

# GAC Advice Response Form for Applicants



The Governmental Advisory Committee (GAC) has issued advice to the ICANN Board of Directors regarding New gTLD applications. Please see Section IV, Annex I, and Annex II of the [GAC Beijing Communiqué](#) for the full list of advice on individual strings, categories of strings, and strings that may warrant further GAC consideration.

Respondents should use this form to ensure their responses are appropriately tracked and routed to the ICANN Board for their consideration. Complete this form and submit it as an attachment to the ICANN Customer Service Center via your [CSC Portal](#) with the Subject, “[Application ID] Response to GAC Advice” (for example “1-111-11111 Response to GAC Advice”). All GAC Advice Responses must be received no later than 23:59:59 UTC on 10-May-2013.

## Respondent:

Applicant Name	Allstate Fire and Casualty Insurance Company
Application ID	1-1191-70059
Applied for TLD (string)	.carinsurance

## Response:

Allstate Fire and Casualty Insurance Company ("AFCIC") appreciates the opportunity to respond to the ICANN Board (the "Board") with regard to the GAC Communiqué issued by the GAC on April 11, 2013 and published by ICANN on April 18, 2013 ("GAC Communiqué"). While AFCIC respects the recommendations offered by the GAC Communiqué, AFCIC believes that the Board should not consider the recommendations in Section IV(b) and Annex 1 of the GAC Communiqué as part of the gTLD evaluation process for the application for .CARINSURANCE because (1) the recommendations are untimely under the clear language of the Applicant Guidebook ("AGB"); (2) they are broad policy recommendations not recognized by the AGB as GAC advice related to new gTLD applications that can be considered by the Board; and (3) the Board's adoption of these recommendations at the end of the application process would essentially rewrite the AGB and impose significant unexpected additional costs and obligations on many applicants who relied on the existing contractual framework. However, should the Board adopt these recommendations, AFCIC's intended operation of the .CARINSURANCE TLD, as specified in its application, comports with them.

I. THE BOARD SHOULD NOT CONSIDER THE GAC COMMUNIQUÉ DURING THE EVALUATION PROCESS

A. THE GAC COMMUNIQUÉ WAS NOT SUBMITTED IN TIME TO BE CONSIDERED BY THE BOARD IN THE EVALUATION PROCESS

The AGB provides: "The GAC may provide public policy advice directly to the ICANN Board on any application." Section 1.1.2.7. However, the AGB makes clear that "to be considered by the Board during the evaluation process, the GAC Advice on New gTLDs must be submitted by the close of the objection filing period." This submission deadline is of such importance that it is stated not once, but twice in the AGB – in Sections 1.1.2.7 AND 3.1. The language of Sections

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1.1.2.7 and 3.1 is clear and unambiguous. It is a condition precedent that for any GAC Advice to be considered during the evaluation process, it must be submitted prior to the close of the Objection Filing Period. If this condition precedent is not met, the Board should not consider the GAC Communiqué as GAC Advice in the evaluation process.

The GAC Communiqué was not submitted prior to the deadline for consideration by the Board. The Objection Filing Period closed on March 13, 2013 at 23:59:59 UTC (see <http://www.icann.org/en/news/announcements/announcement-2-28feb13-en.htm>). The GAC Communiqué is dated April 11, 2013, which is 28 days after the close of the Objection Filing Period. Accordingly, since the GAC Communiqué did not meet the condition precedent, it is not GAC Advice and the Board should not consider it during the application process. Just as ICANN would not accept a gTLD application 28 days after the application deadline, or an objection 28 days after the deadline, or a response to Clarifying Questions 28 days after the deadline, neither should it consider the GAC Communiqué submitted 28 days after the deadline.

While the GAC has an important role in this process, the issues raised in the GAC Communiqué could have been raised earlier in the process including during the development of the AGB. Therefore, the GAC is not being denied its opportunity to timely raise these issues. Conversely, if the Board were to consider the Communiqué submitted well after the deadline, such a decision would adversely impact the gTLD application process. ICANN is obligated by its Articles of Incorporation to “operate for the benefit of the Internet community as a whole.” Section 4. Consideration of the late GAC Communiqué as GAC Advice in the evaluation process, in clear contradiction of the unambiguous requirements of the AGB, would introduce even more unpredictability into the new gTLD application process and significantly damage what remains of the public’s confidence in the integrity of the new gTLD application process.

