

## CA COMMENTS 8.29.19

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### Chapter 17

#### **Post Licensing Producer Conduct Reviews**

Section 12 of the PLMA contains a list of 14 reasons a producer may be disciplined. The insurance commissioner is given authority to take administrative action against a producer who commits any of these acts. Disciplinary action may include suspension, revocation or refusal to renew the producer license. Some states have added additional provisions to this list. For example, if a state does not align the CE compliance term with license renewal, it may be necessary to commence an administrative action to suspend the producer's license for failure to timely complete CE. In some states, insurance departments are required to suspend the license of any individual who fails to pay student loans on a timely basis.

States should use caution in adding additional disciplinary reasons and should carefully review the requirements of the ULS. The full text of the PLMA can be found in the Appendices.

After a license is issued, an insurance regulator may become aware of potential violations of Section 12 in several ways:

1. A licensed producer notifies the insurance regulator of pending criminal charges.
2. The insurance regulator receives a notice from PICS indicating that a nonresident producer failed to disclose criminal charges.
3. A PICS Notice is received of previously unreported administrative action.
4. A letter is received from the producer informing of an administrative sanction by another state or FINRA.
5. The insurance regulator receives subsequent arrest or conviction information from the state's department of justice (DOJ).

The following considerations should be taken into account:

1. If the producer is a nonresident, the insurance regulator should consider what, if any, action was taken by the producer's resident state or FINRA.
2. Whether the criminal charge or administrative action indicates that the producer is or may be a danger to consumers.
3. Whether the charge involves theft or other financial fraud, or involves an activity that threatens the safety of consumers, such that action should be taken immediately to revoke or suspend the producer's license.
4. Whether it is appropriate to contact the producer and request a voluntarily surrender of the license.
5. If the producer failed to report an action, the insurance regulator should consider contacting the producer and request an explanation from the producer. Technical violations (e.g., bad address, failure to timely report) generally do not merit formal action. However, the failure to report an action in itself can be cause for administrative penalty or a warning letter, depending on the particular state's statutes and regulations.
6. Whether the individual did not disclose previous criminal or administrative actions taken in response to the answers to the background questions on any application.

#### **License Reinstatement or Reissuance After Disciplinary Action**

Reinstatement of a producer license means the producer's previous license is re-activated and will expire at the end of the license term. Reissuance of a license means the issuance of a new license with a full license term.

Reinstatement or reissuance of a license after disciplinary action usually is not automatic. A producer whose license has been revoked or suspended by order, or who forfeited a license in connection with a disciplinary matter, should be required to make a written request to the insurance commissioner for **reconsideration of the action taken on the license whether it be** reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

When a producer's license has been suspended for a period of time that extends beyond the producer's license expiration date, reinstatement is not an option. The producer must request reissuance of a license and should not be allowed merely to apply for a new license by passing an examination and submitting a new application.

The producer's request for reinstatement or reissuance must include sufficient information to allow the insurance department to determine whether the basis of the revocation, suspension or forfeiture of the applicant's license no longer exists and whether it will be in the public interest to grant the request for a new or reinstated license. The burden of proof to establish such facts is on the producer. In most states, the producer will have a right to an administrative hearing if the reinstatement request is denied.

Some states allow a license to be voluntarily forfeited in lieu of compliance with an order of the insurance commissioner. In this scenario, a request for voluntary forfeiture of a license should be made in writing to the insurance commissioner. The written consent of the insurance commissioner usually is required.

Forfeiture of a license is effective upon submission of the request, unless a contested case proceeding is pending at the time the request is submitted. If a contested case proceeding is pending at the time of the request, the forfeiture becomes effective when and upon such conditions as required by order of the insurance commissioner. A forfeiture made during the pendency of a contested case proceeding is usually considered a disciplinary action subject to reporting to RIRS.

### **Collaboration and Referrals Among Insurance Regulators**

There are several NAIC tools to facilitate communication about enforcement actions among insurance regulators.

The NAIC's Market Actions (D) Working Group (MAWG) identifies and reviews insurance companies that are exhibiting or may exhibit characteristics indicating a current or potential market regulatory issue that may affect multiple jurisdictions. The Working Group determines if regulatory action should be taken and supports collaborative actions in addressing problems identified.

The NAIC has adopted the *Market Regulation Handbook* to guide state insurance regulators in the conduct of investigations and enforcement activities. The *Market Regulation Handbook* also gives guidance to market conduct examiners on some licensing issues. The Producer Licensing (EX) Working Group has advised examiners that insurers should not be required to keep a hard copy of each individual producer license. Under the PLMA and the *Market Regulation Handbook*, insurers and insurance regulators are directed to rely on the SPLD to verify license status.

