

July 28, 2021

Michael Walker  
Policy Analyst, Policy and Legislation Division  
Office of the Insurance Commissioner

RE: CR-101 (R2021-09) Administrative Hearings

Dear Mr. Walker:

On behalf of the American Council of Life Insurers and our 241 member companies licensed in Washington, we appreciate the opportunity to comment on the above-referenced CR-101 notice of possible rulemaking, which appears to indicate the OIC's intent to limit basic discovery in all administrative hearings in front of the Insurance Commissioner's internal hearing officer. These hearings involve licensees, both life insurers and their producers, who are administratively litigating decisions of the Commissioner, including those decisions terminating a certificate of authority, imposing fines, and refusals of certain business practices.

We understand that the stated goal of the rule is "avoiding delays and achieving administrative efficiencies" in OIC Hearings. However, we are concerned that the proposed rule changes seek to drastically restrict discovery in all insurance administrative hearings in cases involving a licensed life or health insurer and its certificate of authority in Washington State.

As explained below, Washington's Administrative Procedures Act (APA) affords litigants the right to address and respond fully to all allegations and pleadings which would likely be restricted by this rule limiting discovery. In addition, current state law and regulation already affords the Insurance Commissioner's internal hearing officer the ability on a case-by-case basis to approve certain discovery requests (issuance of a subpoena, for example), and to manage any discovery abuses. Moreover, the wholesale restriction on discovery by licensees in all matters, would potentially violate the APA and undermine Constitutionally protected rights, including property rights in a certificate of authority, and potentially for other property rights of an insurer, such as a rate or form.

#### Explanation

Under the APA, state agencies must provide actual fairness and the appearance of fairness in their administrative processes. This potential rule puts both these standards in jeopardy. If the OIC is concerned about perceived abuses involving discovery in individual cases, there are already protections that are available to the hearing officer to handle such issues on a case-by-case basis. There is no need for the OIC to restrict the discovery rights of regulated entities that are engaged in administrative litigation with the Commissioner.

**American Council of Life Insurers** | 101 Constitution Ave, NW, Suite 700 | Washington, DC 20001-2133

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The American Council of Life Insurers (ACLI) is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. 90 million American families rely on the life insurance industry for financial protection and retirement security. ACLI's member companies are dedicated to protecting consumers' financial wellbeing through life insurance, annuities, retirement plans, long-term care insurance, disability income insurance, reinsurance, and dental, vision and other supplemental benefits. ACLI's 280 member companies represent 95 percent of industry assets in the United States.

Both the APA and current OIC regulations permit discovery in a manner closely tracking what a litigant would normally enjoy in any state superior court under the Civil Rules. In fact, the OIC has adopted a regulation (WAC 284-02-070) that specifically adopts by reference Civil Rules 26 through 37 (WAC 284-02-070(2)(e)) in a hearing in front of the Insurance Commissioner's internal hearing officer.

The APA reiterates Constitutionally protected property rights, such as a certificate of authority, or interest in its rate/form filings. The proposed changes appear to conflict with the APA and with RCW 34.05.437(1), which provides the following protection to licensees:

- (1) *The presiding officer, at appropriate stages of the proceedings, shall give all parties full opportunity to submit and respond to pleadings, motions, objections, and offers of settlement.* [RCW 34.05.437: Pleadings, briefs, motions, service. \(wa.gov\)](#)

Should the Commissioner seek to address discovery abuse in a case, his internal hearing officer already possesses the ability on a case-by-case basis to manage the parties in terms of both discovery abuse remedies and permission needed in an individual matter for things such as issuing a subpoena. See, RCW 34.05.446(3) and WAC 284-02-070(2)(e)(i) through (iii). [RCW 34.05.446: Subpoenas, discovery, and protective orders. \(wa.gov\)](#)  
[WAC 284-02-070:](#)

For the reasons stated above, we urge you to reconsider moving ahead with this prospective proposal.

Thank you for your consideration. Please feel free to contact me with any questions.

Sincerely,

***John W. Mangan***

**John Mangan**

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