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October 22, 2009

The National Association of Insurance Commissioners
Producer Licensing Working Group
2301 McGee Street, Suite 800
Kansas City, MO 64108-2662
Attn: Mr. Greg Welker

Gwelker@naic.org

RE: Response to PLWG's Limited Lines Licensing Charges October 6, 2009 Draft
Proposal

Dear Mr. Welker:

The US Travel Insurance Association (USTiA), the nation's largest travel insurance organization has significant concerns with respect to the Producer Licensing Working Group's (Working Group) October 6, 2009 Draft Proposal regarding limited lines licensing (Proposal). Our concerns are focused on both the definition of Limited Lines Ancillary Insurance, and the requirements for licensure. Specifically:

- Limited Lines Ancillary Insurance: Excluding travel insurance from the Limited Lines Ancillary Insurance definition because it is also a "core" limited line means travel insurance would be locked in the current regulatory regime, which fails both regulators and industry alike.
 - Solution: Include travel in the default definition of Limited Lines Ancillary Insurance, and add a section to the Uniform Licensing Standards and electronic mapping process that promotes a workable and uniform process of licensing. If a state is unable to adapt its definitions accordingly, clearly and explicitly state in the Uniform Licensing

Standards that travel is to be treated in the same way as Limited Lines Ancillary Insurance products for regulatory purposes.

- **Licensing Requirements:** Much more clarity is needed to provide clear uniform standards that both non-insurance retailers offering Limited Lines Ancillary Insurance products (including travel agents) and regulators can use to determine more reliably and consistently if an activity requires a license. Moreover, any licensing requirements agreed to by the NAIC must be in a uniform format that every state will be expected to follow such as the Uniform Licensing Standards.
 - Solution: Add language to the NAIC’s Uniform Licensing Standards and Implementation Guidelines that specifically set forth the licensure process and clearly describe activities that do not require licensure in connection with non-insurance retailers offering Limited Lines Ancillary Products.

Below, we explain our concerns and detail our recommended solutions.

Concerns

- 1) ***Excluding Travel Insurance from the definition of Limited Lines Ancillary Insurance leaves in place a licensing process that fails both the travel insurance industry and state regulators.***

Although the Proposal acknowledges that travel insurance fits the definition of Limited Lines Ancillary Insurance products, the definition excludes travel insurance purportedly because travel has been defined in some states as a “core” limited line. This should not be the determinative factor.

There is nothing that prevents travel from being both a “core” limited line and an ancillary limited line. In fact, travel insurance is the quintessential ancillary limited line – clearly meeting the standards set in the definition essentially agreed to by the Working Group.

By excluding travel from the ancillary definition all the licensing problems that currently plague the travel insurance industry remain. As a result, travel insurance is left as the only product that clearly meets the ancillary definition but will continue to face a licensing system that is unworkable because of differing requirements and interpretations among the states.

The NAIC alluded to the problems with limited lines licensing in its Producer Licensing Assessment Aggregate Report of Findings (Assessment Report), dated February 2008. Since then, the travel industry has taken the lead in recommending solutions, submitting to NAIC working groups ten sets of formalized comments—including our April 2009

White Paper Limited Lines Producer Licensing: A Case for Reform from the Travel Insurance Industry.

In these submissions, we have analyzed the short-comings of the current limited lines licensing process and recommended detailed solutions. including alternatives using the Producer Licensing Model Act (Model Act), the Uniform Licensing Standards (Standards), and the NAIC State Licensing Handbook (Handbook).¹ Excluding travel insurance from the definition of Limited Lines Ancillary Insurance solely because it is also a “core” limited line ignores these issues.

For the travel insurance industry, these regulatory barriers and burdens are very real. This becomes clearly evident when one better understands and weighs the significant barrier travel insurance providers face offering travel insurance products nationally through tens of thousands of non-insurance retailers while trying to comply with the states’ non-uniform licensing requirements and interpretations. Specifically, for the multitudes of non-insurance retail travel agencies and agents, we face the following inconsistencies across the states:

- There are at least 19 different lines of authority that are required to sell travel insurance in 49 different jurisdictions.
 - Only 42% of the States accept individual applications for travel filed electronically by New York resident producers;
 - Only 28% of the States accept individual application for travel filed electronically by Pennsylvania resident producers;
 - Less than 2% of the States accept individual applications for resident producers from Florida;
- Eight states require two lines of authority to sell travel insurance
- Many states require state specific applications and refuse to use the NAIC Uniform Application, which despite our earlier efforts to secure changes to fix inaccuracies, remains inaccurate and difficult to use because it “blackens out” boxes on the form in the following ways:
 - Both business and individual licenses are required in the following states where the NAIC forms indicate none are required: Michigan, Oregon, Virginia, and Wyoming;
 - Both business and individual licenses are required in the following states where the NAIC forms indicate only individual licenses are required: Kansas, Maine, Minnesota, Missouri, North Carolina, Nebraska, Nevada, West Virginia, and Illinois;
 - Only a business entity license is required in Texas, although the NAIC form indicates that both and individual and business entity licenses are

¹ We note also that during this process, we have addressed concerns raised by regulators, including “opening” the Model Act and ensuring that any proposed solution not only works for travel insurance, but other products that share similar traits.

required.

