THE COUNCIL
The Council of Insurance Agents & Brokers

December 23, 2024

Ms. Courtney Khodabakhsh
Chair, NAIC Producer Licensing Uniformity (D) Working Group
Delivered Via Email -- Courtney.Khodabakhsh@oid.ok.gov

RE: State Licensing Handbook Appointments Chapter Revisions

Dear Ms. Khodabakhsh:

The Council of Insurance Agents and Brokers ("Council") appreciates this opportunity to weigh in on updates to the Appointments chapter of the State Licensing Handbook. Today, appointments are a major source of non-uniformity across states, and oft-cited policy and enforcement rationales for appointments are no longer compelling. We encourage states to eliminate producer appointment requirements as unnecessary, costly, and overly onerous. But to the extent they remain, we urge states to rationalize and narrow appointments requirements and to adopt uniform approaches consistent with the suggestions below and the proposed redlines in Appendix A.

The Council represents the largest and most successful employee benefits and property/casualty agencies and brokerage firms. Council member firms annually place more than $300 billion in commercial insurance business in the United States and abroad. In fact, they place more than 90 percent of all U.S. commercial insurance products and services and they administer billions of dollars in employee benefits. Council members conduct business in some 30,000 locations and employ upward of 350,000 people worldwide, specializing in a wide range of insurance products and risk management services for business, industry, government, and the public.

Non-uniformity – in appointments and producer credentialing generally – imposes real costs on consumers, regulators, and industry.

Uniformity in producer credentialing (e.g., licensing, appointments) brings real benefits to insurance consumers, regulators, and industry. Lack of uniformity, however, generates significant complexity and costs. When the cost of doing business increases, consumers ultimately pay. Consistent rules and standards ensure that consumers, regardless of where they happen to be located, are dealing with a vetted, professional insurance salesforce. Additionally, to the extent well-functioning, efficient credentialing regimes allow and encourage producers to work in more places, consumers have greater market access and choice between qualified insurance professionals. For regulators and industry, uniform approaches generate efficiencies in administration and enforcement, and ultimately, greater success and confidence in compliance with legal requirements.

Individual appointments should be eliminated.

First, appointments do not contribute to consumer protection like other credentialing requirements. Producer appointments do not determine whether an agent is qualified or adequately trained to sell, solicit, and negotiate insurance. Instead, producer pre-licensing, exams, continuing education, and extensive background checks provide necessary consumer safeguards. So, unlike its core licensure requirements, the Producer Licensing Model Act ("PLMA") labels appointments as "optional." Indeed, **nine states** have eliminated individual producer appointments and we are not aware of any resulting harm to consumer protection or other regulatory/enforcement concerns in those jurisdictions.

Second, the historical rationale for appointments is gone. Appointments are a Civil War-era construct designed to ensure that agents had knowledge of insurers' products (now handled through licensure and training requirements) and that agents selling insurance on behalf of out-of-state carriers would accept legal service of process and give policyholders effective means to pursue claims against those carriers. Over 150 years later:

(a) Admitted carriers are licensed and required to submit to each state's service-of-process rules;
(b) Carriers' primary contractual relationships are now with licensed agencies (a licensure category that did not exist when appointments were developed) that, notably, have oversight responsibility for their individual producers; and
(c) Independent agents are prevalent (unlike post-Civil War when agents were a direct extension of the carriers).

Ultimately, today, regulators have ample tools and far simpler and less costly ways to pursue individual agents and carriers for wrongdoing.

Third, appointments are extremely costly and unwieldy to administer, including initial appointments, renewals, and terminations. Some Council member firms manage *hundreds of thousands* of appointments for several thousand different carriers. Aside from hefty appointment fees paid by carriers, industry stakeholders and insurance departments alike spend tremendous resources on administrative, IT and compliance support to manage appointments. State processes for filing, renewing and paying for appointments vary greatly (see, e.g., discussion below regarding timing of appointments), which only adds to the cost burden on the whole system.

Further, due to the sheer volume of producer appointments and frequency of changes in employment and contract status, carriers and producers struggle to keep appointment approvals and terminations up to date. Errors and late or missing appointments are common and are frequently discovered during insurance department market conduct exams, but are completely *unrelated to* the original instigating enforcement or consumer protection concern. Appointment errors also can result in withheld commissions from brokers who have placed business for an insurer, even though it is the insurers' obligation to comply with appointment requirements. While commissions in these situations do typically get paid eventually, the resolution process can take months and involve many departments and individuals across the broker and insurance company.

For the foregoing reasons, the cost of individual producer appointments now outweighs their benefits and the best way to achieve uniformity is by eliminating them.

If states retain individual appointment requirements, they should be limited in scope and administered through uniform processes.

If more states are unwilling to get rid of producer appointments entirely – again, an option consistent with the PLMA – there are multiple interim steps that could be taken to rationalize and narrow the scope of the current appointments regime and alleviate systemic burdens associated with it.

