written consent of any regulatory official authorized to regulate the insurer, which consent specifically refers to this section.

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. If you have previously completed the *Short Form Application for Written Consent to Engage in the Business of Insurance*, you do not need to provide duplicate photos or attachments.

PLEASE TYPE

SECTION I – APPLICANT INFORMATION



Full Name of Applicant:

Last Name	First Name	Middle	SS#
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Home Address	City	County	State	Zip	Home Phone
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Business Address	City	County	State	Zip	Business Phone
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1. If you were born in the United States, provide the following:

Place of Birth	City	County	State	Zip	Date of Birth
----------------	------	--------	-------	-----	---------------

2. If you were not born in the United States, provide the time of first entry and port of entry:

3. Are you a U.S. Citizen? yes no
If no, provide the following:

Citizenship Country	State/Province	Basis of U.S. Residence	Alien Registration Number
---------------------	----------------	-------------------------	---------------------------

4. If you are a naturalized citizen of the United States, indicate where and how you became naturalized. The number of the Certificate of Naturalization must be provided, if applicable.

5. Have you ever used or been known by another name (including maiden name) or used or been issued another social security number? yes no
If yes, provide the following (attach additional pages as needed):

Name	Social Security Number	Date of Use
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6. Provide identification of your current, and all former, spouses (attach additional pages as needed):

Spouse's Last Name	First Name	Middle	Social Security Number	Marital Status
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7. Do any of your relatives, by blood or marriage (either current or prior), serve in any capacity with any entity engaged in the business of insurance? yes no
If yes, provide the following (attach additional pages as needed):

Name of Relative	Address	Relationship to Applicant	Insurer/Employer
------------------	---------	---------------------------	------------------

8. Have you ever been a party, in any capacity, in a civil action, lawsuit, bankruptcy or other proceeding? yes no
If yes, provide details of all civil actions (attach additional pages as needed):

Title of Case	Case Number
---------------	-------------

Federal State

Identification of Court	City/State	Date of Action
-------------------------	------------	----------------

Description of case and your involvement, including outcome:

SECTION II – EDUCATION

1. Provide complete details about your education and training, including identification of all schools that you have attended. Attach additional pages as needed.

Name of High School(s)	Address	Major	Dates Attended	Highest Level Attained
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Name of College(s)	Address	Major	Dates Attended	Highest Level Attained
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Name of Tech School(s)	Address	Major	Dates Attended	Designation
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Post Graduate Schools or Programs	Address	Dates Attended	Designation
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SECTION III – CHRONOLOGICAL EMPLOYMENT HISTORY AND PROFESSIONAL LICENSES – CERTIFICATIONS – DESIGNATIONS

1. List in chronological order each and every place where you have been employed, including any military service (attach additional pages as needed). Include all instances where you have served as a paid or non-paid officer or director.

Name of Employer	Address	Title/Job	Employment Dates	Reasons for Leaving

2. Do you now hold, or have you ever held, a professional license relating to the business of insurance, including but not limited to, being a producer, agent, broker, solicitor, adjuster, or third party administrator? yes no
 If yes, provide the following information about your active or prior insurance professional license(s) (attach additional pages as needed):

Type of License	Date of Issue	State	Status of License
-----------------	---------------	-------	-------------------

3. Have you ever had a consumer complaint, administrative, civil or other legal proceeding (include pending actions) filed against you regarding your insurance activities? yes no
 If yes, provide the following (attach additional pages as needed):

Type of Action	Court/Administrative Agency	State	Date of Action	Outcome
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4. If your insurance-related license has ever been suspended, revoked, or administratively sanctioned (include pending actions) as a result of the legal or administrative action described in this section, provide the following information (attach additional pages as needed):

Date of Sanction/Suspension/Revocation	Type of License	Fines Paid	Status of Proceeding
--	-----------------	------------	----------------------

5. Do you now hold, or have you ever held, any other professional licenses, certifications or designations not issued by a Department of Insurance? yes no
 If yes, provide the following information about your active or prior professional licenses, certifications or designations (attach additional pages as needed):

Issued by	Address	City/State
-----------	---------	------------

Type of License, certification or designation	Date of Issue	Status of license, certification or designation
---	---------------	---

