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Prohibited Persons and Written Consent under 18 U.S. C. § 1033(e)

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I. Introduction

Congress enacted 18 U.S.C. §§ 1033 and 1034 as part of the Violent Crime Control and Law Enforcement Act of 1994 (the “Act”). The Act was in response to several major insurance company insolvencies in which existing state remedies were ineffective against fraudulent behaviors that drove the companies into insolvency.¹ The Act provides criminal and civil enforcement provisions aimed at assisting state insurance regulators in dealing with interstate insurance fraud schemes.² The Act also provides a mechanism for persons prohibited by the Act from participating in the business of insurance to seek written consent from the appropriate insurance regulator to work in the insurance industry (hereinafter a “1033 Consent”).

This article provides a general overview of the Act and discusses regulatory issues associated with prohibited persons and written consents under 18 U.S.C. § 1033(e).

II. Overview of the Act

Section 1033 classifies certain activities as crimes when carried out by individuals, their agents, and employees engaged in the business of insurance and whose activities affect interstate commerce. Prohibited activities include:

- Knowingly, with the intent to deceive, making any false material statement or report or willfully and materially overvaluing any land, property or security in connection with any financial reports or documents presented to any insurance regulatory official or agency for the purpose of influencing the actions of that official or agency³.
- Willfully embezzling, abstracting, purloining, or misappropriating any of the moneys, funds, premiums, credits or other property of any person engaged in the business of insurance, including individuals acting as, or being an officer, director, agent, or employee of that person⁴.
- Knowingly making any false entry of material fact in any book, report or statement of the person engaged in the business of insurance with the intent to deceive any person about the financial condition or solvency of such business⁵.
- By threats or force or by any threatening letter or communication, corruptly influencing, obstructing, or impeding or endeavoring to corruptly influence, obstruct, or impede the proper administration of the law under which any proceeding is pending before any insurance regulatory official or agency⁶.
- Willfully engaging in the business of insurance whose activities affect interstate commerce or participating in such business, if the individual has been convicted of a criminal felony involving dishonesty or breach of trust or has been convicted of an offense under 18 U.S.C. § 1033⁷.
- Willfully permitting the participation of any individual convicted of a criminal felony involving dishonesty or breach of trust or has been convicted of an offense under 18 U.S.C. § 1033.⁸

The penalty for engaging in those prohibited acts is a fine as provided by Title 18 or imprisonment for a term ranging from one (1) to ten years (10), or both a fine and imprisonment. If the activity jeopardized the safety and soundness of an insurer and was a significant cause of an insurer being placed into conservation, receivership, or liquidation, the imprisonment term is up to fifteen (15) years.

Section 1034 authorizes the U.S. Attorney General's Office to bring a civil action in the appropriate U.S. District court against any person who engages in conduct constituting an offense under section 1033. If upon proof of such conduct by a preponderance of evidence, the person is subject to a civil penalty not to exceed \$50,000 for each violation or the amount of compensation that the person received or offered for the prohibited conduct, whichever is greater. If the offense contributed to the decision of a court to enter an order directing the conservation, rehabilitation, or liquidation of an insurer, the penalty is remitted to the appropriate regulatory official for the benefit of the policyholders, claimants, and creditors of the insurer. The imposition of a civil penalty under section 1034 does not preclude any other criminal or civil statutory, common law, or administrative remedy available to the United States or other person. Furthermore, the Attorney General is authorized to petition the appropriate U.S. District Court to enter a cease and desist order if there is reason to believe that a person is engaging in conduct constituting an offense under section 1033. The filing of a petition under section 1034 does not preclude any other remedy available at law to the United States or any other person.

III. Section 1033(e) – Prohibited Persons Barred from the Business of Insurance

Section 1033(e)(1)(A) makes it a federal felony for a person to engage or participate in the business of insurance if that person has been convicted of a state or federal felony involving dishonesty or a breach of trust, or a crime under 18 U.S.C. § 1033. These persons are commonly referred to as “prohibited persons.” Section 1033(e)(1)(B) makes it a federal felony for a company or person engaged in the business of insurance to willfully permit the participation of a person who is prohibited under section 1033(e)(1)(A).