Fundamentally, in whatever form and to whatever extent appointment requirements remain, states should clarify that those obligations lie with insurers, not brokerage firms/agencies or individual producers. We are aware of at least one state that has tried to shift responsibility from an insurer onto producer licensees, which is not consistent with the PLMA or the Handbook.

(1) Consider limiting appointment requirements to entities and/or to certain lines of insurance.

For instance, regulators could eliminate appointments for certain lines of insurance like commercial property and casualty business. There, clients are businesses, not individuals, and the coverage pertains to property, not people, so there is a distinct consumer protection posture.

Although we recognize that business entity-level appointments are discouraged under the current State Licensing Handbook, we read that position to presuppose that individual appointments *are* required (so the business appointment would add complexity and be unnecessary). But we think states could consider moving toward a uniform approach of firm-level appointments – *in lieu of, not in addition to* individual appointments -- which would greatly ease administrative burdens and unnecessary complexity, and better reflect commercial arrangements in the market today.

(2) To the extent individual appointment requirements remain, take steps to make them less burdensome.

a. Limit appointments to agents, not brokers.

A less favorable but still helpful approach would be to narrow the scope of individuals to whom appointment requirements apply. "Producers" are individuals licensed to sell, solicit and negotiate insurance, but there are various types of producers. Some work as exclusive/captive agents representing one particular insurer; others work as independent agents who represent a variety of insurers. The remainder work as brokers who do not represent any insurer, but rather represent insureds and help them find available coverage in the market that meets their needs. Appointments purportedly serve as declarations that particular individuals are authorized to sell/transact insurance *on the insurer's behalf*. Insurers, in turn, must verify that appointees have valid licenses and are qualified to sell their products.

Section 14A of the PLMA states – where individual appointments are required: *"An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer.* ***An insurance producer who is not acting as an agent of an insurer is not required to become appointed****."* (emphasis supplied). Further, the NAIC's Producer Licensing Model Act Implementation Frequently Asked Questions (PL FAQ) guidance clarifies that insurers need only appoint producers "acting as agents on behalf of the insurer. Inasmuch as brokers are not appointed, notification of appointments of brokers is not required."

Contrary to the PLMA and related guidance, many states do not acknowledge any distinction between agents and brokers for purposes of individual appointments and are requiring appointments for all producers. This unnecessary extension of the appointments regime adds costs and burdens to the system. Further, this approach is inconsistent with common understanding of agent/principal dynamics and may mislead consumers. If appointments serve as a mechanism to formalize the agent/principal relationship between insurers and the agents they authorize to act on their behalf, "appointing" producers who do not act with authority from any insurer creates a false impression of that relationship.

Also, notably, the appointment process requires agents to provide sensitive personal data and submit to extensive background checks, and some agents work with *dozens* of carriers. Because there is no uniform appointment form employed or shared across insurers, appointees must pass their personal information to multiple carriers in a variety of ways including paper, email, or the insurer's unique electronic portal. For these reasons, at the very least, individual appointment requirements should be limited to *agents*, not brokers.

b. Improve uniformity of appointments processes.

Finally, there are significant opportunities to unify and improve processes for individual appointments. For instance, there is significant divergence between states around *when* appointments must be completed and filed. Section 14B of the PLMA states: *"To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the insurance commissioner, a notice of appointment within fifteen (15) days from the date the agency contract is executed* ***or*** *the first insurance application is submitted."* (emphasis supplied).

Industry and several states interpret the plain language of the PLMA to mean that the appointment may be filed **either** within 15 days of execution of the agency contract **or** within 15 days after the carrier receives an initial submission of business from a licensed agent – it's the carrier's choice. Some states, however, stipulate that the appointment notification must occur at the earlier of the two possible times – a position not dictated by the PLMA. Other states have adopted completely different rules. Now, there are over a dozen distinct approaches across the states.

Insurers generally prefer to process individual appointments within 15 days of receipt of first piece of business. This method significantly reduces unnecessary/unused appointments by limiting appointments to agents who actually produce business. It also guards against

unnecessary transmittal, disclosure and exposure of highly personal and confidential appointee data (i.e., the data is never shared if the agent does not produce any business for the carrier).

The alternative approach requiring appointments within 15 days of execution of an agency contract results in unnecessary appointments/filings (i.e., costs and burdens). Additionally, this method creates an unfair advantage for insurers that use captive agents because agency contracts are not issued in those relationships. Finally, there do not appear to be any additional consumer protections associated with this approach.

We therefore urge states to follow the PLMA and allow carriers to choose their appointment notification approach, rather than dictating divergent processes in law or regulation.

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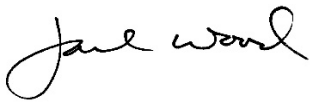
Based on the foregoing, we request that the Working Group consider the attached edits to the Appointments chapter of the State Licensing Handbook.