6. Have you ever had a customer, client or consumer complaint, administrative or other legal proceeding (include pending actions) filed against you regarding your other professional activities? yes no
If yes, provide the following (attach additional pages as needed):

Type of Action	Court/Administrative Agency	State	Date of Action	Outcome
----------------	-----------------------------	-------	----------------	---------

7. If any other professional licenses, certifications or designations have ever been suspended, revoked, or administratively sanctioned as a result of the legal or administrative action described in this section (include pending actions), provide the following information (attach additional pages as needed):

Date of Sanction/Suspension/Revocation	Type of License	Fines Paid	Status of Proceeding
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SECTION VI – CRIMINAL HISTORY

1. Provide a narrative statement describing the circumstances leading to all criminal charge(s) filed against you; the date of charge(s); place of charge(s); trial court(s); date of disposition; convicted charge(s); sentence(s); date(s) of incarceration; date(s) of probation/parole; date(s) of release from probation/parole; restitution ordered; restitution paid; fines/costs ordered; fines/costs paid. Include details of negotiated plea agreements and pleas of *nolo contendere* to an Information or indictment. Describe in detail the criminal conviction or convictions which are the subject of this Application. Attach additional pages if needed.

2. Other than described in Section IV, No. 1, during your lifetime have you ever been charged, arrested, indicted, entered into a negotiated plea agreement, entered a plea of guilty or *nolo contendere* to an Information or indictment, had a sentence suspended or had pronouncement of a sentence suspended, in connection with any other felony or misdemeanor criminal activities? yes no
If yes, provide a narrative statement describing the circumstances of every instance.

Drafting Note: In lieu of, or in addition to, the questions contained in Section IV, Nos. 1 and 2, the working group has prepared a summary chart (attached) that states may wish to consider for inclusion in the Application.

3. Have you received any type of pardon to the offense or offenses that are the subject of this Application, or any other offense listed in this Application? yes no
If yes, provide the following information (add additional pages if needed):

Pardoning Authority	County	State	Convicted Offense	Date of Pardon	Terms of Pardon
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4. Have your civil rights been revoked? yes no
If yes, provide the following information:

Court of Judgment	Date of Revocation of Civil Rights	Date of Restoration of Civil Rights
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5. Have you made full payment of any and all outstanding court costs, supervision fees, fines and ordered restitution concerning any and all offenses? yes no
 If no, provide explanation (add additional pages if needed):

6. Are there mitigating or extenuating circumstances surrounding your commission of the offenses listed in Section IV? If yes, explain (attach additional pages as needed).

7. List all evidence that exists regarding your rehabilitation (attach additional pages as needed).

SECTION V – PRESENT/PROPOSED INSURANCE EMPLOYMENT

1. Provide complete details about your present employment or business association/relationship with an entity engaged in the business of insurance (attach additional pages as needed):

Name of Employer	Address	City	State	Zip	Telephone
Name of Insurance Entity	Address	City	State	Zip	Telephone
Applicant's Direct Supervisor	Address	City	State	Zip	Telephone
Business Location of Applicant's Employment/Insurance Related Activity				Offices Held or Job Title	

2. Describe in detail the nature, duties and activities of your present employment or business association/relationship with an entity engaged in the business of insurance, including office, position, occupation, trade, vocation, or profession (attach additional pages as needed):

3. Provide complete details about your proposed employment or business association/relationship with an entity engaged in the business of insurance (attach additional pages as needed):

Name of Employer	Address	City	State	Zip	Telephone
Name of Insurance Entity	Address	City	State	Zip	Telephone
Applicant's Direct Supervisor	Address	City	State	Zip	Telephone
Business Location of Applicant's Employment/Insurance Related Activity				Offices Held or Job Title	

4. Describe in detail the nature, duties and activities of your proposed office, position, occupation, trade, vocation, or profession (attach additional pages as needed):

5. Explain why your conviction(s) will not effect your fitness or ability to perform any of the above duties or activities (attach additional pages as needed):

6. List the names and locations of all insurers and entities providing services to insurers for which you have advised, represented or in any manner worked for or provided services to, together with a description of the activities performed for each such entity (attach additional pages as needed).