- States like Illinois and California do not issue limited lines agency licenses, which makes it almost impossible to obtain non-resident licenses for travel agencies resident in those states for its sales (especially internet sales) in other states.

Such inconsistencies cause big problems for the travel industry. This is particularly problematic for out-of-state sales of travel, which comprise approximately half of all travel insurance sales (more than half of all on-line sales). Because of the lack of a uniform approach or interpretation to licensing, an individual travel agent sitting in New Jersey (for example) *may* (or may not) need a license in, say, Virginia, Connecticut, Rhode Island, New York, Massachusetts or any other state before selling travel insurance to a resident of such state — depending upon how that state regulator interprets the law.

Due to inconsistencies among the states, the licensing process gives rise to constant back and forth communications with various Departments of Insurance to explain the discrepancies in their interpretations and to resolve questions and issues. Because of this, it commonly can take over 6 months to get one travel agency or agent properly licensed in the states where they may offer travel insurance to their customers.

This makes accurate compliance nearly impossible in an industry that sees turnover of nearly 100% in a 6-month time period. As a result, because of the realities of the marketplace and regulatory oversight, many travel insurance retailers remain unlicensed, much like the Best-Buy clerk offering a service contract, the real estate agent offering home warranty contracts, or the HVAC contractor offering an extended warranty.²

Despite efforts to comply, **travel agents and agencies are almost never the focus of regulatory attention.** To the extent a limited lines regulatory issue arises, the regulators' focus is almost always solely on the wholesale type producer, MGA, or insurer that provides the product to the non-insurance retailers. Thus, through their regulatory prioritization, regulators tacitly acknowledge the limited sales activities and the practical difficulty tracking such non-insurance retailers.

Ultimately, this has been an effective enforcement approach despite the difficulty in achieving full compliance with licensing requirements. Our goal, here, however, is to make state licensing laws and requirements match regulatory practice. It is the gap between current regulatory practices and requirements that leads to the lack of uniformity

² Unlike other retailers, travel insurance cannot take advantage of current regulatory approaches for the sale of service contracts or car rental companies. Service contracts, for example, are most often underwritten by insurance companies. However, regulators generally do not require those who offer them to be licensed. In fact, NAIC's Service Contract Model Act (685) only requires registration, not licensure, for those offering service contracts.

Nor can travel take advantage of the way in which most states interpret licensing requirements for car rental companies. Most states permit only one agency and DRP license for a rental car company's entire state operations. This is do-able for car rental companies, who only distribute through owned business sites. Interestingly, this is permitted even if sales are for out-of-state residents.

and makes compliance very difficult. The Assessment Report notes this, finding that inconsistencies in the states' interpretations of limited lines licensing needs to be addressed for states to come into compliance with the Standards. (Assessment Report p. 14-15.) To ensure that travel insurance is not left behind, it needs to be clearly and explicitly a part of any solution derived for other Limited Lines Ancillary Insurance products.

- 2) ***Much more clarity is needed to provide clear uniform standards that both travel agents and regulators can use to judge more reliably and consistently if an activity requires a license. These standards must be clearly enunciated in the Uniform Licensing Standards.***

Based on the discussions between members of the Working Group at NAIC meetings and on Working Group conference calls, it is clear that State regulators have not focused on, nor do they share the same views on, which activities normally engaged in by non-insurance retailers offering Limited Lines Ancillary Insurance product like travel require licensing. Unfortunately, as currently drafted, the Proposal does little to fix this. It instead relies upon the same language that has caused the current regulatory confusion and inconsistency. What is needed is a clearer, more definitive statement in the Uniform Licensing Standards that truly reflects the current standards and practices actually used and accepted by the regulators and in the marketplace, and which will serve as a consistent, uniform base-line going forward.

The Proposal refers to (1) the list of licensable and non-licensable activities found in the NAIC's Implementation Guidelines (Guidelines) in the Producer Licensing Handbook, and (2) Sec. 4B(2) of the Model Act, which exempts from licensing those who secure and furnish information for the purposes of group policies provided no commission is paid and there is no selling, soliciting or negotiation of insurance. Our concern about the Proposal is that, as written, these provisions do not provide clear guidance when applied to the actual activities of non-insurance retailers offering travel insurance or other Ancillary Limited Line Insurance products.

