VIA EMAIL

November 3, 2021

Mary E. Kosinski
Arizona Department of Insurance and Financial Institutions
100 N. 15th Ave., Suite 261
Phoenix, AZ 85007-2630
public_comments@difi.az.gov

RE: Proposed Rulemaking R21-93 Amending R20-6-407

Dear Ms. Kosinski:

The following comments on the above-referenced matter are submitted on behalf of the members of the American Property Casualty Insurance Association (APCIA) -- a national property casualty trade association that promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association, including a number of service contract providers. APCIA member companies write approximately 55.2 percent of all property and casualty insurance sold in the great state of Arizona.

Thank you for the opportunity to submit these comments. As you will see below, we harbor a number of concerns regarding the proposed rulemaking and the extent to which it deviates from the letter of the Service Company Act, if not the spirit.

Definitions

The proposed definition of both "solvent" and "insolvent" is too narrow. Common usage of these terms contemplates as a component the ability or inability to pay debts as they come due. We would like to see both definitions modified accordingly.

We question the inclusion of a definition of the term "provider," a term that does not appear to actually be used in the proposed regulation. Because the governing statue does not use this term, neither should any regulations promulgated pursuant to that statute.

Regarding the proposed definition for "Reasonable time" or "Reasonable period of time," it is entirely unreasonable to expect for a copy of a service contract to be delivered within two business days of the purchase of the contract. Most states allow for a minimum of two weeks for the contract to be delivered, and we would request a similar timeframe.

We also object to any attempt to adopt a proof of mailing requirement, something not contemplated by the governing statute. Such a requirement would impose needless expense on our members, expenses which will simply be passed along to consumers in the form of higher prices.

Application for a service company permit

Proposed changes to this section are alternatively ambiguous or duplicative. For example, section (C)(2)(g) appears to seek the same information as section (C)(2)(f) while section (C)(2)(h) seeks information that is duplicative of information required by section (C)(3)(c). The duplicative requirements should be deleted.

Similarly, section (C)(2)(l) requires a "summary of the applicant's financial position." However, such information is arguably already required under section (C)(3)(a) in the form of a copy of the applicant's most recent financial statement. Accordingly, one of the duplicative requirements should be deleted.

Section (C)(2)(j) requires an applicant provide "[t]he types of items the applicant intends to cover under its service contracts." Rather than require applicants to describe "types," we suggest instead replacing "types of items" with "lines of business" and include the following suggested lines: consumer goods; home warranty; and motor vehicle.

We object to the requirement at section (C)(3)(a) to submit financial statements verified by a certified public accountant and instead suggest leaving the current requirement that provides for certification by the owner, duly elected officer or a certified public accountant. Reversion to the current standard should also carry over to the permit renewal process at section (E)(3)(a).

Regarding section (C)(3)(c), the new language represents a significant expansion of disclosure requirements from the applicant to "owners, officers, managers, or directors of the applicant…" The expansion appears to have no basis in statutory language, and raises questions about who exactly is contemplated by "managers," a potentially rather long list of personnel. We request the disclosure requirement remain limited to the applicant to avoid the associated compliance costs of maintaining such a list.

Section (C)(3)(d) requires an applicant provide a "list of subcontractors who are under common ownership or control or are affiliated with the applicant." The registration requirements of the Service Contract Act are expressly limited to service companies, nor are we sure what value such information would provide. We recommend deleting this requirement, both here and at section (E)(3)(e).

Service company permit renewal and late-renewal

The reference to changes to service contract administrator at section (E)(2)(e), when that information is not required to be provided in association with an initial application, should be deleted.

The $25 daily fee imposed in section (E)(5)(c) on expired permit holders is arbitrary and should be deleted.

Filing of Forms

We are very concerned about certain of the form filing requirements contained herein. The requirement found at section (G)(2)(b) to itemize the "systems, products and appliances covered by the contract" as well as "the specific items or components of those systems, products, and appliances which are

excluded from coverage" is overly burdensome and unrealistic. It would require our members to maintain a constantly evolving list of items or components that are not covered as manufacturers continually develop new product models (which they may or may not bother to inform our members about). Such an approach is unrealistic and impractical and would significantly lengthen the contract form.

A better approach to take would be to simply copy the statutory language found at A.R.S. §20-1095.06(6) and require that "[s]ervice contracts shall specify the merchandise and services to be provided and any limits, exceptions or exclusions."

Similarly, section (G)(2)(d) could lead to excessively long contract forms that seek to identify every possible circumstance under which the contract holder may engage a subcontractor that is not recommended by the service company and should be deleted.

We strongly disagree with the inclusion of section (G)(2)(f), new language which creates out of whole cloth an appeal process for claim denials based on preexisting conditions. Its inclusion is directly contravened by A.R.S. § 20-1095.06(D)(12), which provides, "Service contracts shall clearly indicate whether preexisting conditions are covered or excluded under the terms of the service contract."

Nowhere in the statute is there a reference to an appeal process to determine whether the holder was aware of the preexisting condition or, indeed, an appeal process at all. Any attempt to adopt such a procedure by regulation is without statutory support.

Thank you for the opportunity to submit comments on the proposed regulation. If you have any questions regarding our comments, please do not hesitate to ask.

Sincerely,

Alex Hageli
Director, Personal Auto, Electronic Issues, Specialty Lines & Counsel