7. Provide details of any proposed or current written or oral agreements, contracts or understandings between yourself and any entities engaged in the business of insurance (attach additional pages as needed).

SECTION VI – FINANCIAL INFORMATION

1. Attach financial statement(s) indicating your net worth, including all assets held by you, or held in the names of others for you, the amount of each secured and unsecured liability owed by you, or by you together with any other person.

2. Do you have any judicial or administrative penalties, fines or outstanding (include pending actions)?

yes no

If yes, describe in detail (attach additional pages as needed):

3. Do you have any civil judgments, tax or other liens or penalties outstanding (include pending actions)?

yes no

If yes, describe in detail (attach additional pages as needed):

Drafting Note: States should consider the advisability of obtaining confirmation that the applicant has no relevant administrative fines, civil judgments, tax or other liens or penalties outstanding. States should also consider obtaining confirmation that the applicant has no past due or delinquent loans, child support or alimony.

4. Attach a list indicating the amount and sources of all income for five (5) calendar years prior to the Application through the date of the Application.

Drafting Note: States may wish to consider requesting income information for a period longer than five (5) years.

5. Have you ever been in a position which required a fidelity bond? yes no
If yes, and any claims were made on the bond, provide details (attach additional pages as needed):

6. Have you ever been denied an individual or position schedule fidelity bond, or had a bond cancelled or revoked? yes no
If yes, provide details (attach additional pages as needed):

7. Have you, or any business entity in which you served as an officer, director, trustee, investment committee member, key employee, stockholder or owner become insolvent, placed in bankruptcy, receivership, rehabilitation or liquidation? yes no
If yes, provide details (attach additional pages as needed):

8. List any and all entities (corporations, partnerships, sole proprietorships, trusts, etc.) engaged, directly or indirectly, in the business of insurance in which you hold directly or beneficially (or hold in joint tenancy, or in the name of others for you) a stock or other ownership interest. Include any option agreements to purchase or participate in an ownership interest (attach additional pages as needed):

9. List any and all entities (corporations, partnerships, sole proprietorships, trusts, etc.) engaged, directly or indirectly, in the business of insurance in which your relatives, by blood or marriage, hold directly or beneficially a stock or other ownership interest. Include any option agreements to purchase or participate in an ownership interest (attach additional pages as needed):

SECTION VII – GROUNDS RELIED UPON FOR APPLICATION FOR WRITTEN CONSENT

1. Provide a complete explanation of the reasons or grounds the applicant relies upon to establish that the applicant’s insurance activities for which written consent is sought will not be contrary to the intent and purpose of 18 U.S.C. § 1033, and will not pose a risk to the insurance consumers or the insurance companies (attach additional pages if needed):

2. You may enclose letters of recommendation addressed to the insurance regulatory official in the state where the Application is being submitted, attesting to your character and reputation. These letters should indicate the length of time that the writer has known you, and should describe your character traits as they relate to the employment, position or activities for which written consent is sought. Each letter should indicate that it is being submitted in compliance with these procedures and that you have informed the writer of the factual basis of the Application being filed with the regulatory official and the purpose thereof.
3. Have you ever applied for written consent with any other Commissioner or equivalent? yes no
If yes, provide the following information, together with a copy of the Application filed in other state(s):

Name of Commissioner	State	Date of Application	Outcome of Request
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SECTION VIII – ATTACHMENTS

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

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

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

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

SECTION IX – APPLICANT’S SWORN STATEMENT VERIFYING TRUTH OF INFORMATION IN APPLICATION AND AUTHORIZATION FOR RELEASE OF INFORMATION