Similar to non-insurance retailers offering other types of products, travel agents generally offer their customers travel insurance as an add-on to their trip. The information about the policy may be in a brochure or on a computer screen designed and developed by an identified wholesale type producer, MGA, or insurer that provides the product to the non-insurance retailers. The travel agent – much like a Bestbuy clerk, Verizon salesperson, veterinarian's assistant, or self-storage attendant — will provide a general description of the coverage, including a price. The non-insurance retailer may also receive the customer's application and premium. All specific questions beyond what is described in the pre-packaged materials are directed to the identified whole-sale type producer, MGA, or insurer. A minimal marketing or referral fee is paid normally to the travel agency and based in part on the amount of the underlying sale.

Most if not all of these activities arguably do not require licensing under the Guidelines, but this is neither clear nor consistently applied across the states. For instance, the

Guidelines point out that “solicit” does not include “dispensing brochures and other general information, so long as [there is] no conversation relating to the terms of the contract.” Thus, a non-licensed person (individual or business) may dispense brochures and general information and, presumably, discuss the contents thereof. But it is not clear what else, if anything, may or may not be discussed.

Moreover, the Guidelines also permit non-licensed persons to:

- Communicate with prospective policyholders in order to obtain factual information necessary for an insurance producer to complete a review;
- Receive requests for coverage for transmittal to a licensed insurance producer or for processing through an automated system developed and maintained under the supervision of an insurer or licensed insurance producer;
- Receive and record information from an applicant or policyholder and prepare an application for insurance pursuant to instructions from and for the review of an insurance producer; and
- Receive premiums at the recorded place of business where the payment is being made for a policy.

Because these activities do not require a license, they would not be considered “selling, soliciting or negotiating” under the Model Act. Moreover, under Sec. 13D of the Model Act, anyone undertaking these activities **would be permitted to receive a commission**. This applies to all, including group enrollers, who are otherwise exempted from licensing under Sec. 4B(2) of the Model Act, whose activities are limited to the above items.

Unfortunately, it is unclear whether this analysis is either generally accepted or goes far enough to address all of the activities of non-insurance retailers offering Limited Lines Ancillary Insurance. In addition, we note that the Model Act and Guidelines are ordinarily being interpreted in the context of more traditional insurance agent sales, such as when an agent is actively urging a potential customer to buy an auto, property, medical or life insurance policy from a particular company, offering details about the terms or benefits of the coverage, and binding or fulfilling that policy.

As has been generally acknowledged by regulators and the marketplace alike, non-insurance retailers offering Limited Lines Ancillary Insurance products do not require the same regulatory scrutiny as major lines of authority, as long as both the regulator and customer know who is ultimately responsible for the product. Again, it is the gap between current regulatory practices and stated requirements that leads to the lack of uniformity and makes compliance very difficult.

Recommendations

To reconcile current regulatory practice with current law, we believe two things are required: (1) include travel in the default definition of Limited Lines Ancillary Insurance, and (2) clarify the Guidelines and add a section to the Uniform Licensing

Standards and electronic mapping process that promotes a workable and uniform process of licensing. In addition, if a state is unable to adapt its definitions accordingly, clearly and explicitly state that travel is to be treated as set forth in the Guidelines and Uniform Licensing Standards in the same way as Limited Lines Ancillary Insurance products.

To effectuate these recommendations, only small changes are required. We believe this can be easily done by revising the Uniform Licensing Standards and the Producer Licensing Handbook, and by updating the Uniform Application. As we have mentioned in previous correspondence, this will permit states to retain flexibility to make any necessary changes to their policies and procedures in whatever format they deem suitable. Depending upon a state's statutory authority, it may decide to use the Standards as guidance for its current laws, or may adopt the Standard provisions by statute, regulation, bulletin or notice.

To do this, we have slightly tweaked our previous recommendations. We recommend modifying the Uniform Standards by adding the following (*see also* Attachment A hereto):

34. Limited Lines Ancillary Insurance Standards

For specific types of insurance offered, solicited, or sold to the consumer under an individual, group, or group enrollment under a master policy as an add on in connection with and incidental to non-insurance goods or services, including coverage for (i) travel, (ii) car rental, (iii) [state may list other lines it fits into this category including self-storage, pet, portable electronics]; or [(iv)] any other similar coverages as designated by the insurance commissioner, hereafter referred to as Limited Lines Ancillary Insurance:

A person may sell, solicit or negotiate Limited Lines Ancillary Insurance only under a business entity license, if:

