

the E&O angle

E&O issues and advice

Change with Care

If you're thinking about changing your agents E&O carrier, use this checklist.

By David Hulcher

Over the past several years, the insurance agents E&O marketplace—like the insurance industry in general—has experienced quite a change. There has been constriction in the markets available. More than 15 carriers used to compete for business. Now, there are four or five major carriers offering this very important financial coverage. Those carriers that do remain have reevaluated the states that they feel they can profitably write business in and have made substantial rate increases in others. These changes have left many agents having to look for a new E&O carrier. Despite market shifts, it is important to find solid coverage with a carrier that is committed to being a long time market. It is easy to forget what important coverage benefits to look for when you are changing carriers. But remember—your agency's exposure to loss is certainly not going to decrease in hard market. Here are a few things to think about if you're in the process of changing your E&O carrier:

- 1. Uncover potential claims.** When your current agents E&O policy is written on a claims-made basis, it is very important to go through a discovery period with your agency's employees to uncover any incidents that have the potential to turn into a claim. These potential claims should be reported to your current E&O carrier. Be sure that when you are receiving quotes from other carriers that they are willing to offer full prior acts coverage. If not, you should purchase tail coverage from them.
- 2. Require a broad definition of covered services.** The policy language should provide a broad definition of professional services. This may mean listing all of the covered activities specifically, having a comprehensive coverage format that includes all activities unless listed in the exclusions or a combination of both.
- 3. Create a comprehensive insured list.** The broader the number of insureds, the better. In the long run, it will prevent oversights involving having to specifically name someone. If you are working with independent contractors, it's important that you are covered for their scope of duties as a sub-producer. Some E&O carriers require them to be added to the declarations or specifically named in the application. Also, if you plan on growing your agency through merger or acquisition, be sure that newly-acquired agencies are within the definition of who is insured.
- 4. Understand claims reporting requirements.** The definition of a claim is extremely important, especially when considering changing carriers. Reporting a claim to the carrier should include the ability to report potential claims—any potential

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events that may give rise to a claim. Some carriers require the agent receive a written demand for damages. This creates a potential coverage gap because of the prior claims exclusion in E&O policies which excludes coverage for claims that you knew about or could have reasonably foreseen.

- 5. Clarify insured vs. insured.** Many carriers have insured vs. insured exclusions which can be a problem if your agency writes the insurance for your employees. Ask your carrier if this is covered by the policy. Some carriers will provide coverage if another employee without an equity interest renders the professional service.
- 6. Extended reporting period options (ERP).** There are many things to look for in an ERP. First, the policy should provide some kind of automatic ERP that provides time for you to make your decision to purchase the ERP. The ERP should be an available option whether the company or the agency cancels or non-renews the policy. It is also helpful if the cost of the ERP options are outlined in the policy and that once the option is exercised it can not be terminated.
- 7. Weigh agent vs. direct.** It is a good idea to purchase your insurance through an agent that specializes in agents E&O. Should a claim arise, agents add value. Purchasing coverage from a carrier directly can lead to potential conflicts of interest should you use them to place retail business for your own clients. There could also be a conflict of interest should an E&O claim arise from an error made on clients who are written by the same carrier that writes your E&O. You don't want this mistake to damage your ability to write business with the carrier or for your defense to be inadequate.
- 8. Confirm carrier stability.** Carriers' financial ratings have been changing. You should not only monitor the ratings of the insurers that you place but also your E&O carrier rating. It is also helpful to find out the level of experience and the carrier's track record in writing agents E&O business. The amount of premium volume in their program will provide a good indication of their commitment to the marketplace and their ability to smooth rates across the states. **IA**

Hulcher (David.Hulcher@iiba.net) is IIABA's director of E&O operations.