The “business of insurance” is broadly defined in the Act to include all acts necessary or incidental to the writing of insurance or the reinsuring of risks and the activities of persons who act as, or are, officer, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of such persons. Other persons include any subcontractors, third-party administrators, consultants, or professionals authorized to act on behalf of the insurer.⁹ An “insurer” under the Act is an entity whose business activities consist of the writing of insurance or the reinsurance of risks, and includes any person who acts as, or is, an officer, director, agent, or employee of that business. The term “interstate commerce” is also broadly defined to include interstate and, in defined circumstances, intrastate activities in any state or U.S. commonwealth, possession, or territory.

Section 1033(e)(2) provides a mechanism by which prohibited persons may apply to the appropriate insurance commissioner for written consent to work in the business of insurance. However, the prohibited person may not work in the business of insurance while the person is applying for consent. Furthermore, even if written consent is granted, the person is not relieved from any state law prohibition concerning licensure or discipline.

IV. Issues Concerning Section 1033(e)

A. Relationship to State Law

The Act does not preempt or supersede applicable state laws. A 1033 Consent only releases the person from “prohibited person” status under federal law. An individual granted a 1033 Consent, or whose criminal history does not trigger the Act, may still be barred from participating in the insurance industry under state law.

B. Undefined Terms of the Act

1. Crimes Involving Dishonesty or Breach of Trust

The Act does not define or list the felonies that involve “dishonesty” or “breach of trust” under section 1033(e). The Act simply refers to “any felony” involving dishonesty or breach of trust, which also includes state criminal felonies. There is no definitive case law outlining the standards for determining which crimes involve dishonesty or breach of trust in the context of the Act. In the absence of statutory definitions or federal case law interpreting such term under the Act, general rules of statutory construction would apply in interpreting these terms. Cases interpreting similar terms in other federal acts and cases decided under the Federal Rule of Evidence 609(a)(2) may also provide guidance in interpreting these terms.

Under Federal Rule of Evidence 609(2)(a), evidence that a witness has been convicted of a crime involving dishonesty or false statement may be admitted into evidence to attack the witness’s credibility. Congress intended Rule 609(a)(2) to apply only to crimes that factually

or by definition involve an element of misrepresentation, deceit, fraud, cheating, or stealing because those types of crimes tend to heavily bear on the truthfulness of a witness.¹⁰ Ordinarily, the statutory elements of the crime will indicate whether it is one of dishonesty or false statement or will require an admission of an act of dishonesty or false statement. See *United States v. Jefferson*, 623 F.3d 227 (5th Cir. 2010).

Regarding state-law felonies, most states have adopted Federal Rule of Evidence 609(2)(a) in their evidence codes in some form or fashion. Additionally, states may have enacted state criminal laws that are analogous to federal felony provisions. There is, however, no uniform definition of crimes involving dishonesty or breach of trust among the states. Therefore, the nature and elements of state felonies are determined according to the statutes and case law of the particular jurisdiction.

2. Willfully

The Act does not define the term “willfully” for purposes of sections 1033(e)(1)(A) or (B). The term “willfully” has numerous meanings and its construction depends on the context of its use. *Bryan v. United States*, 524 U.S. 184, 191, 118 S.Ct. 1939, 141 L.Ed.2d 197 (1998) (quoting *Spies v. United States*, 317 U.S. 492, 63 S.Ct. 364, 87 L.Ed. 418 (1943)). Generally though, in criminal cases, “in order to establish a ‘willful’ violation of a statute, ‘the Government must prove that the defendant acted with knowledge that his conduct was unlawful.’” *Id.* (quoting *Ratzlaf v. United States*, 510 U.S. 135, 137, 114 S.Ct. 655, 126 L.Ed.2d 615 (1994)). In *U.S. v. Peterson*, 357 F.Supp.2d 748 (S.D. N.Y. 2005), the District Court held that, for purposes of the prohibited persons provision of section 1033(e)(1)(A), the government must prove that the defendant acted knowingly and purposefully in engaging in the insurance business following his felony conviction.¹¹

There are no reported cases concerning the interpretation of “willfully” for purposes of section 1033(e)(1)(B) regarding insurers, but based on *Peterson*, “willfully” in this subsection may not require proof of specific intent to violate that subsection. However, this interpretation is not suggested by the National Association of Insurance Commissioners (the “NAIC”). Instead, the NAIC suggests that “willfulness” under section 1033(e)(1)(B) should turn on actual knowledge of the insurer and the affirmative action taken by the insurer to determine whether the individual is a prohibited person.¹²

Finally, as to state felonies, the interpretation of “willfully” will depend on the particular jurisdiction’s specific statutory language, rules of statutory construction applicable to state criminal statutes, and state case law interpreting such statutes.