Accordingly, while the Board may forward the GAC Communiqué to the GNSO for consideration in the development and implementation of the next round of gTLD applications, the Board should not consider the GAC Communiqué in the evaluation process for THIS round of applications as this round nears its end.

**B. EVEN IF THE GAC COMMUNIQUÉ WAS TIMELY, THE PORTIONS OF IT RELEVANT TO THE APPLICATION ARE NOT IN A FORM WHICH MAY BE CONSIDERED BY THE BOARD IN THE EVALUATION PROCESS**

Section 3.1 of the AGB specifies the three (3) possible forms for GAC Advice that may be considered by the Board. Specifically, it states:

“GAC Advice may take one of the following forms:

I. The GAC advises ICANN that it is the consensus of the GAC that a particular application should not proceed. This will create a strong presumption for the ICANN Board that the application should not be approved. (“Type I Advice”)

II. The GAC advises ICANN that there are concerns about a particular application “dot-example.” The ICANN Board is expected to enter into dialogue with the GAC to understand the scope of concerns. The ICANN Board is also expected to provide a rationale for its decision. (“Type II Advice”)

III. The GAC advises ICANN that an application should not proceed unless remediated. This will raise a strong presumption for the Board that the application should not proceed unless there is a remediation method available in the Guidebook (such as securing the approval of one or more governments), that is implemented by the applicant.” (“Type III Advice”)

Only Section IV(b) and Annex 1 of the GAC Communiqué are potentially relevant to the .CARINSURANCE (the “Potentially Relevant Commentary”). Nothing in the Potentially Relevant Commentary advises ICANN that it is the consensus of the GAC that any particular application should not proceed. Accordingly, the Potentially Relevant Commentary does not constitute Type I Advice. Similarly, the Potentially Relevant Commentary does not advise ICANN that there are concerns about a particular application, and thus it does not constitute Type II Advice. Finally, nothing in the Potentially Relevant Commentary advises ICANN that any application should not proceed unless remediated. Accordingly, the Potentially Relevant Commentary does not constitute Type III Advice.

To function within the evaluation process, the GAC advice requirements were structured to require GAC advice to express concerns about particular applications with those concerns raised on a case by case basis, taking into consideration the specifics of each string, application, and applicant. Instead, in the first part of the Potentially Relevant Commentary, the GAC advises the Board of six safeguards that it now believes at this late stage should be used to amend the AGB and apply to all new gTLDs (“General Safeguards”): (1) Whois verification and checks to identify registrations with deliberately false, inaccurate, or incomplete WHOIS information and notifying the relevant registrar of the inaccuracy; (2) Mitigating abusive activity by ensuring that terms of use prohibit illegal and illicit conduct; (3) Security checks to assess whether domains are being used to perpetrate security threats; (4) Documentation of inaccurate WHOIS records and security threats and the actions taken to respond to such checks; (5) ensuring that there is a mechanism in place for making complaints to the registry operator regarding inaccurate WHOIS or security threats in the TLD; and (6) ensuring that there are consequences for false WHOIS information and use of a domain name in violation of law. This is clearly general policy advice and not advice about a particular application.

The GAC Communiqué then goes on to list additional safeguards that should apply to what it identifies as two categories of gTLDs: Category 1, Consumer Protection, Sensitive Strings, and Regulated Markets; and Category 2, Restricted Registration Policies. For Category 1 gTLDs, the GAC Communiqué then lists a number of subcategories of gTLDs, including Children, Environmental, Health And Fitness, Financial, Gambling, Charity, Education, Intellectual Property, Professional Services, Corporate Identifiers, Generic Geographic Terms, and Inherently Governmental Functions such as Financial, and includes the Application in the “Financial” subcategory. For all Category 1 gTLDs, the GAC Communiqué advises that Registry operators: (1) require registrants to comply with law in their acceptable use policies; (2) notify registrants of this at the time of registration; (3) require registrants that collect and maintain sensitive information to take reasonable security measures; (4) establish a working relation with the relevant regulatory, industry, or self-regulatory bodies; and (5) require registrants to provide and update a single point of contact (“Category 1 Safeguards”).