### **Recommended Best Practices for Insurance Regulators**

- Report all formal final administrative actions to RIRS regardless of the voluntary forfeiture, fine or penalty amount.
- Use CRD, SPLD, RIRS, 1033 Application, PICS and state court records to verify information submitted by applicants. State court records databases may be available online to analysts.
- Check the producer's resident or home state's website or other licensing records to verify actions reported or taken by that state. The NAIC website has a map with links to each state insurance department website.
- Develop form letters or consent order templates pre-approved by legal staff to be used by experienced licensing staff to propose settlement of minor violations without need to involve legal staff.
- Adopt an administrative rule that if an order of revocation or suspension does not contain terms regarding reissuance or reinstatement, an application for reinstatement or reissuance may not be made until at least one year has elapsed from the date of the order or acceptance of the forfeiture of a license.
- Maintain a record tickler system of all special conditions imposed on any producer licenses so that the compliance with the conditions can be reviewed as the end of any special supervision term nears.

## Chapter 18

### Adjusters

An adjuster is a person who investigates claims, determines coverage, examines relevant documents and inspects property damage. An adjuster also may determine the amount of a claim, loss or damage payable under an insurance contract or plan. An adjuster often settles or negotiates settlement of the claim. In some states, the adjuster's authority is limited to a specialty area such as auto, homeowner, workers' compensation or crop insurance.

There are ~~three~~ **four** kinds of adjusters: 1) public; 2) independent; and 3) company (sometimes called staff adjusters), **4) Crop Adjusters**. Public adjusters represent the insured, while independent and staff adjusters represent the insurer. More than 30 states require licensure of one or more of these types of adjusters.

Public adjusters directly contract with the person who is seeking coverage or benefits under an insurance policy or other kind of insurance plan. The role of a public adjuster is to represent an insured or claimant in the settlement of a claim. The NAIC has adopted the *Public Adjuster Licensing Model Act* (#228).

Under the model, a public adjuster is defined as:

"Public adjuster" means any person who, for compensation or any other thing of value, acts on behalf of an insured by doing any of the following:

1. Acting for or aiding an insured in negotiating for or in effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured.
2. Advertising for employment as a public adjuster of first-party claims or otherwise soliciting business or representing to the public that the person is a public adjuster of first-party claims for loss or damage to real or personal property of an insured.
3. Directly or indirectly soliciting the business of investigating or adjusting losses, or of advising an insured about first-party claims for loss or damage to real or personal property of the insured.

Staff adjusters are typically salaried employees of an insurer or an insurer's affiliates and do not adjust claims for entities other than their employer or its affiliates. Independent adjusters are self-employed or associated with or employed by an independent firm. Independent adjusters may adjust claims on behalf of many insurers. The NAIC has adopted model guidelines for Independent Adjuster Licensing Guidelines adjusters that states are encouraged to adopt. The Appendices contain the model guideline.

Most states recognize one or more of the following exemptions to adjuster licensing:

1. Attorneys-at-law admitted to practice in this state, when acting in their professional capacity as an attorney.
2. A catastrophe situation officially declared by the insurance commissioner or governor (according to state law). Registration may be required, but no permanent license should be required of a nonresident adjuster who is sent on behalf of an insurer for the purpose of investigating or adjusting a loss or a series of losses resulting from a catastrophe.
3. A person employed solely to obtain facts surrounding a claim or to furnish technical assistance to a licensed independent adjuster.
4. An individual who is employed to investigate suspected fraudulent insurance claims but who does not adjust losses or determine claims payments.
5. A person who solely performs executive, administrative, managerial or clerical duties, or any combination thereof, and who does not investigate, negotiate or settle claims with policyholders, claimants or their legal representative.
6. A licensed health care provider or its employee who provides managed care services as long as the services do not include the determination of compensability.
7. A managed care organization or any of its employees or an employee of any organization providing managed care services as long as the services do not include the determination of compensability.
8. A person who settles only reinsurance or subrogation claims.
9. An officer, director, manager or employee of an authorized insurer, surplus lines insurer, a risk retention group (RRG) or an attorney-in-fact of a reciprocal insurer.
10. A U.S. manager of the U.S. branch of an alien insurer.
11. A person who investigates, negotiates or settles life, accident and health, annuity, or disability insurance claims.
12. An individual employee, under a self-insured arrangement, who adjusts claims on behalf of his or her employer.
13. A licensed insurance producer to whom claim authority has been granted by the insurer.

14. A person authorized to adjust workers' compensation or disability claims under the authority of a third-party administrator (TPA) license pursuant to [applicable licensing statute].