C. Authority to Grant Written Consent

The issuance of a 1033 Consent by any state insurance regulatory official allows an individual, who would be otherwise barred by section 1033, to be employed in any U.S. jurisdiction. However, the Act does not clearly specify who constitutes the appropriate insurance regulatory official to whom application for Consent should be made.

The NAIC has developed guidelines to assist member states in determining the appropriate insurance regulatory official to grant Consent. These guidelines are discussed below in the section entitled “NAIC Guidelines.”

V. Insurer Obligations to Identify Prohibited Persons

Insurers are required to identify and notify state insurance departments of prohibited persons who act as, or are, officer, directors, agents, or employees of insurers or who are other persons authorized to act on behalf of insurer. The Act does not “grandfather” persons engaged or participating in the business of insurance prior to the passage of the Act. The Act does not contain any automatic waiver for individuals who may possess a state insurance license. Also, there is no time limitation on how far back the felony conviction that triggers prohibited-person status may have occurred. Therefore, insurers should take steps to identify prohibited persons on an existing and prospective basis. These steps may include conducting criminal background checks on prospective employees, requiring current and prospective employees, officers, directors and other persons to certify that they have not been convicted of a felony, requiring current and prospective employees, officers, directors, and other persons to report any criminal conviction within a period of time. Failure to initiate a screening process designed to identify prohibited persons in current or prospective employment relationships may be a factor in determining if a violation of the statute has occurred.

VI. National Association of Insurance Commissioner’s Guidelines

The NAIC has published the *Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994: 18 United States Code Sections 1033 and 1034* (the “NAIC Guidelines”) that state insurance departments may refer to for standard procedures regarding 1033 Consents. The NAIC Guidelines were initially adopted in 1998 and subsequently amended in 2000, 2002, and 2010.

The NAIC Guidelines include procedures to serve as a model or guide that state insurance departments may accept or reject, in whole or in part. Highlights of these items are outlined below.

A. Definitions of Certain Terms

The NAIC Guidelines suggest definitions for various terms. Of particular significance are definitions for “breach of trust” and “dishonesty,” since they are undefined in the Act. Crimes involving “breach of trust” are defined to include, but not limited to, any offense constituting or involving misuse, misapplication or misappropriation of 1) 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, 2) such acts in relation to anything of value of any public, private or charitable organization.¹³ Crimes involving “dishonesty” are defined to include, but are not limited to, any offense constituting or involving perjury, bribery, forgery, counterfeiting, false or misleading oral or written statements, deception, fraud, schemes or artifices to deceive or defraud, material misrepresentations and the failure to disclose material facts.¹⁴

B. Procedures to Determine Which Regulator Gives Written Consent

The NAIC Guidelines contain suggested standards to determine the appropriate state insurance regulator to provide a 1033 Consent. The procedures, in the order below, summarize the methodology to be considered by state insurance regulators:¹⁵

1. If the applicant is applying for a license as a producer or other licensed insurance professional, the state that would be issuing the resident license should be considered the appropriate insurance regulatory official.
2. If the applicant is to become an employee or officer, partner, owner, director or board member of an insurance company, HMO, or any similar regulated insurance entity:
 - a. The insurance regulator in the state where the applicant's most substantial work will be performed should be considered the appropriate insurance regulatory official; or
 - b. The insurance regulator in the state of domicile of the regulated insurance entity should be considered the appropriate insurance regulatory official.
3. If the individual is a consultant for, or an employee, officer, partner, owner, director or member of a non-licensed entity, one of the following should be considered the appropriate insurance regulatory official:
 - a. The insurance regulator in the applicant's state of residence; or
 - b. The insurance regulator in the state which constitutes the focal point of the individual's business or professional activities; or
 - c. The insurance regulator in the jurisdiction that has the most regulatory interest over the applicant's proposed insurance activities, as reflected in his or her application for consent. All of the following factors should be considered in determining which jurisdiction has the most regulatory interest:
 - i. Situs of proposed activity;
 - ii. Percentage of insurance business activity within the jurisdiction;
 - iii. Monetary value of insurance business activity within the jurisdiction; and
 - iv. Potential harm to the citizens within the jurisdiction.
 - d. Finally, the insurance regulator in the jurisdiction(s) where the prior criminal activity occurred and the felony conviction was obtained may be considered the appropriate insurance regulatory official.