I, _____ (name of applicant), swear under penalty of law that my statements in the attached Application, and the documents appended thereto, are true and correct and complete. I understand that my statements in the Application and the attachments to my Application will be relied upon by the Insurance Commissioner of the State of _____ in the execution of his or her duties under the Insurance Code, and 18 U.S.C. § 1033, in making a decision on this Application. I understand that if I have made any false statement in this Application, or if there are any false statements included in the attachments to this Application, I may be criminally prosecuted under any state criminal or administrative remedies available and that any insurance license(s) that I currently hold, or for which I have applied, will be subject to suspension or revocation. I further understand that these false statements would also constitute a violation of 18 U.S.C. § 1033. For purposes of this Application, I do not contest the validity of any felony conviction upon which this request would be granted. *By signing this Application, I acknowledge that the Insurance Department of the State of _____ may conduct an independent investigation to confirm the information in this Application and I expressly consent and authorize any person, business or agency to release any information the Insurance Department may request as part of the investigation, including but not limited to, records of my former employment, state and federal tax returns, business records, and banking records.*

Signature of Applicant

Date

STATE OF _____)
COUNTY OF _____)

Subscribed, sworn to, and acknowledged before me by _____ to be his/her free act and deed this ____ day of _____, 20____.

Notary Public, State at Large

My Commission Expires

Provide a lifelong list of all charges and convictions for felony or misdemeanor crimes, including: circumstances leading to criminal charge(s), date(s) of charge(s); court(s); date(s) of disposition; convicted charge(s); sentence(s); date(s) of incarceration; date(s) of probation/parole; date(s) of release from probation/parole; restitution ordered; restitution paid; fines/costs ordered; fines/costs paid. Attach additional pages, if needed.

Circumstances Leading to Charge(s)	Criminal Charge(s) and Date of Charge	Court	Date(s) of Disposition	Convicted Charge(s)	Sentence(s)	Date(s) of Incarceration	Date(s) of Probation/Parole	Release Date(s) from Probation/Parole	Restitution Ordered/Paid	Fines/Costs Ordered/Paid

From: [CUTLER Eric * DCBS](#)
To: [Mullen, Timothy B.](#)
Cc: [Keen, TK](#)
Subject: Oregon Comments RE: NAIC Draft 1033 Template - Request for Comments
Date: Monday, January 30, 2023 5:54:07 PM
Attachments:

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Tim,

Again, thanks for letting us submit our thoughts on the draft template.

We applaud the efforts here to establish a good frame work from which we can draw on to improve our process, but we had some input and questions which follow.

- In Section 2 of the draft, it was unclear if this template implies that non-resident applicants would not have to go through the 1033 process if their home state had already issued one. We would reserve the right for Oregon to still require non-residents and residents to have to follow this process. However, section 5 seems to imply we can establish our own process? It was not very clear to me unfortunately.
- Also in Section 2, in Oregon we would reserve the right to include the details of the crimes, as some states currently do not, and this seems to imply it is not needed. Again, just some clarity on each state being able to adapt this template to fit our separate laws and approaches would be great. Further, we have an affidavit process that we deem critical in securing a license in Oregon under these circumstances, and will reserve the right to continue this.
- Also under section 2, in Oregon we allow individuals who are convicted of a serious misdemeanor involving dishonesty or breach of trust to apply for a 1033 waiver. In our statutes this is grounds to deny a licenses and section 2 seems to imply only felonies count or apply. Again, my suggestion would be to add some more flexibility for the differing states in their approach to this.
- More of a question than a comment, but in section 4, it references an electronic process for a 1033 waiver. Will this be built into NIPR/SBS? And will they be customizable to fit the differing states 1033 waiver requirements?

Again, thank you for letting us comment on this draft template and I look forward to working with you all in the upcoming year!

Thanks,

From: [Jodie Delgado](#)
To: [Mullen, Timothy B.](#)
Subject: NAIC Draft 1033 Template - Texas Comments
Date: Tuesday, January 31, 2023 1:00:32 PM
Attachments: [NAIC 1033 Process 9.29.27 \(1\).docx](#)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon,

Below are the comments from TX regarding the 1033 draft template process.

Section 1: no comments

Section 2: Texas will also consider a 1033 Waiver for nonresidents whose home states have different interpretations of what crimes require a 1033 Waiver, or do not issue a 1033 Wavier at all. A Wavier issued by the Texas Commissioner of Insurance is limited to activity occurring in Texas.