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For gTLDs the GAC identifies as being “associated with market sectors which have clear and/or regulated entry requirements” in multiple jurisdictions, which according to the GAC Communiqué, includes .CARINSURANCE, the GAC Communiqué advises that three additional safeguards are needed; namely, that Registry Operators: (1) verify and validate registrants’ credentials for “participation in that section”; (2) consult with national authorities if they doubt the authenticity of the registrant credentials; and (3) conduct periodic post-registration checks to ensure registrants’ continued compliance with the relevant regulations and licensing requirements (“Regulated Sector Safeguards”).

Again, this section constitutes general policy advice suitable for the GNSO Council to consider for round 2 and also does not express any specific concern about a particular application. Although it advises that “[t]hese strings are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm”, this section never states exactly what that harm (i.e., the “concern”) would be. And while the Category 1 section identifies the Financial category (which according to the GAC Communiqué includes .CARINSURANCE) as being one of the “market sectors which have clear and/or regulated entry requirements”, it does not advise the Board exactly what the specific concerns are with regard to the market sectors having such requirements, which would be necessary for the Board to even consider attempting to address such concerns.

Likewise, in the Category 2 section of the Potentially Relevant Commentary, the GAC Communiqué advises the Board that for strings identified in Category 1 where registration is restricted (which would include .CUTOINSURANCE), that “the registration restrictions should be appropriate for the types of risks associated with the TLD” (“Restricted Access Safeguards”) and that for strings that represent generic terms (which also would include .CCARINSURANCE according to the GAC Communiqué) that exclusive registry access should serve a public interest goal (“Exclusive Access Safeguards”). Again, these also are policy recommendations suitable for consideration by the GNSO Council for round 2, not concerns about a particular application in the current round as required by the AGB.

Furthermore, the GAC Communiqué seeks to create categories and subcategories that have no basis whatsoever in the AGB, which only specifies two types of applications: community-based and non-community based. The AGB makes no mention of, or distinction between, restricted or unrestricted TLDs because the AGB allows each applicant to set its own registry restrictions and business models in order for innovation and competition to flourish. Similarly, the General Safeguards, Category 1 Safeguards, Regulated Sector Safeguards, Restricted Access Safeguards, And Exclusive Access Safeguards have no basis whatsoever in the AGB. If the Board adopts the categorization and safeguards recommended by the GAC Communiqué, it would constitute a fundamental rewriting of the AGB and framework for new gTLDs at the end of the gTLD application process after applicants have developed business plans and expended significant amounts of time, resources and money in reliance on the existing framework. This would be the case even if the GAC Communiqué had been received by the submission deadline, which it was not, and this late filing underscores that these recommendations are improper at this point in the application process and not of the substance that applicants would reasonably have expected the GAC Communiqué to contain based on the unambiguous language of the AGB setting forth what is, and is not, GAC Advice. This is fundamentally unfair. The Board should not consider breaching its contract with applicants and violating its Articles of Incorporation, in order to accommodate this late policy advice from the GAC.

It should also be noted that the recommendations in Section IV(b) and Annex I of the GAC Communiqué directly contradict the GAC's longstanding GAC Principles Regarding New gTLDs, dating back to 2007, which states: "All applicants for a new gTLD registry should therefore be evaluated against transparent and predictable criteria, FULLY AVAILABLE TO THE APPLICANTS PRIOR TO THE INITIATION OF THE PROCESS (emphasis added). Normally, therefore, no subsequent additional selection criteria should be used in the selection process."

Accordingly, since the recommendations in Section IV(b) and Annex I of the GAC Communiqué are broad policy recommendations that do not have any basis in the current AGB, they are not in a form permissible for the Board to consider during the evaluation process. In addition, if the Board were to adopt the Communiqué recommendations at this time, it would fundamentally alter the AGB and gTLD framework in direct contradiction to longstanding GAC Principles. Therefore, the most prudent course of action would be for the Board to submit these GAC recommendations to the GNSO Council for consideration as part of the policy development process for possible implementation in later rounds, where potential applicants would be able to make an informed decision on whether to apply for a gTLD with knowledge of any newly-imposed obligations.