Respectfully submitted,



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APPENDIX A: PROPOSED REVISIONS TO CHAPTER 11

Appointments

Appointments are optional under Section 14 of the Producer Licensing Model Act (#218). Nine states currently do not require individual agent appointments. An appointment is a registration with the state insurance department that an agent is acting on behalf of an insurer. Appointments and appointment terminations are the responsibility of insurers. Model #218 clarifies that producers who are not acting as agents of insurers do not require appointments.

State insurance regulators should balance the cost of a regulatory requirement with the benefit that requirement adds to consumer protection. If detailed information is collected, that information should be a meaningful part of the state insurance department's consumer protection plan. If information is only rarely used in support of investigations, it may not be cost-effective to collect that information and require staff to compile it and process it.[1]

~~An appointment is a registration with the state insurance department that a producer is acting on behalf of an insurer. The Producer Licensing Model Act (#218) contains several sections related to appointments. Section 14 of Model #218 establishes the requirement that a producer acting as an agent of an insurer must have an appointment. This is an optional provision and applies only in those states that require appointments.~~ For states the do require individual agent appointments, Section 15 of Model #218 establishes a procedure for the reporting of appointment terminations. The Gramm-Leach-Bliley Act (GLBA), as modified in 2015, prohibits any state other than a producer's home state from imposing any appointment requirements upon a member of the National Association of Registered Agents and Brokers (NARAB).

In 2002, the Producer Licensing (EX) Working Group adopted a uniform appointment process for states that do require appointments. The full text is included in the Appendices and is available on the Working Group's web page. This process is referred to in the Uniform Licensing Standards (ULS). The key elements include:

1. States should allow the electronic filing of appointments and appointment terminations. Paper filings are discouraged.
2. States should establish a billing system for payment by insurers of initial appointments.
3. States shall allow insurers to select the ~~effective~~ date ~~of the initial appointment~~for filing a notice of appointment, in accordance with the options in Section 14B of Model #218.
4. ~~States shall require insurers to follow a prescribed timeline to file appointments.~~[2]

[1] This paragraph is taken from Chapter 12 (Business Entities) of the NAIC State Licensing Handbook. Just as there are different state approaches taken (and permitted) on business level-entity appointments, the same is true for individual appointments or having appointment requirements at all. We therefore think it is appropriate to include this paragraph in Chapter 11 as well.

[2] This is not required by the PLMA and we believe it may add to non-uniformity and confusion around appointment timing. Section 14B of Model #218 requires states to prescribe the format of appointment notifications, but leaves it

5. States shall require only one appointment or termination form or transaction per producer per company. At this writing, appointments by company group are not available.
6. States shall require insurance companies to submit terminations to the insurance department in accordance with the requirements of Section 15 of Model #218.
7. States shall require that, if a producer is terminated for cause, the insurer must submit supporting documentation.

Any information received by the insurance department must remain confidential in accordance with Section 15 of Model #218. In states that renew appointments, the key elements include:

1. States shall provide or publish a pre-renewal notice to insurers informing them that appointment renewals are imminent.
2. At the time for renewal, a state will deliver an invoice. The invoice may not be altered, amended, or used for appointing or terminating producers.
3. Insurers shall return the invoice and the payment to the department or its designee.
4. States shall establish a dispute resolution process to accommodate errors after the fact.

Appointment Terminations

Section 15 of Model #218 imposes a requirement on insurers to report terminations of producer appointments. Section 15 requires that the insurer report a termination within 30 days of its occurrence. If a termination is for any of the reasons listed in Section 12, License Denial, Non-Renewal or Revocation of Model #218, insurers are required to submit a detailed report to the state and a copy of the report to the producer. Section 15(E) grants immunity from civil liability for good-faith reporting to insurers and state insurance regulators. Reports filed under Section 15 are considered confidential.

Recommended Best Practices for State Insurance Regulators

- Automatically terminate appointments if a license goes inactive for any reason.
- Eliminate fees for appointment terminations and instead assess all charges at the time of an appointment. This will eliminate delays in cancellations.
- Do not require an appointment as a condition of licensure. Model #218 and the ULS provide that a producer can hold a license without holding an active appointment. Producers who are not acting as agents of an insurer do not require an appointment.
- If a state chooses to require individual agent appointments, r~~R~~equire only one appointment or termination form or transaction for each company for each ~~producer~~ agent per state.
- Sub-appointments and multiple appointments for agents that sell multiple lines of insurance ~~and Business Entity appointments~~ are discouraged.
- Do not mandate timing of appointment notifications. Allow insurers to determine timing of appointment notifications consistent with Section 14B of Model #218.

to the insurer to determine the timing within the Model's parameters. We therefore suggest removing item number 4 and revising item number 3 for additional clarify.

- Immediately accept terminations for cause and refer them for investigation. States should follow the procedures as outlined in Model #218. No advance notice should be required to the producer or the state insurance department.
- Use electronic filing for appointments, terminations and renewals, to the extent possible, to eliminate delays and increase efficiency.