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

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

Section 4-5: In most cases, Texas contemplates the 1033 Waiver at the time of the licensing application. There is not a need for a separate application form for applicants who do not hold a current license. The need for a 1033 Waiver is determined at the time of the licensing application review. Texas laws on producer licensing require TDI to consider certain factors when reviewing an application with criminal history. However, Texas does not look at the 1033 process as a separate application analysis. The decision to grant or deny the 1033 Waiver is made alongside the licensing application decision. TDI issued 525 Waivers between 2019-2022. For currently licensed individuals, a separate request is required.

Section 6: Texas recommends revising the last sentence of section A to: "Factors that may be considered by the commissioner may be determined by each state jurisdiction's rules,

and may include, but are not limited to the following:"

Section 7: no comments

Thank you,

Jodie Delgado

Director, Agent & Adjuster Licensing

Customer Operations Division

Texas Department of Insurance

(512) 676-6481

jodie.delgado@tdi.texas.gov

VIRGINIA COMMENTS

Draft: 9/29/22

DISCUSSION DRAFT

Template for 1033 Consent Process

Suggestion on How to Make 1033 Consent Process Effective and Efficient

Language 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.

2. A prohibited person may seek written consent

- A. A prohibited person may seek written consent to engage in the business of insurance in [Insert Jurisdiction]. The process for obtaining consent is set forth in this document. The process is available only to a [Insert Jurisdiction] resident who is seeking a [Insert Jurisdiction Insurance Department] insurance license or who wishes to be employed in the business of insurance in [Insert Jurisdiction Insurance Department] in a non-licensed capacity. A non-resident should consult ~~her or his~~their home state insurance department. The [Insert Jurisdiction Insurance Department] may require the prohibited person to provide a copy of the home state’s written consent.

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.
- 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 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.

Commented [RT1]: NAIC guidelines definition “Breach of trust” means a wrongful act, use, misappropriation, or omission with respect to any property or fund which has been committed to a person in a fiduciary or official capacity or the misuse of one’s official or fiduciary position to engage in a wrongful act, use, misappropriation or omission.

Commented [RT2]: Consultants, Surplus Lines Brokers, Viatical Settlement Brokers/Providers, TPAs, MGAs, etc. Title settlement agents?

Commented [RT3]: Here if a felony is deferred and ultimately dismissed its not considered a conviction. Under state law some expungements/sealed convictions may not be required to be reported and applicants may not be required to disclose.

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

Commented [RT4]: NAIC guidelines definition “Dishonesty” means directly or indirectly to cheat or defraud; to cheat or defraud for monetary gain or its equivalent; or wrongfully to take property belonging to another in violation of any criminal statute. Dishonesty includes acts involving want of integrity, lack of probity, or a disposition to distort, cheat, or act deceitfully or fraudulently, and may include crimes which federal, state or local laws define as dishonest.

Common definition for dishonesty include, lie, cheat, deceive, or defraud. Untrustworthiness, lack of integrity, honesty, fairness, etc.

Commented [RT5]: Some military convictions are considered equivalents of felony convictions. Virginia considers this when determining whether a 1033 should be issued.

Commented [RT6]: The NAIC 1033 Short Form requests much of the same information on the NAIC Uniform applications. For unlicensed individuals we use a form similar to the NAIC Uniform application. We do not require photos.

In most cases the applicant does not know which felony convictions require a 1033. A separate 1033 application delays licensure especially if it is required to be approved prior to submitting the license application. Some states may bifurcate the licensing decision process by having the 1033 application reviewed by legal while the license application is reviewed by licensing, delaying the process further.

Commented [RT7]: VA does not require a separate application for the 1033 waiver. When the Commissioner reviews resident felony applications a 1033 review is conducted.

Commented [RT8]: Additional factors Virginia uses:

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

Commented [RT9]: Not all states issue or report 1033s. Some states only issue a 1033 on request by the licensee.

Add requirement for states to report 1033s to the NAIC.

Commented [RT10]: This factor is often used to determine the issuance of a 1033 for an unlicensed individual to work in the insurance industry.

4. Applying 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 result in denial of the Application. An amendment to the Application must be filed immediately upon the occurrence of any event or discovery or recollection of any fact that would change any answer on the Application. 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 review of an Application. This may include incorporating the 1033 consent process into the process a jurisdiction uses to issue an insurance producer license.