Drafting Note: This guideline is drafted to eliminate redundant licensure requirements with respect to the activities engaged in by a licensee. If licensed as an independent adjuster, TPA or similar business entity, licensees should not be required to obtain separate independent adjuster licenses, provided that the types of claims adjusted do not include life, health, annuity or disability insurance claims.

### **Qualifications of an Adjuster**

States that do require licensure assess the qualifications of potential adjusters in various ways. States use one or more of the following methods to determine that a person has the requisite knowledge to properly adjust claims:

1. Specialized or related education prior to licensure, i.e., prelicensing coursework.
2. A specified amount of experience that is relevant to the kind of adjusting work the applicant will be doing (i.e., P/C, workers' compensation or life/health).
3. A license examination.
4. Relevant professional designation such as the Chartered Property Casualty Underwriter (CPCU) or Associate in Claims (AIC).
5. Prior similar licensure in another state.

For states implementing a new regulatory scheme for adjusters, it is common practice to waive the initial exam for applicants with appropriate credentials and experience.

### **Fitness and Character Considerations**

Like insurance producers, many states also evaluate an applicant's fitness, character and trustworthiness to engage in this aspect of the insurance business. Insurance regulators typically consider:

1. Criminal history.
2. Administrative actions taken by other state insurance regulators.
3. Civil judgments that may shed light on an applicant's character or fiscal integrity.

In some states, an adjuster must apply for a license by line of insurance, or line of authority, similar to the manner in which producers are licensed. Other states require adjuster licenses by categories such as motor vehicle physical damage, workers' compensation or crop.

States are encouraged to implement a fingerprint requirement for public and independent adjusters, similar to what is required of producers. Additionally, if a state permits a nonresident adjuster to designate that state as its home state, fingerprinting of that nonresident should be required. States are encouraged to adopt the *Authorization for Criminal History Record Check Model Act (#222)* when evaluating and considering whether an applicant or licensee has met the character and trustworthiness requirements to obtain, maintain or renew a license.

### **Reciprocity**

In almost every jurisdiction where licensure is required, it is the "home state" insurance regulator who assesses the qualifications of his or her resident adjusters. Based upon securing a license in one's home state, many states will grant a comparable or similar nonresident license to such an individual. This is not the case in all states, and varying lines of authority, qualification standards and license types have created barriers to nonresident licensure. In addition, an adjuster based in a state that does not license adjusters may be required to take exams in multiple states.

### **The New NAIC Public Adjuster Model Act defines home state as:**

"Home state" means the District of Columbia and any state or territory of the U.S. in which the public adjuster's principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare another state in which it becomes licensed and acts as a public adjuster to be the "home state."

## **The NAIC Independent Adjuster Guidelines defines home state as:**

“Home state” means the District of Columbia and any state or territory of the U.S. in which an independent adjuster maintains his, her or its principal place of residence or business and is licensed to act as a resident independent adjuster. If the resident state does not license independent adjusters for the line of authority sought, the independent adjuster shall designate as his, her or its home state any state in which the independent adjuster is licensed and in good standing.

There are a few states that will not grant nonresident licensure based upon a person having qualified and passed a license exam in the applicant’s home state. Instead, these states require the nonresident applicant to take an exam in the nonresident state even though the person has taken and passed the license exam in the home state.

Adjuster licensing processes were modeled on producer licensing processes and in 2011, the NAIC adopted the *Independent Adjuster Reciprocity Best Practices Guidelines* paper, which provides jurisdictions with a model to meet reciprocity requirements, as well as take major steps toward reaching uniformity. The NAIC uniform licensing forms are designed to be used by applicants for adjuster licenses. Producer licensing for nonresidents is predicated on the producer satisfying the requirements for a home state license. Those producer requirements often include preclicensing education and examination. Since, at this writing, 40 states license public adjusters, 33 states license independent adjuster licenses and only 15 states require company adjusters to be licensed, obtaining nonresident adjuster licenses becomes more complex because adjusters often do not have an underlying resident license. Until states adopt the provision that allows an individual to qualify for licensure by designating another state as the person’s home state or to designate the state in which the application is filed as the person’s home state, obtaining a nonresident adjuster license becomes more complex because adjusters often do not have an underlying resident license.

Some states do not license adjusters. In order for the use of electronic licensing systems, adjusters residing in states that do not license adjusters can select an Adjuster Designated Home State (ADHS). The ADHS is the state in which the adjuster does not maintain his, her or its principal place of residence or business, and the adjuster qualifies for the license as if the person were a resident.

A state whose laws permit a nonresident adjuster to designate that state as its home state will require the nonresident to qualify as if the person were a resident (exam requirements; fingerprinting, if required; and CE). Once the individual has met the qualifications, the designated home state will issue a nonresident license. The PDB and designated home state will list the record as nonresident, designated home state.