If the regulator receiving an application for a 1033 Consent determines that there is a more appropriate insurance regulatory official, then the recipient should forward the application to the most appropriate insurance regulatory official, or he most appropriate NAIC member who satisfies the above criteria.¹⁶

C. 1033 Consent Application Process

The NAIC Guidelines recommend that the focus of the 1033 Consent application process should be to determine whether the activities the applicant will engage or participate in, constitute a risk or threat to insurance consumers or the insurer, and whether issuance of written consent is consistent with public interest and/or federal or state laws. The NAIC Guidelines suggest the use of two forms, a “short form”¹⁷ and a “long form”¹⁸, by state insurance departments. The “short form” should be used to determine whether to grant written consent in an expedited manner to a prohibited person whose insurance activities do not on their face create a risk or threat to insurance consumers or to the insurer.

The “long form” should be used if, after review of the initial application, the state insurance department determines that the applicant’s insurance activities are the type to pose a risk to insurance consumers or to the insurer. The information requested in the “long form” serves to supplement the information in much more detail, but may overlap that elicited in the “short form.”

D. Consideration of the Merits and Criteria to Grant a 1033 Consent

The NAIC Guidelines recommend that the following principles be considered in reviewing the merits of a 1033 Consent application: 1) whether the applicant has been fully rehabilitated and no longer poses a risk or threat to insurance consumers or the insurer; and, 2) whether the issuance of written consent to the applicant is consistent with the public interest, federal and state law and any applicable court orders.¹⁹

Various sections of the NAIC Guidelines contain procedures and factors to be used in deciding whether a 1033 Consent should be granted. Some of the factors are identical, but others expand the guidelines. The following are described as supplemental factors to be considered by an insurance commissioner as part of his or her deliberations:²⁰

1. The legitimate interest of the insurance commissioner or the insurer for whom the activities would be performed in protecting property, and the safety and welfare of specific individuals, businesses or the general public.
2. Whether the applicant or someone on his her behalf has made a materially false or misleading statement or omission in the application process.
3. The nature of the circumstances surrounding, and the seriousness of, the offense or offenses, and whether any pre-screening reports contain any information related to same.
4. Whether the applicant has been charged with, indicted or convicted of multiple criminal offenses.
5. Evidence supporting the applicant’s rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the

recommendation of person who have or had the applicant under their supervision.

6. Whether all NAIC members received timely notice of the applicant's request for written consent, together with any relevant information regarding the fitness of the applicant back from other NAIC members.

Furthermore, Exhibit D to the NAIC Guidelines, entitled "Department of Insurance Procedures Governing Persons Subject to 18 U.S.C. § 1033," contains various guidelines and factors to be used in determining whether a 1033 Consent should be granted. The first section appears to be a suggested document for publication by insurance departments to inform licensees and interested persons about procedures for 18 U.S.C. § 1033, which lists the following factors considered in determining requests for 1033 Consents²¹:

1. The nature and severity of the conviction;
2. Date of the conviction;
3. The injury and/or loss caused by the Act for which the person convicted;
4. Whether the crime related to the business of insurance;
5. Whether the prohibited person received a pardon from the sovereign that convicted him or her;
6. Whether the prohibited person completed parole or probation;
7. The nature and strength of any character letters;
8. The prohibited person's business and personal record before and after the commission of the crime;
9. Whether and to what extent the person has made material false statements in an application renewal or in other documents filed with the commissioner; and,
10. Whether and to what extent the prohibited person has made material false misstatements in applications or other documents filed with other state or federal agencies.

