

Chapter 11

Appointments

An appointment is a registration with the state insurance department that a producer is acting on behalf of an insurer. The PLMA contains several sections related to appointments. Section 14 of the PLMA establishes the requirement that a producer acting as an agent of an insurer must have an appointment. This is an optional provision and applies only in those states that require appointments. Section 15 of the PLMA establishes a procedure for the reporting of appointment terminations. The GLBA, as modified in 2015, prohibits any state other than a producer's home state from imposing any appointment requirements upon a member of NARAB.

In 2002, the Producer Licensing (EX) Working Group adopted a uniform appointment process. The full text is included in the Appendices and is available on the Producer Licensing (EX) Working Group's web page. This process is referred to in the ULS. The key elements include:

1. States should allow electronic filing of appointments and appointment terminations. Paper filings are discouraged.
2. States should establish a billing system for payment by insurers of initial appointments.
3. States shall allow insurers to select the effective date of the initial appointment.
4. States shall require insurers to follow a prescribed timeline to file appointments.
5. States shall require only one appointment or termination form or transaction per producer per company. (At this writing, appointments by company group are not available.)
6. States shall require insurance companies to submit terminations to the insurance department in accordance with the requirements of Section 15 of the PLMA.
7. States shall require that, if a producer is terminated for cause, the insurer must submit supporting documentation. Any information received by the insurance department must remain confidential in accordance with Section 15 of the PLMA.

In states that renew appointments, the key elements include:

1. States shall provide or publish a pre-renewal notice to insurers informing them that appointment renewals are imminent.
2. At the time for renewal, a state will deliver an invoice. The invoice may not be altered, amended or used for appointing or terminating producers.
3. Insurers shall return the invoice and the payment to the department or its designee.
4. States shall establish a dispute resolution process to accommodate errors after the fact.

Appointment Terminations

Section 15 of the PLMA imposes a requirement on insurers to report terminations of producer appointments. Section 15 requires that the insurer report a termination within 30 days of its occurrence. If a termination is for any of the reasons listed in Section 12 (License Denial, Nonrenewal or Revocation) of the PLMA, insurers are required to submit a detailed report to the state and a copy of the report to the producer. Section 15 (E) grants immunity from civil liability for good-faith reporting to insurers and insurance regulators. Reports filed under Section 15 are considered confidential.

Recommended Best Practices for Insurance Regulators

- Automatically terminate appointments if a license goes inactive for any reason.
- Eliminate fees for appointment terminations and instead assess all charges at the time of an appointment. This will eliminate delays in cancellations.
- Do not require an appointment as a condition of licensure. The PLMA and the ULS provide that a producer can hold a license without holding an active appointment.
- Require only one appointment or termination form or transaction for each company for each producer per state.
- Sub-appointments and Business Entity appointments are discouraged.
- Immediately accept terminations for cause and refer them for investigation. States should follow the procedures as outlined in the PLMA. No advance notice should be required to the producer or the state insurance department.
- Use electronic filing for appointments, terminations and renewals, to the extent possible, to eliminate delays and increase efficiency.

Chapter 12

Business Entities

Prior to the PLMA, most states used the term “insurance agency” to refer to the business structure used by insurance producers. Under the PLMA, the term “business entity” (BE) is used. This term is intended to cover a broad range of legal business operating structures. BEs are considered to be producers under the PLMA.

Section 2(A) of the PLMA defines a BE as a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

The Producer Licensing (EX) Working Group has adopted a uniform application form that is the standard for all states for resident and nonresident BE applications. Section 6(B) of the PLMA provides further guidance about the licensing of BEs:

A BE acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the Uniform Business Entity Application. Before approving the application, the insurance commissioner shall find that:

1. The BE has paid the fees set forth in [insert appropriate reference to state law]; and
2. The BE has designated a licensed producer responsible for the BE’s compliance with the insurance laws, rules and regulations of this state.