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 is sufficiently trustworthy to participate in the business of insurance without being a risk to consumers and/or insurers. A prohibited person has the burden of satisfying this standard. Factors that may be considered by the Commissioner include, but are not limited to, the following:
 - 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 judgement(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 a 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 whether 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. the nature and strength of any letters of recommendation and other evidence of rehabilitation;
 - l. the prohibited person’s employment history before and after the commission of the crime(s);
 - m. the nature of any consumer complaints in the Department’s possession or reported by the prohibited person;

- n. 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. the prohibited person's proposed type of employment in the insurance industry;
- p. the extent to which the prohibited person will be supervised in that employment;
- q. 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
- r. whether the prohibited person has had any professional license revoked or suspended by any state or federal agency.

7. Ongoing duties of person who Application is granted

- A. An Application granted by the Commissioner is conditioned on the truth and veracity 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.

Commented [RT11]: Virginia usually issues blanket 1033s. However, on occasion a 1033 is issued with restrictions such as to a particular agency/insurer, or duties that do not involve the handling of monies.

Commented [RT12]: Virginia has in its 1033's the following compliance requirements:

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

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

Commented [RT13]: Was unable to see revision marks for the form.

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

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.

Commented [RT14]: In most cases the applicant does not know which felony convictions require a 1033.

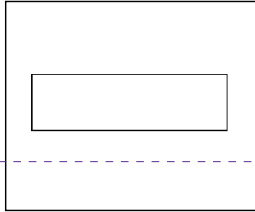
Commented [RT15]: Not all insurers or agency owners are aware of the 1033 requirement, or not sure when an application should be submitted.

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.

PLEASE TYPE

SECTION I - APPLICANT INFORMATION



1. Full Name of Applicant:

Commented [RT16]: Much of the information requested is on the NAIC Uniform Applications. Remove photo requirement.

Last Name First Name Middle Name

Have you ever been known by or used another name, including maiden name? Yes No

If yes, Identify: _____

Home Address: _____
 Street Address City State ZIP

Mailing Address: _____
 P.O. Box or Street Address City State ZIP

Home Telephone Number: _____ Work Telephone Number: _____

Social Security No. _____

Have you ever used or been issued another social security number? _____

If so, provide an explanation and previous/other social security number(s) _____

Place and Date of Birth: _____

(Answer all questions fully and completely. Failure to answer the questions fully will result in delays in the application process. You are not limited to the space below. Attach additional pages if needed).

SECTION II - CRIMINAL HISTORY

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

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.

Commented [RT17]: The determination should be with the Commissioner. Applicants often do not know which felony convictions warrant a 1033.

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:

SECTION III - PRESENT/PROPOSED INSURANCE EMPLOYMENT

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

2. Please describe in detail the office, position, and title to which the requested 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.

SECTION IV - ATTACHMENTS

Attach the following documents to this Application for written consent. Applications without attachments, or applications with incomplete attachments, will be returned to the applicant.

1. Certified copy of the applicant's criminal history.
2. Certified copy of the indictment, criminal complaint, docket sheet, or other initiating documents for the charge(s) that is the subject of this Application.
3. Certified copy of the order of judgment and sentence of the court for the conviction(s) that is the subject of this Application, including certification of completion and performance of all conditions imposed by the court.
4. An affidavit from the individual that seeks to employ you stating in detail the duties and responsibilities that you are performing or are to perform for them and for which you seek written consent and that it is that individual's opinion that the performance of these responsibilities does not constitute a threat to the public.

Commented [RT18]: Virginia does not require certified documents.

Commented [RT19]: Comment regarding the attestation.

Remove the requirement for the applicant to insert their name and the jurisdiction in which the applicant is applying.

Amend the language as follows:

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

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

Commented [RT20]: Virginia does not have this requirement.

