

# Are you really an MGA?

## *Clarifying the regulatory requirements for MGAs, MGUs and Program Administrators*

### BACKGROUND

Insurance agencies face confusion in determining the applicable regulatory requirements when their services extend beyond the traditional agency model. Whether referred to as a managing general agent (MGA), managing general underwriter (MGU), or program administrator (PA), many agencies are performing services for insurers in addition to, or in place of, the sale of insurance policies. Unfortunately, these terms are often used interchangeably, and inaccurately, leading to uncertainty among our clients in determining their regulatory and contractual obligations.

### IMPORTANT DEFINITIONS

#### **Program Administrator**

Program Administrator (PA) is a general term referring to insurance agencies that provide services to insurance companies in addition to selling insurance. These services may include, for example:

- Marketing
- Appointing subproducers
- Underwriting authority (the PA may accept or reject risk on behalf of the insurer)
- Claims adjusting authority
- Rate & form filings
- Negotiation of reinsurance contracts and management of reinsurance programs

#### **PLEASE NOTE**

The contents of this white paper are provided for informational purposes only, should not be construed as legal advice, may not reflect the most current legal and regulatory developments and should not be considered an indication of future results.

PAs are typically acting as an agent for the insurer and need to be properly licensed and appointed as a producer. They can provide valuable knowledge, resources, sales, and reinsurance markets for insurers.

### Managing General Underwriter

A Managing General Underwriter (MGU) is a business that manages all or part of an insurer's underwriting function on an outsourced basis, or exercises underwriting authority delegated by an insurer. When an insurer delegates underwriting authority to the MGU, the MGU's activities usually, but not always, require an insurance producer license.

### Managing General Agent

MGUs and PAs are often referred to informally as "MGAs." Although MGUs and PAs frequently take on significant obligations through contractual arrangements with insurers, the determination whether your agency has actually become an MGA under state law requires a few more steps described below.<sup>1</sup>

"MGA" has an important statutory definition in each state. If your agency satisfies this definition, it triggers a requirement for the MGA to obtain a license, registration and/or appointment, and, in most states, requires specific contractual terms to be included in its contract with the insurer.

## LICENSING

### NAIC Model MGA Act

In the late 1980s and early 1990s, The National Association of Insurance Commissioners (NAIC) developed a Model Managing General Agents Act (the "Model MGA Act").<sup>2</sup> Although the requirements in each jurisdiction vary, most U.S. states have adopted some version of the Model MGA Act.

The Model MGA Act provides that an "MGA" is any individual or entity who<sup>3</sup>:

(1) Manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office);  
and

(2) Acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of **gross direct written premium equal to or more than five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer** in any one quarter or year together with the following activity related to the business produced:

(A) **adjusts or pays claims in excess of \$10,000 per claim, or**

(B) **negotiates reinsurance on behalf of the insurer.**

## Is Your Insurance Agency an MGA?

**Carrier-specific.** The MGA analysis is insurer-specific. In other words, an agency may become an MGA for one or more insurance companies, but not for others.

**Sales threshold:** 5% of policyholder surplus. The agency and the insurer need to determine whether the agency has produced gross direct written premium equal to or more than 5% of the insurer's policyholder surplus. Of course, the agency's production could increase or vary over time and trigger an MGA analysis. The Model MGA Act requires a quarterly re-assessment of each agent's production to determine whether the agent became an MGA for the insurer. <sup>4</sup>

**Additional Licenses and Appointments.** For an agency that meets the 5% sales threshold, there are 2 avenues for becoming an MGA. In addition to the typical producer licensing requirements, the paths to becoming an MGA result in two additional sets of licensing and appointment requirements:

- If an agency meets the 5% sales threshold and **adjusts claims for the insurer in excess of the per-claim value set by the state**, then the agency must comply with licensing, registration and appointment obligations as both an **MGA and an adjuster**.
- If an agency meets the 5% sales threshold and **negotiates reinsurance on behalf of the insurer**, then the agency must comply with licensing, registration and appointment obligations as both an **MGA and a reinsurance intermediary**.