The second part of Exhibit D appears to be designed to provide employees of state insurance departments with a guide for dealing with prohibited persons under section 1033 and requests for 1033 Consent.²² The recommended procedures include the formation of an Advisory Committee (the "Committee") to review 1033 Consent applications and provide recommendations to the insurance commissioner regarding the fitness of a prohibited person to work in the insurance industry.²³ These procedures state that the Committee is to review a timely and complete a 1033 Consent application in light of the following items:²⁴

1. The factors set forth in the insurance code in making its recommendations.

2. Any relevant additional factors in making its recommendations.
3. Whether and to what extent the person has made material false statements in applications or other documents filed with other state agencies.
4. Charges that were nolle prossed.
5. Convictions resulting from arrests, the records of which have been expunged.
6. Convictions for which a pardon has been granted unless the circumstances indicate that the pardon was granted due to the innocence of the person involved.
7. Requests for written consent shall be granted only if the mitigating circumstances clearly and substantially outweigh the seriousness of the criminal history together with any other aggravating circumstances.

If a 1033 Consent is granted, the NAIC Guidelines recommend that it be conditioned upon: 1) the truth and veracity of facts disclosed by the applicant in the application; and, 2) the applicant remaining in the approved position with its associated insurance activities considered not to be a risk or threat to insurance consumers or the insurer.²⁵ A change in duties requires the filing of a new request for a 1033 Consent.²⁶ If a person violates the terms of a 1033 Consent, the consent is invalidated and the person resumes his or her status as a prohibited person.²⁷ If the person is licensed by the insurance department, that person is subject to license revocation proceedings.²⁸

VII. State Activity Regarding 1033 Consents

Generally, most states have procedures regarding the Act and/or requests for 1033 Consents through memoranda²⁹, bulletins³⁰, administrative rules³¹, and statutes.³² Florida is an exception and does not issue 1033 Consents.³³

A. Insurer Responsibilities – Internal Procedures

Alabama, Iowa, and Massachusetts have reviewed insurer operations to determine whether insurers have implemented internal procedures to conduct background checks or investigations of prospective and existing employees to determine the existence of any felony convictions for offenses under the Act.³⁴ Furthermore, Alabama and New Hampshire have administrative rules requiring internal procedures concerning prospective and existing employee compliance with the Act.³⁵

B. Grounds for Producer Discipline

State insurance departments have disciplined producers in connection with various violations of section 1033. These violations include allowing a prohibited person to work at an insurance agency³⁶, failure to report the denial of a 1033 Consent request from another jurisdiction³⁷, failure to comply with the conditions of a 1033 Consent³⁸, and failure to obtain a 1033 Consent.³⁹

C. 1033 Consents

Generally, states that grant 1033 Consents have incorporated, in whole or in part, the NAIC's Guidelines. A review of reported state administrative decisions concerning 1033 Consents reveal that age at the time of the offense, the seriousness of the criminal convictions, age of the criminal conviction, evidence of rehabilitation, truthfulness of the information contained in the 1033 Consent application and other state applications, and duties the prohibited person will engage in are significant factors in determining whether a state insurance regulator will issue a 1033 Consent.⁴⁰

VIII. Conclusion

The Act prevents anyone previously convicted of a felony involving dishonesty or breach of trust from working in the interstate insurance industry, unless that person has written consent from an authorized state regulator. The Act is broad in scope, requires compliance by prohibited persons and insurers, and imposes significant criminal and civil penalties. Compliance with the Act may present challenges for prohibited persons, insurers, and state insurance regulators because the Act does not define key terms or set parameters for a state regulator's decision to grant or refuse consent. Furthermore, there are few federal or state court decisions interpreting the Act.

The NAIC developed guidelines to assist state regulators in the exercise of their authority under the Act, which many states regulators have implemented. Insurers and potentially prohibited persons should consult statutes, administrative rules, case law, administrative decisions, and insurance department information in the jurisdictions they currently operate in or plan to operate in to determine their respective obligations under the Act. Failure to do so exposes potential prohibited persons and insurers to possible regulatory action and penalties imposed by the Act.

¹ House Report No. 103-486, 1994 WL 107579 (March 25, 1994).