I, _____ (name of applicant), swear under penalty of law that my statements in the attached Application, and the documents appended thereto, are true and correct and complete. I understand that my statements in the Application and the attachments to my Application will be relied upon by the Insurance Commissioner of the State of _____ in the execution of his or her duties under the Insurance Code, and 18 U.S.C. § 1033, in making a decision on this Application. I understand that if I have made any false statement in this Application, or if there are any false statements included in the attachments to this Application, I may be criminally prosecuted under any state criminal or administrative remedies available and that any insurance license(s) that I currently hold, or for which I have applied, will be subject to suspension or revocation. I further understand that these false statement(s) would also constitute a violation of 18 U.S.C. § 1033. For purposes of this Application, I do not contest the validity of any felony conviction upon which this request would be granted. *By signing this Application, I acknowledge that the Insurance Department, for the State of _____ may conduct an independent investigation to confirm the information in this Application and I expressly consent and authorize any person, business or agency to release any information the Insurance Department may request as part of the investigation, including but not limited to, records of my former employment, state and federal tax returns, business records, and banking records.*

Signature of Applicant

Date

Drafting Note: Some jurisdictions may require application to be notarized.

STATE OF _____)
COUNTY OF _____)

Subscribed, sworn to, and acknowledged before me by _____ to be his/her free act
and deed this _____ day of _____, 20____.

Notary Public, State at Large My Commission Expires: _____

January 31, 2023

Commissioner Sharon P. Clark
Public Protection Cabinet
Kentucky Department of Insurance
500 Mero Street, Frankfort, KY 40601

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

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

Dear Commissioner Clark and Director Deiter:

The American Council of Life Insurers (ACLI) appreciates the opportunity to provide comments 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 waiver reform is a step in the right direction. As part of our Economic Empowerment and Racial Equity initiative, ACLI has formally committed to [supporting the removal](#) of unnecessary barriers to producer licensure. We believe that states, insurance producers and consumers will benefit from a consistent and transparent process for 1033 waivers while also preserving the important protections for our customers, including vulnerable adults. Our member companies seek to recruit and retain well-qualified and well-vetted candidates, and improve the talent pipeline for qualified producers.

As you are aware, the working group has committed, through its adopted charges, to discussing how criminal convictions may affect producer licensing applicants and review 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 waiver requests. We appreciate the task force looking to improve the waiver 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 have several concerns with the Template for 1033 Consent Process language in the exposed discussion draft:

3. Definition of relevant terms

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

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

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 is sufficiently trustworthy to participate in the business of insurance without being a risk to consumers and/or insurers. A prohibited person has the burden of satisfying this standard. Factors that may be considered by the Commissioner include, but are not limited to, the following:

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

7. Ongoing duties of person who Application is granted

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.


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

We greatly appreciate the opportunity to provide comments on the 1033 waiver 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

Ian Trepanier



Vice President & Associate General Counsel
American Council of Life Insurers

Senior Policy Analyst
American Council of Life Insurers



Independent Insurance Agents
& Brokers of America.

January 31, 2023

Tim Mullen
Director of Market Regulation
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO 64106

Re: Proposed Template for 18 U.S.C. 1033 Consent Applications

Dear Mr. Mullen:

I write on behalf of the Independent Insurance Agents & Brokers of America (IIABA) to offer comments concerning the NAIC's draft template for written consent applications submitted pursuant to 18 U.S.C. 1033(e)(2). IIABA is the nation's oldest and largest national association of insurance agents and brokers. The hundreds of thousands of agents and insurance professionals we represent operate from more than 25,000 business locations and offer all types of insurance—property, casualty, life, health, employee benefit plans, and retirement products—from a wide variety of insurance companies. We are pleased to offer comments concerning three elements of the proposed template below.

Treatment of Expungements

The proposed template surprisingly would require written consent to be obtained in instances in which covered offenses have been expunged, and we urge the NAIC to reconsider and revise this position. The view expressed in the draft is inconsistent with the manner in which expungements operate and overlooks the fact that such an interpretation would impose unnecessary hiring and occupational barriers on those with expunged records.

Requiring written consent to be obtained in cases in which covered offenses have been expunged also conflicts with the manner in which other financial services regulators enforce similar provisions of federal law. The banking world is subject to prohibitions and requirements that largely mirror 18 U.S.C. 1033, and those provisions require any person convicted of a criminal offense involving dishonesty or a breach of trust or other identified crimes to obtain written consent from the Federal Deposit Insurance Corporation (FDIC) in order to work in the

banking industry.¹ The statutory requirements that apply to the banking and insurance industries are nearly identical, yet the FDIC (which has a longer history of acting in this area and has adopted formal regulations) excludes all covered offenses that have been expunged.