Since BEs are considered producers, the reciprocity issues discussed in other sections also apply to BEs. States should not require additional attachments to the application that might interfere with reciprocity.

A common issue that arises with resident and nonresident BE licensing is the role of the secretary of state (SOS) and the state corporation statutory requirements. Most states have adopted a Model Corporation Law that requires resident and nonresident businesses to register with the state corporation department. The issue for state licensing directors is whether the state insurance department should require some proof of registration with the SOS as a pre-condition to licensing. The NAIC legal department has studied this issue extensively and advised the Producer Licensing (EX) Working Group that states should not require items such as articles of incorporation or proof of registration with the SOS as a pre-condition to licensing for nonresident BEs.

The PLMA does require that all producers, including BEs, notify the insurance commissioner prior to using an assumed name. Section 10 of the PLMA states:

An insurance producer doing business under any name other than the producer’s legal name is required to notify the insurance commissioner prior to using the assumed name.

The uniform appointment process as adopted by the Producer Licensing (EX) Working Group does not specifically address BEs. Section 14 of the PLMA states that a producer acting as an agent of an insurance company must be appointed. States vary in the interpretation of these guidelines. This issue is one that the Producer Licensing (EX) Task Force considered in 2010 as part of its efforts to streamline BE licensing. In the absence of specific guidance from the Producer Licensing (EX) Working Group, the guidelines discussed in the paragraphs below are suggested.

Insurance regulators should balance the cost of a regulatory requirement with the benefit that requirement adds to consumer protection. If detailed information is collected, such as several levels of appointments, that information should be a meaningful part of the state insurance department’s consumer protection plan. If information is only rarely used in support of investigations, it may not be cost-effective to collect that information and require staff to compile it and process it. During a recent assessment of state insurance department licensing units, it was often found that information about affiliations and branch offices often required at the time of application was rarely used. Sub-appointments and BE appointments are discouraged.

Just as the uniform appointment process contemplates that only one appointment will be required for an individual producer no matter how many types of products that producer sells for a given company, if a state requires appointments for a BE, then

the state should require only one appointment per BE per company—no matter how many types of products that BE sells for a given company.

Section 6(B)(2) of the PLMA requires a BE to designate a licensed producer as responsible for compliance. This is commonly referred to as the designated responsible producer (DRP). There is no provision in the PLMA to require multiple DRPs if the BE chooses to write multiple lines of insurance. For example, if a DRP holds a life LOA only, and an affiliated producer is authorized to sell P/C products, it is not necessary for a DRP with a P/C LOA to be named as a second DRP.

The PLMA does not give specific guidance on appropriate action to take when a notification is received that the DRP has lost their home state license. A recommended practice is to send a notification to the BE and inform it that the BE license will go inactive unless a new DRP is named and approved within a reasonable number of days.

A BE has an ongoing responsibility to report misconduct of the BE or any of its affiliated producers. Section 12(c) of the PLMA states:

The license of a BE may be suspended, revoked or refused if the insurance commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation and the violation was neither reported to the insurance commissioner nor corrective action taken.

Recommended Best Practices for Insurance Regulators

- Use the NAIC uniform application for BEs, and eliminate all other state-specific forms.
- Review all state insurance laws and regulations, and amend any that require attachments that might violate reciprocity.
- Review the practical consumer protection value of all information collected, and collect only information that adds value.
- Require only one DRP per BE.
- If appointments are required for a BE, require only one appointment per state, and require no sub-appointments.
- Use electronic filings for more efficiency.

Chapter 13

Temporary Licenses

Section 11 of the PLMA contains a provision that allows a state insurance director to issue a temporary license to the survivor of a producer if the insurance commissioner deems it necessary for servicing the deceased producer's customers.

The license is limited to 180 days and also may be limited in scope by the insurance commissioner. The intent of this section is to wind up the business affairs of the producer and not to indefinitely continue the decedent's insurance business.