## II. EVEN IF THE BOARD ADOPTS THE BROAD POLICY RECOMMENDATIONS IN THE GAC COMMUNIQUÉ IN VIOLATION OF THE GAC'S OWN PRINCIPLES, THE INTENDED OPERATION OF .CARINSURANCE WILL ALIGN WITH THESE RECOMMENDED SAFEGUARDS

Should the Board adopt the recommendations in Section IV(b) and Annex 1 of the GAC Communiqué as GAC Advice rather than passing the GAC Communiqué to the GNSO Council for consideration for round 2, AFCIC's intended operation of the .CARINSURANCE gTLD as set forth in its application will be aligned with the recommendations although some of the safeguards do not seem necessary or relevant when applied to .CARINSURANCE based on AFCIC's intended use and operation of the TLD.

AFCIC and its affiliates ("Allstate") comprise a leading insurance group that provides insurance products for autos, apartments, homes, recreational vehicles, motorcycles, boats, personal property, lives and businesses across the country. Allstate is the largest publicly-held personal lines property and casualty insurance group in America with over 12,000 agents and operations throughout the United States, Canada, and in the UK. Allstate has a longstanding commitment to the highest ethical standards and has always had an exemplary governance program. As stated in AFCIC's application for .CARINSURANCE, "The intended future mission of the .CARINSURANCE gTLD is to serve as a trusted, hierarchical, and intuitive namespace, provided by AFCIC for AFCIC and potentially its qualified subsidiaries affiliates, business partners and others." In other words, the .CARINSURANCE gTLD will be a securely restricted TLD which will initially only allow registration of second level domain names by AFCIC and its subsidiaries and affiliates, and then will eventually be open to AFCIC's over 12,000 agents who are non-employee independent contractors. Notably, also as stated in AFCIC's application for .CARINSURANCE, these registrants will be required to have a formal, written agreement with AFCIC or an AFCIC affiliate, specifically allowing the registration of a second-level domain name in the .CARINSURANCE gTLD registry ("Required Agreement").

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Because the purpose of the .CARINSURANCE TLD is to provide a trusted namespace operated by AFCIC where consumers can get information about Allstate, its business partners and independent agents, and their products and services, while being safe from phishing, pharming, cybersquatting and other forms of online fraud, AFCIC's intended operation of .CARINSURANCE is already aligned with the recommended General Safeguards. As domain names will only be available to Allstate, its business partners and independent agents, AFCIC will be motivated to ensure that Whois information is accurate and that inaccurate Whois information is addressed and has consequences. Accordingly, AFCIC intends to conduct Whois verification and checks as well as to monitor for security threats. It should be noted that since all of the registrants will be either AFCIC, its subsidiaries, affiliates or independent agents, AFCIC should have access to the correct contact information for them to be used for verification, unlike Registry Operators of "open" TLDs. The requirement of accurate Whois information and consequences for inaccurate Whois information will be included in the Required Agreement. Since AFCIC has an interest in ensuring that Whois information is accurate and that the namespace is secure, it already intends to have a mechanism in place for reporting inaccurate Whois information and security issues. Furthermore, as specified in its application, AFCIC intends to host all of the second-level domains in the .CARINSURANCE TLD, which will simplify monitoring for compliance and enforcement for non-compliance.

AFCIC's intended operation of the .CARINSURANCE TLD as specified in its application is also aligned with the recommended Category 1 Safeguards and the Regulated Sector Safeguards. AFCIC employs a variety of physical, electronic, contractual, and managerial safeguards to protect personal and confidential information within its premises and on its websites, and AFCIC will take similar precautions to protect registrant and user data associated with the .CARINSURANCE gTLD. It is intended that both the Required Agreement and the registration agreement as well as other agreements between AFCIC and registrants will require the registrants (which as previously noted, would be either AFCIC, its affiliates or subsidiaries or its independent agents) to comply with law and take reasonable security measures to protect sensitive information and to provide and update a single point of contact. Additionally, AFCIC's proposed validation of agents will facilitate the ability of the "abuse point of contact" (as required in Section 4.1 of the template Registry Agreement) to respond to use complaints in a more timely fashion, especially with regard to "any reports from law enforcement, governmental agencies, and quasi-governmental agencies of legal content." With regard to AFCIC establishing a working relationship with the relevant regulatory, industry, or self-regulatory bodies, these relationships already exist as Allstate is the largest publicly held personal lines property and casualty insurer in America, and the insurance industry is highly regulated. Allstate regularly works with the National Association of Insurance Commissioners, state and federal regulators, legislators and other authorities, and various trade groups including the Financial Services Roundtable. Similarly, because AFCIC is a property and casualty insurance provider and the only registrants of .CARINSURANCE domain names other than itself will be its affiliates, business partners or its independent contractor agents, AFCIC will already have verified that such parties have the necessary credentials. AFCIC will consult with the relevant authorities if it doubts the authenticity of those credentials (the relevant authorities in this case in the U.S., would likely be state authorities as opposed to national authorities as property and casualty insurance regulation in the U.S. is primarily state-based) and will have a program in place for monitoring of compliance with regulatory and licensing requirements.