Interstate Commerce Element of the Written Consent Requirement

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

Notarization of Consent Applications

The proposed template includes a drafting note indicating that "[s]ome jurisdictions may require applications to be notarized." We urge the NAIC to delete the drafting note and to expressly indicate that notarization of 18 U.S.C. 1033 consent applications should not be required by state insurance departments.

Federal law imposes no duty on an applicant to notarize such requests, and we can think of no conceivable reason or public policy rationale for imposing such a mandate. Establishing an unnecessary and unwarranted notarization requirement only adds to the hiring barriers, costs, and burdens that a person required to submit such an application must overcome in order to work in the insurance industry. It is also noteworthy that the FDIC does not require notarization of similar requests by those seeking consent to work in the banking industry.

Conclusion

IIABA appreciates having the opportunity to submit these comments and thanks the Producer Licensing Task Force, other regulators, and NAIC staff for their consideration of our views. If we can provide any additional information or assistance, please feel free to contact me via email at wes.bissett@iiaba.net.

Very truly yours,



Wesley Bissett
Senior Counsel, Government Affairs

¹ 12 U.S.C. 1829.



January 31, 2023

Commissioner Sharon P. Clark
Public Protection Cabinet
Kentucky Department of Insurance
500 Mero Street, Frankfort, KY 40601

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

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

Dear Commissioner Clark and Director Deiter,

The National Association of Insurance and Financial Advisors (NAIFA) appreciates the opportunity to provide comments on the template for 1033 Consent Process, and for the task force's efforts on this important topic. Founded in 1890, NAIFA represents the interests of more than 20,000 licensed insurance agents and financial advisers across the country. Ninety percent of NAIFA members serve middle-income clients and lower-income individuals and families.

NAIFA strongly believes that Americans' financial needs continue to drive demand for more licensed, highly skilled life insurance producers and financial professionals. However, the insurance industry lacks an adequate number of producers to serve the needs of Americans as recruiting and retention for new producers continue to decline. Providing access to a wide range of insurance and financial services to help Americans plan for life's big moments is critical for financial security. Revisions and transparency to the 1033 waiver process, are important steps in addressing and reducing unnecessary barriers for new producers entering the industry, many of which have a disproportionate impact on minority candidates.

We support the NAICs and the task force's goal of developing a simple and consistent approach to the 1033 waiver process. In our review of the exposed template of 1033 Consent Process, we have a few concerns.

3. Definition of Relative Terms

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.

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

4. Applying for Written Consent

B “Full and absolute candor is required”

NAIFA feels that this language is vague. It does not provide clear guidance on expectations for the required information to be provided by applicants and does not express the types of information needed to properly review 1033 waiver applications. In disclosing a criminal record, applicants could never truly provide full and absolute candor without providing every conceivable detail of every element of a crime, proceedings, etc. Certain details must be selected or consolidated for clarity, memory, perspective, etc. We recommend that this language is removed. If the task force intends to express that the omission or obfuscation of material facts could negatively impact the application, then we recommend adopting language that more clearly expresses that sentiment while providing clear expectations. Alternatively, we believe that this sentiment is adequately expressed in the language included in Section 7, currently titled “Ongoing duties of Person who Application is Granted.”

5. Process for granting or denying an application

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

B. Notification of 1033 waiver application availability should be clearly presented prior to and during the licensing application process.

C. A jurisdiction's process for review of a 1033 waiver application should be provided to an applicant at the time of submission.

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 is sufficiently trustworthy to participate in the business of insurance without being a risk to consumers and/or insurers. A prohibited person has the burden of satisfying this standard. Factors that may be considered by the Commissioner include, but are not limited to, the following.

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

7. Ongoing duties of person who Application is granted.

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.

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

Sincerely,



Maeghan Gale
Policy Director, Government Relations
National Association of Insurance and Financial Advisors (NAIFA)