The PLMA gives three examples of persons eligible for a temporary license:

1. The surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the producer, or for the recovery or return of the producer to the business, or to provide for the training and licensing of new personnel to operate the producer's business.
2. A member or employee of a BE licensed as an insurance producer, upon the death or disability of an individual designated in the BE application or the license.
3. The designee of a licensed insurance producer entering active service in the armed forces of the U.S.

The insurance commissioner also is given discretion to grant a temporary license in any other circumstance where the insurance commissioner deems that the public interest will best be served by the issuance of this license. The insurance commissioner also may require the temporary licensee to have a licensed producer as a sponsor.

Part I Insurance Producer Licensing

Section C License Continuation

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- Chapter 16 License Renewal and Reinstatement
- Chapter 17 Post Licensing Producer Conduct Reviews

Chapter 14

Continuing Education

The completion of CE is the method used by state insurance regulators to ensure continued competence of producers. Under the previous GLBA reciprocity requirements, a state had to recognize a producer's completion of a CE requirement in the producer's home state as satisfying the other state's CE requirement for license renewal. The only exception was if the producer's home state refused to provide reciprocity to another state.

Some states have adopted special training requirements for specific lines of insurance. When such a requirement exists, it is typically imposed on resident and nonresident producers selling a specific insurance product. A specific CE standard, which is derived from federal mandates, may be imposed on nonresidents such as for long-term care insurance (LTCI), flood or crop insurance and would not violate the ULS.

Section 16(B) of the PLMA specifically states:

A nonresident producer's satisfaction of his or her home state's CE requirements for licensed insurance producers shall constitute satisfaction of this state's CE requirements if the nonresident producer's home state recognizes the satisfaction of its CE requirements imposed upon producers from this state on the same basis.

Under the ULS, producers are to complete 24 credits of CE for each biennial compliance period. Three of the 24 credits must be in ethics. Fifty minutes is equal to one credit hour of CE. If applicable, the CE compliance period should coincide with the license renewal. The ULS indicate that the license term should be tied to the birth date or birth month.

CE is required if the producer holds one of the six major lines of authority contained in the PLMA, but it is not required for each line of authority. For example, if a producer holds a life and a property line of authority, the requirement for renewal is 24 credits. If a producer holds only the life line of authority, the requirement for renewal is 24 credits. States may limit the subject area requirements for CE. Some states prohibit CE credit for training on sales techniques. Generally, CE is not required for limited lines. Under the ULS, producers may repeat CE courses for credit in successive renewal terms but are not permitted to take a course for credit more than once in the same license continuation period. States must accept both classroom study and verifiable self-study. States should not impose a limit on the use of self-study courses.

Producers and CE providers must submit evidence of course completion in the method specified by the insurance commissioner. Some states require the producer to present a certificate of completion at the time of license renewal. Many states require the CE provider to report attendance. Under this system, a producer is required to present only the attendance certificates if there is a discrepancy. Another option is to require producers to self-certify completion and then verify compliance by random desk audits.

The PLMA and the ULS contain two exemptions from CE requirements. The exemptions are an inability to comply due to military service and/or a demonstration of an extenuating circumstance, such as medical disability. States with waivers for professional designations should consider allowing CE credits for filed and approved courses used to obtain and maintain professional designations.

Some states grant an extension instead of an exemption. This decision is left to each state to decide.

Course Approvals

The Producer Licensing (EX) Working Group has adopted standards for course approval and reciprocity in filing of courses. States are to follow the standards set forth in the Continuing Education Reciprocity (CER) process as adopted by the Producer Licensing (EX) Working Group. Under a reciprocity filing, states are to accept the number of credits awarded by another state and treat a request for reciprocity as a registration. Only the home state of the CE provider is to perform a content review of the course filing. The Appendices contain information on CER and the current filing forms. The most current information on CER can be found on the Producer Licensing (EX) Working Group web page.