AFCIC's intended operation of the .CARINSURANCE TLD would also comport with the recommended Restricted Access Safeguards and Exclusive Access Safeguards in that the restrictions that would apply to the .CARINSURANCE TLD are both appropriate to the types of risks associated with the TLD and serve the public interest (although, since as described above, access to the registry is only securely restricted, and not exclusive, the Exclusive Access Safeguards would not apply to the .CARINSURANCE TLD). Property and casualty insurers must obtain and protect sensitive information from consumers in order to provide insurance coverage to them as well as to process applications, provide quotes, and perform other related services. Therefore, property and casualty insurers and their customers are frequent targets for phishing, pharming, and other forms of fraud and abuse, and unrestricted TLDs will create new opportunities for these types of fraud. As the Board is surely aware, the number and sophistication of phishing scams sent out to consumers is continuing to increase dramatically. See <http://apwg.com/resources/overview/avoid-phishing-scams..> One of the most common ways that such fraud is perpetrated is through fraudulent email messages that come from email addresses based on a domain name that may contain a well-known company name or trademark (commonly referred to as "phishing"). See <http://www.fbi.gov/scams-safety/fraud>. The email addresses ask the consumer for sensitive information, which the consumer provides because it recognizes the company or brand name. Similarly, domain names incorporating and/or resembling well-known company names and marks can be used to set up fake websites that can trick consumers to enter their personal, password or financial information (commonly known as "pharming"). See <http://www.scamwatch.gov.au/content/index.phtml/itemId/829456>. The Board is also aware that cybersquatting continues to be a significant problem. According to WIPO, in 2012, trademark holders filed a record 2,884 cybersquatting cases covering 5,084 Internet domain names with WIPO alone, and WIPO panels found evidence of cybersquatting in 91% of all decided cases. See [http://www.wipo.int/pressroom/en/articles/2013/article\\_0007.html](http://www.wipo.int/pressroom/en/articles/2013/article_0007.html).

Phishing, pharming, cybersquatting, and other forms of internet fraud flourish in unrestricted TLDs like .com because anyone can register a domain name in them, without any verification of rights or intended use, and the full burden of monitoring and stopping these fraudulent uses of domain names falls primarily on the companies whose names or marks are being used to perpetrate the fraud, or in some cases government/law enforcement. As the GAC itself opined in the GAC Communiqué, strings like .CARINSURANCE are likely to invoke a level of implied trust from consumers, and carry higher levels of risk associated with consumer harm. Since the .CARINSURANCE TLD would be securely restricted to only AFCIC, its affiliates, and its independent agents, who are licensed insurance providers and who are known to AFCIC and bound by agreements such as the Required Agreement, the result would be that these types of fraud would be virtually non-existent in the .CARINSURANCE TLD, which would benefit consumers and businesses generally, including AFCIC's competitors. Furthermore, it should be noted that as AFCIC intends to permit its independent contractor agents, who may also offer competitors' property and casualty products and services, to register second-level domains in the .CARINSURANCE TLD, some of AFCIC's competitors will have indirect access to the .CARINSURANCE TLD. Additionally, AFCIC's intention is to reserve the names and trademarks of known competitors from registration in .CARINSURANCE and to implement additional Rights Protection Mechanisms that will allow trademark owners, including competitors, to challenge domain names initially reserved/allocated by AFCIC. This will prevent consumer confusion in the namespace and protect trademark owners' rights generally, and AFCIC's competitors' rights specifically, in the .CARINSURANCE TLD. As such, the secure restrictions AFCIC intends to utilize

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for .CARINSURANCE are clearly both appropriate for the risks associated with the string and also in the public interest.

Therefore, even if the Board considers the GAC Communiqué as GAC advice, AFCIC should be able to proceed with its .CARINSURANCE TLD application without remediation because it satisfies the proposed standards.