- (1) The licensed business entity is clearly identified as the licensed producer on marketing materials and fulfillment packages distributed by non-insurance retailers to customers; identification shall include the entity's name and contact information;
- (2) The licensed business entity keeps a register of each non-insurance retailer business that offers Limited Lines Ancillary Insurance on the licensed business entity's behalf. The register shall include the name and contact information of the non-insurance retailer and an officer or person who directs or controls the non-insurance retailer's operations. The licensed business entity shall also certify that the non-insurance retailer registered complies with 18 USC 1033. The licensed business entity shall submit such Register within 30 days upon request by a state insurance department;
- (3) The licensed business entity has designated one of its employees as a licensed individual producer (a "Designated Responsible Producer" or "DRP") responsible for the business entity's compliance with the insurance laws, rules and regulations of this state;

- (4) The DRP, president, secretary, treasurer, and any other officer or person who directs or controls the licensed business entity's insurance operations comply with the fingerprinting requirement for the resident state of the business entity;
- (5) The licensed business entity has paid all applicable licensing fees as set-forth in applicable state law; and
- (6) The licensed business entity requires each employee and non-insurance retailer whose duties include selling, soliciting or negotiating Limited Lines Ancillary Insurance to receive a program of instruction or training, which may be subject to review by the commissioner.

B. A non-insurance retailer, including its employees, whose activities are limited to offering Limited Lines Ancillary Insurance on behalf of and under the direction of a licensed business entity meeting the conditions stated in paragraph A above, is authorized to do so upon registration by the licensed business entity as described in paragraph A.2.above.

This approach permits states to channel existing or future limited lines ancillary types of products into a licensing process that reflects much more closely how those offering Limited Lines Ancillary Insurance products are in fact regulated today. In much the same way other provisions of the Standards currently are applied, states are left the flexibility to adopt these measures, whether by bulletin, notice, regulation or statute. Moreover, the provision above parallels the NAIC's Service Contract Model Act (685), which also provides for a registration process. Finally, it provides better protection for customers and regulators by providing them with information as to who is ultimately responsible in case any regulatory issues arise.

This type of approach does not preclude the electronic mapping process the Proposal recommends, which the travel industry believes is vitally important. In addition, with respect to fingerprinting, the language above is consistent with Option 2 as set forth in the Proposal.

Finally, to clarify who is required to hold a license and who is not, we recommend that the Guidelines be updated to better reflect activities commonly undertaken by non-insurance retailers that offer travel and other Limited Lines Ancillary Insurance products. Specifically, we recommend the changes reflected below:

ACTIVITIES	LICENSABLE “AGENT” ACTS	NON- LICENSABLE “CLERICAL” ACTS
<i>Solicit</i>		
Dispense brochures, and other general information (so long as no conversation relating to the terms of a contract)		x
Disseminating buyer’s guides, applications for coverage, coverage selection forms or other similar forms in response to a request from prospective or current policyholders		x
Receiving and recording information from a policyholder to give to an insurance producer for his or her response		x
Scheduling appointments with insurance producers to discuss insurance		x
<u>Offering general information, which may include a description of the coverage, and the price, as well as processing the application, collecting premiums, and other activities permissible under the Guidelines , on behalf of a licensed business entity that is clearly identified as such on the marketing materials and fulfillment packages for limited lines of insurance offered, solicited, or sold to the consumer under an individual, group, or group enrollment under a master policy as an add on in connection with and incidental to non insurance goods or services, including coverage for (i) travel, (ii) car rental, (iii) [state may list other lines it fits into this category including self-storage, pet, portable electronics]; or [(iv)] any other similar coverages as designated by the insurance commissioner.</u>		x
Disseminating information as to rates secured by reference to a published or printed list or computer data base of standard rates	x	

Without providing such clarity and uniformity on this issue, both state regulators and market participants who offer these products will continue to struggle to determine when producer licensing is required and to comply with producer licensing regulations across the country.

In conclusion, we offer these suggestions to promote a more consistent and uniform reading and implementation of current state laws, in a way that will protect consumers and permit states to continue their current enforcement approach, while taking into account the practical difficulty of licensing non-insurance retailers.

Our concern with the Proposal as it stands is that it does not clearly and comprehensively address current issues, resulting in a continuation of the current limited lines licensure problems. As it stands, the Proposal would increase regulatory burdens and costs, and do nothing to provide regulators with what they need to protect consumers – information regarding the associated distributing producer to which the regulator turns when problems arise.

Finally, because of the importance of this issue, we respectfully request the opportunity to permitted 30 minutes to more fully present our views and answer questions that Working Group members may have.

Thank you for your consideration of our views.

Sincerely,

/s/ John P. Fielding

John P. Fielding

Attachment