States vary in their method for course content approval. Some states use outside vendors, and others do the course reviews internally. The Producer Licensing (EX) Working Group has not adopted any guidelines on methods for approving classroom courses.

The Producer Licensing (EX) Working Group has adopted guidelines for approval of online and self-study courses. The goal of these standards is to deliver functional computer-based Internet courses that offer quality insurance and/or risk management material in a password-protected online environment.

The key elements are:

1. Material that is current, relevant and accurate, and includes valid reference materials, graphics and interactivity.
2. Clearly defined objectives and course completion criteria.
3. Specific instructions to register, navigate and complete the coursework.
4. Technical support or provider representative available during business hours.
5. A process to authenticate student identity.
6. A method for measuring the student's successful completion of course material and for evaluating the learning experience.
7. A process for requesting and receiving CE course-completion certificates.

The standards call for an examination that is proctored by a disinterested third party. The standards also provide several methods to compute the number of credits that should be awarded. The standards also recommend acceptance of courses that are part of a program that is part of a nationally recognized professional designation. For designation courses, the course should receive credit hours equivalent to hours assigned to the same classroom course material.

The Continuing Education Recommended Guidelines on Online and Self-Study is included in the Appendices.

The ULS prohibit CE providers from advertising CE programs until state course approval is received.

The Appendices contain a sample list of questions and answers frequently asked by insurance producers about CE requirements.

Continuing Education Providers

A state should have a process for registering and qualifying persons who wish to be recognized as CE providers. The process should include duties, responsibilities and performance standards for CE providers. An aspiring CE provider should demonstrate an ability to deliver quality instruction and to comply with all reporting and course supervision requirements. These standards should also contain the conditions under which a CE provider may be removed from the state's approved provider list.

The Appendices contain a sample outline of instructions to CE providers.

Recommended Best Practices for Insurance Regulators

- Require CE providers to electronically report class attendance to the state insurance department or its designated vendor.
- Set a reasonable deadline for CE providers to deliver electronic reports.
- Require CE providers to promptly issue attendance certificates (or certificate of completion for self-study courses) and require producers to retain them. The certificates should be sent only to the state insurance department in the event of a dispute.
- Provide access for producers and insurers to department records to monitor CE credits on file.
- Implement an audit program to observe and evaluate CE providers and instructors.
- Participate in the NAIC Personalized Information Capture System (PICS) to receive alerts or monitor actions against existing licensees.

Chapter 15

Reporting of Actions and Compensation Disclosure

Reporting of Actions

Section 17 of the PLMA requires a producer to report, to all states in which the producer is licensed, any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. Producers also are required to report any criminal prosecution of the producer taken in any jurisdiction within 30 days of the initial pretrial hearing date.

The challenge for producers is that it can be difficult to ensure that all relevant states received the report. NIPR has created an electronic solution, called Reporting of Actions (ROA), to facilitate distribution of one report to multiple states. States should encourage the use of this electronic process to save time and create an electronic record of timely submission.

State licensing directors should have a method to receive these reports and refer them for investigation. The director should consider giving staff limited authority to review and clear reports that include violations such as traffic citations or certain misdemeanors.

Recommended Best Practices for Insurance Regulators

- Use the Attachment Warehouse/Reporting of Action system to receive electronic notifications to alert a state when an individual or business entity producer has added information into the Attachment Warehouse since their initial entry regarding administrative, criminal or civil actions.

Compensation Disclosure

Section 18 of the PLMA requires disclosure where the producer receives any compensation from the customer for the placement of insurance or represents the customer with respect to that placement. This section contains several specific definitions and exceptions to the disclosure requirement. The Producer Licensing (EX) Working Group has not developed any formal guidance on the implementation of Section 18, but the NAIC issued an FAQ document to give additional guidance. This FAQ is in the Appendices. State licensing directors should confer with their legal counsel as to appropriate methods for implementing this section.