If the resident state of the adjuster does not require an adjuster license, adjusters cannot use the NIPR ADHS module unless they declare another state to be the home state. NIPR has recently added a new Nonresident Adjuster Licensing (NRAL) application that allows an individual to designate a state other than the resident state as the home state. NIPR contains functionality to allow adjusters that have designated another state as the home state to renew online. Adjusters with any license can update contact information through the NIPRCCR.

## **Continuing Education**

Approximately 18 states have CE requirements for their resident adjusters. Reciprocity exists among a majority of these states but not all, in part as a result of the inconsistency among lines of authority granted within each state’s adjuster licensing scheme. It also becomes problematic when the resident adjuster’s home state does not have any CE requirements.

*Model #228* and the Independent Adjuster Licensing Guidelines contain a CE requirement that the home state shall require 24 hours of CE every two years, with three of the 24 hours covering ethics. It is recommended that a state accept an adjuster’s satisfaction of its home state’s CE requirements as satisfying that state’s CE requirements, provided that the home state recognizes CE satisfaction on a reciprocal basis. For a state that permits a nonresident adjuster to designate that state as its home state, the home state will require and track CE compliance for that adjuster.

## **Emergency/Catastrophic Adjusters**

A state that offers temporary licensure or registration for emergency/catastrophic adjusters are encouraged to follow the Independent Adjuster Licensing Guidelines and develop an automated notification or registration procedure that allows for an immediate, streamlined and efficient filing process for adjusters who are seeking authority to adjust claims in the event an emergency or catastrophe is declared.

## Non-U.S. Adjusters for Limited Lines Portable Electronics Insurance Products

Many states license, or are considering licensure for, limited lines portable electronics insurance producers. Because some major portable electronics insurance companies provide claims adjustment services via non-U.S. entities, the issue of licensing adjusters who do not reside in the U.S. has gained increased prominence. The Independent Adjuster Licensing Guidelines and *Model #228* are silent on the licensing of non-U.S. citizens beyond the requirement to designate a home state. Some states, however, have tax laws or other laws that require licensees and applicants for licenses to submit and maintain a Social Security number (SSN). State license laws that allow for the licensing of non-U.S. adjusters must take this possible barrier to licensure into consideration. States also should require non-U.S. citizens to comply with all necessary qualification requirements, such as passing the resident license examination (if applicable).

### Recommended Best Practices for Regulators

- Adopt the NAIC Model Act for Public Adjusters.
- Adopt the NAIC Independent Adjuster Licensing Guidelines.
- Use the NAIC uniform applications and develop a mechanism for electronic submission and electronic bulk submissions.
- Use the definition of “home state” as defined in the NAIC Public Adjuster Model Act as the basis of reciprocity.
- Provide resident and nonresident adjuster licensing requirements on forms and Web sites and on the SPLD.
- Allow electronic payment for residents and nonresidents for authorized submitters as well as individual adjusters.
- Post applications and license status information on Web sites and on the SPLD
- Eliminate perpetual licenses, eliminate the word “perpetual” from issued licenses, and adopt a biennial renewal process tied to the uniformity standards.
- Adopt the NAIC Independent Adjuster Reciprocity Best Practices Guidelines.
- Use the definition of “home state” as defined in the *NAIC Independent Adjuster Licensing Guidelines (#1224)*
- Participate in the NIPR ADHS application.
- Participate in the NAIC Personalized Information Capture System (PICS) to receive alerts or monitor actions against existing licensees.
- Use the Attachments Warehouse/Reporting of Action system to receive electronic notifications to alert a state when an adjuster has added information into the Attachments Warehouse since their initial entry regarding administrative, criminal or civil actions. For nonresidents that designate your state as the “home state”, a nonresident license should be issued.
- For nonresidents that designate your state as the “home state”, develop internal data fields that will allow the tracking of CE compliance.
- Include a provision in law that prohibits simultaneous licensure as both an Independent Adjuster and a Public Adjuster.
- If your state requires a license examination, require applicants for a resident license to pass your own state’s examination, not simply use passing results from another’s state’s examination. However, recognition of an exam taken in another state may be given where a nonresident license is being requested.
- Grant an exemption from the license examination requirement to applicants for the crop line of authority who have satisfactorily completed the National Crop Insurance Services Crop Adjuster Proficiency Program or the loss adjustment training curriculum and competency testing required by the Federal Crop Insurance Corporation Standard Reinsurance Agreement.
- If your state allows non-U.S. citizens to receive a license, ensure that other laws in your state (such as tax laws) do not require every licensee or applicant for a license to submit a Social Security Number (SSN) or Individual Taxpayer Identification Number (ITIN).