² *Id.*

³ 18 U.S.C. §1033(a)(1).

⁴ 18 U.S.C. §1033(b)(1).

⁵ 18 U.S.C. §1033(c)(1).

⁶ 18 U.S.C. §1033(d).

⁷ 18 U.S.C. §1033(e)(1)(A).

⁸ 18 U.S.C. §1033(e)(1)(B).

⁹ See *Beamer v. NETCO, Inc.*, 44 F.Supp. 2d 882 (S.D. Ohio 2005) (convicted felon engaged in business of insurance by developing software program that produced insurance forms for title insurance agencies and negotiating contracts with insurance underwriters regarding sale of the software program).

¹⁰ See H.R. Conf. Rep. No. 93-1597, 93rd Cong., 2d Sess. (1974), reprinted in 1974 U.S.C.C.A.N. 7098, 7103, reprinted following Fed. R. Evid. 609, 28 U.S.C.A.

¹¹ *U.S. v. Peterson*, 357 F.Supp.2d at 754, citing *Leonard B. Sand et al., Modern Federal Jury Instructions, Instr. 3A-3*; see also *United States v. George*, 386 F.3d 383, 393 (2d Cir. 2004) (noting that “the Second Circuit has held that the term ‘willfully’ in criminal statutes typically does not require the government to prove the defendant’s specific intent to violate the particular criminal statute in question.”).

¹² National Association of Insurance Commissioners, *Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994* (2011) at 27.

¹³ *Id.* at 48.

¹⁴ *Id.*

¹⁵ *Id.* at 11 - 12.

¹⁶ *Id.* at 12.

¹⁷ *Id.* at 63 - 66.

¹⁸ *Id.* at 50-62.

¹⁹ *Id.* at 14.

²⁰ *Id.* at 20-21.

²¹ *Id.* at 38 – 39.

²² *Id.* at 40.

²³ *Id.*

²⁴ *Id.* at 47 - 48.

²⁵ *Id.* at 45.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ **HI** (Memoranda No. 2001-5(A), 2001 WL 35812992 (Apr. 23, 2001)); **IA** (Memorandum, “Written Consent for Prohibited Person to Engage in the Business of Insurance Under 18 U.S.C. §§ 1033 and 1034” (June 5, 2001)); **MT** (Memorandum 6-11-2009 (June 11, 2009) superseded by **MT** Memorandum 5-20-2008 (May 20, 2008)); **NE** (Bulletin No. 2001-009, 2001 WL 35144217 (Oct. 15, 1998)); **NY** General Counsel Opinion No. 8-11-2009, 2009 WL 2712329 (Aug. 11, 2009), **NY** (NY General Counsel Opinion No. 4-23-2008, 2008 WL 2132849 (Apr. 23, 2008), NY General Counsel Opinion No. 4-23-2008, 2008 WL 2132850 (Apr. 23, 2008), and NY General Counsel Opinion No. 7-24-2002, 2002 WL 33011089 (July 24, 2002), NY Circular Letter No. 2000-15 (US), 2000 WL 34630172 (May 23, 2000)); **OR** (Bulletin No. 2001-5, 2001 WL 35819507 (July 27, 2001)); **SC** (Memorandum No. 3-27-2006, 2006 WL 2660681 (Mar. 27, 2006)); **VA** (Administrative Letter No. 2005 (April 25, 2000) and Administrative Letter No. 1998-8, 1998 WL 35153553 (July 15, 1998)).

³⁰ **AK** (Bulletin No. 98-5, 1998 WL 35151141 (June 4, 1998)); **AL** (Bulletin 1-24-2002, RE: Licensing and Appointment Procedures (Jan. 24, 2002)); **DC** (Bulletin No. 99-001-FR, 1999 WL 34679171 (August 12,