Most states have implemented a license, registration or appointment requirement for MGAs. These requirements are in addition to the licensing and appointment requirements for producers, and usually extend beyond the simple notification requirement described in Section 5(E) the Model MGA Act.

### Texas

As noted above, the Model MGA Act is not the law in any particular state, and not every state has adopted it. State laws and related guidance can vary significantly. For example, Texas law provides a completely different definition of MGA that applies to many agencies operating in Texas, especially wholesale brokers, even if they would not be an MGA in any other state. Texas law provides that an agency must comply with the state's MGA law if it accepts, **from insurance policies produced and sold by other agents**, either of the following, whichever is less: (1) **50%** or more of the agency's total annual business; or (2) **\$500,000 in total annual premium**.<sup>5</sup>

## Exemptions

The Model MGA Act provides several categories of individuals and entities who are exempt from MGA laws, including:

- Employees of the insurer.
- Underwriting managers affiliated with the insurer, only if they do not receive compensation based on the volume of premiums written.
- Attorneys-in-fact for a reciprocal insurer or inter-exchange insurer.

## CONTRACTS

Each MGA must enter into a contract with the insurer containing many restrictions and obligations not typically imposed on other agencies. These obligations typically include<sup>6</sup>:

- Maintaining funds collected for the insurer in a fiduciary capacity with an institution insured by the FDIC.
- Maintaining a surety bond for the protection of the insurer. The amount of the bond may vary with the premium produced by the MGA.
- Limits on claims settlement authority.
- Restrictions on placement of reinsurance.
- Stringent claims reporting obligations.
- A prohibition against profit sharing compensation paid by the insurer to the MGA for a period of 1 to 5 years after the profits are earned.
- Independence between the MGA and the insurer, including restrictions against joint employment of individuals, and a prohibition against individuals associated with the MGA from serving on the insurer's board of directors.
- A ban on delegation of authority by the MGA (although the MGA may appoint subproducers with the insurer's permission).

State laws governing claims adjusters and reinsurance intermediaries may impose further contractual requirements on MGAs.

## REGULATORY AND AUDIT RESPONSIBILITIES

Compared to other agents, Program Administrators, MGUs and MGAs face increased regulatory scrutiny. Although MGAs often operate with significant independence from the insurer, state laws provide that their actions are deemed to be those of the insurer, and they may be examined by insurance regulators **as if they were the insurer.**<sup>7</sup>

Further, state laws typically require the insurer to conduct on-site reviews of the MGA's underwriting and claims operations, and to collect audited financials from the MGA.<sup>8</sup>

## CONCLUSION

If you would like to learn more, or to determine whether your agency needs an MGA license, MGA appointment, or MGA contract, please contact us at ACCEL Law Group.

### ABOUT ACCEL Compliance

ACCEL Compliance provides comprehensive compliance services and software to insurance agents and brokers. We focus on ensuring insurance intermediaries meet their regulatory obligations while freeing their resources to focus on growth. Learn more at [ACCELCompliance.com](https://www.ACCELCompliance.com).

### ABOUT ACCEL Law Group

ACCEL Law Group specializes in advising insurance agents and brokers on complex mergers, acquisitions and regulatory matters. Learn more at [ACCELLawGroup.com](https://www.ACCELLawGroup.com).

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## NOTES

- 1 This memo refers to an entity agency. In most states, the same requirements apply to an individual agent acting in the agent's individual capacity.
- 2 [NAIC Model Managing General Agents Act, MDL-225.](#)
- 3 [NAIC Model Managing General Agents Act, Section 2\(D\).](#)
- 4 [NAIC Model Managing General Agents Act, Section 5\(F\).](#)
- 5 [Texas Insurance Code, Sections 4053.001 and 4053.002.](#)
- 6 [NAIC Model Managing General Agents Act, Section 4.](#)
- 7 [NAIC Model Managing General Agents Act, Section 6.](#)
- 8 [NAIC Model Managing General Agents Act, Section 5.](#)