1999) and Bulletin No. 11-001-FR, 2011 WL 262331 (June 20, 2011)); **GA** (Directive No. 98-Ex-2, 1998 WL 35076359 (Nov. 11, 1998)); **KY** (Bulletin No. 2000-2 (US), 2000 WL 35439048 (May 31, 2000)); **LA** (Bulletin No. 6-1-99, WL 34589418 (June 1, 1999)); **MA** (Bulletin No. 98-11, 1998 WL 35077130 (Sept. 21, 1998) updated by Bulletin No. 2001-11); **NE** (NE Bulletin CB-95 (Oct. 15, 1998)); **NV** (Bulletin No. 2001-009, 2001 WL 35724991 (May 25, 2001)); **NJ** (Bulletin No. 97-13, 1997 WL 34472278 (Oct. 28, 1997) and Bulletin No. 98-10, 1998 WL 35021418 (June 29, 1998)); **PA** (Notice No. 2010-08, 2010 WL 2813790 (July 17, 2010)); **TN** (<http://www.tn.gov/commerce/insurance/documents/1033Info.pdf> last viewed April 4, 2012); **TX** (Bulletin B-0030-06 (Aug. 10, 2006)); **WI** (Bulletin No. 8-15-2001, 2001 WL 35722197 (Aug. 15, 2001)).

³¹ **AL** (AL ADC Ch. 482-1-106; 482-1-107, Form AL-RI-1; 482-1-146-.01 - 482-1-146-.14); **CA** (10 CA ADC §§ 2105.2; 2175.1 - 2175.9; 2176.1; 21716.2; 21716.4; 2177.1 - 2177.14; 2178; 2194.55); **IA** (IA ADC 191-13.2(505,552B) - IAC 191-13.10); **IN** (760 IN ADC 1-6.2.1.5); **MD** (COMAR 31.03.12.01 *et. seq.*); **NC** (11 NC ADC 6A.0412); **NH** (NH ADC Ins. 4601.06); **NJ** (NJ ADC 11:17E-1.2; 11:17E-1.3; 11:17E-1.4; 11:17E-1.7); **NM** (NM ADC 13.4.2; 13.4.3, 13.4.4; 13.4.5, and 13.20.2), **NV** (N.R.S. 690C.100); **PA** (31 PA ADC §§ 62.2; 115.19); **OR** (OR ADC 836-071-0321; 836-071-0323; 836-071-0326; 836-071-0328; 836-071-0331; 836-071-0336; 836-071-0341; 836-071-0346; 836-071-0351; 836-071-0355; 836-071-0560); **SD** (SDCL § 58-30-23.7); **TX** (28 TX ADC § 3.9305); **UT** (U.C.A. 1953 § 31A-16-103; U.C.A. 1953 § 31A-23a-105; U.C.A. 1953 § 31A-23a-111; U.C.A. 1953 § 31A-23a-112; U.C.A. 1953 § 31A-25-203; U.C.A. 1953 § 31A-25-208; U.C.A. 1953 § 31A-25-209; U.C.A. 1953 § 31A-26-203; U.C.A. 1953 § 31A-26-213; U.C.A. 1953 § 31A-26-214); **WA** (WA ADC 284-13-760); **WV** (WV ADC § 114-2-7).

³² **AK** (AK ST. §21.26.355); **AZ** (AZ ST. §20-489); **CA** (Cal. Ins. Code §12978); **DC** (DC Code §22-3225.04); **IA** (IA ST §522B.16B); **KY** (KRS § 304.9-465); **LA** (LA R.S. 22:1546; 22:1554; 22:1695; 22:485); **MD** (Md. Ins. Art. § 2-109(e)); **NV** (NV ST. 690C.100); **NJ** (NJ ST. 17:22A-40); **OR** (OR ST. § 731.428); **SC** (SC ST. § 38-1-20); **SD** (SD ST. §58-30-23.7); **TX** (TX BUS & COM §20.05); **UT** (UT ST. §§31A-16-103, 31A-23a-105, 31A-23-111, 31A-23a-112, 31A-25-203, 31A-25-208, 31A-25-209, 31A-26-203, 31A-26-213, 31A-26-214).

³³ See <http://www.myfloridacfo.com/agents/Licensure/General/PriorCrimHist.htm>, which states in pertinent part:

Individuals Seeking Consent Under 18 U.S.C. § 1033

The Florida Department of Financial Services does not issue consents under 18 U.S.C. § 1033.

Under 18 U.S.C. § 1033, an individual who has been convicted of a crime involving dishonesty or breach of trust is prohibited from engaging in the insurance business. Violation of this federal law could result in imprisonment for up to five years and a fine of \$5,000. However, the law allows for a prohibited individual to obtain consent from an insurance regulatory official to engage in the insurance business.

While this federal law offers a way for individuals to obtain consent from state insurance regulators and avoid criminal prosecution, the law does not authorize the Florida Department of Financial Services ("Department") to grant or deny the consents. The Department's power is limited to that authorized by the Florida Legislature through the Florida Statutes. Therefore, at the present time, there is no law in the state of Florida authorizing this Department to grant or deny consents under 18 U.S.C. § 1033 or to establish procedures for the exercise of its discretion in this regard.

Please be aware that any license you now have or may receive from this Department does not constitute consent under the federal law. You should therefore govern yourself accordingly.

³⁴ **AL** (Examination Report of National Security Fire & Casualty Company, 2011 WL 4435169 (May 20, 2011); Examination Report of Omega One Insurance Company, 2011 WL 4435167 (May 6, 2011); Examination of Mutual Savings Fire Insurance Company, 2011 WL 4435167 (Apr. 18, 2011)); **IA** (See *In the Matter of Bankers Life & Casualty Company*, 2007 WL 844824 (Iowa Sec. Bur., March 14, 2007)); **MA** (Report on the Comprehensive Market Conduct Examination of Bay State Insurance Company (September 20, 2005); Report on the Comprehensive Market Conduct Examination of Liberty Life Assurance Company of Boston (Feb. 26, 2007); Report on the Comprehensive Market Conduct Examination of Safety Insurance Company (Oct. 20, 2009)).

³⁵ See AL ADC 482-1-146-.11; NH ADC Ins. 4601.06.

³⁶ *In the Matter of the Insurance Producer License of Mai Houa Lor*, MN License No. IN20464377, National Producer No 6520018, 2007 WL 7584727 (June 19, 2007) (licensed producer allowed employee convicted of state felony for forgery who did not obtain a 1033 Consent to be present at three insurance applicants' home during discussions about and the sale of life insurance policies and allowed the employee to take messages for licensee).

³⁷ *In the Matter of Eddy Krist Hauff*, State of Washington Office of Insurance Commissioner, No. 12-0038 (February 9, 2012) (licensee answered "no" on resident producer license application to questions regarding prior felony conviction and prior denial of request for 1033 waiver. Washington regulator later learned that the licensee had a prior felony conviction, his Oregon resident agent license was revoked, and application for 1033 waiver request was denied by the Oregon regulator).

³⁸ *In the Matter of Bryan Reyes*, 2011 WL 1519618 (2011) (licensee's 1033 Consent conditioned on continued good behavior and affirmative duty to notify the Iowa Securities Bureau, Insurance Division of any violations of a criminal statute. Licensee arrested for Driving Under the Influence (DUI) and failed to notify insurance Iowa Securities Bureau, Insurance Division and licensee's license revoked).

³⁹ *In the Matter of David J. Kempema*, 2012 WL 938552 (Jan. 25, 2012); See also *Texas Department of Insurance v. Ruben Reyes*, 2001 WL 35728857 (February 5, 2001) (licensee's insurance agent license revoked based on federal conviction for conspiracy to distribute illegal drugs and conspiracy to launder money).

⁴⁰ See *In the Matter of Anthony C. Sims*, State of Washington Office of Insurance Commissioner, No. 12-0038 (February 8, 2011); *Webb v. South Carolina Department of Insurance*, 2010 WL 6782641 (S.C.Admin.Law.Judge.Div., December 15, 2010); *In Re Katherine T. Lord*, Bureau of Insurance, Maine Department of Insurance, Docket No. INS. 07-600 (July 7, 2007); *In the Matter of the Application of Elizabeth Elizondo for an Adjuster Trainee License*, 2004 WL 417856 (Tx. St. Off. Admin. Hgs., September 2004) Compare with *In the Matter of George S. Scott v. New Jersey Department of Banking and Insurance*, 2011 WL 586030 (N.J. Adm., August 8, 2011); *Harvey B. Baum v. Department of Banking and Insurance*, 2010 WL 203823 (N.J. Admin., April 1, 2010); *In re Robert R. Greenberg v. Wrynn*, 926 N.Y.S.2d 289 (2011).