

**REPORT OF THE NARAB WORKING GROUP:
RECOMMENDATION OF STATES CONTINUING TO MEET RECIPROCITY REQUIREMENTS OF THE
GRAMM-LEACH-BLILEY ACT**

In another step toward completion of its charges, the NARAB (EX) Working Group has prepared this report of individual states' continuing compliance with the producer licensing reciprocity requirements of the Gramm-Leach-Bliley Act ("GLBA"), 15 U.S.C. § 6751 *et seq.* GLBA provides that the NAIC shall determine whether the requisite number of states have achieved reciprocity. The NAIC membership originally determined that the states met the non-resident producer licensing reciprocity requirements of GLBA in 2002. In total, 47 jurisdictions have been certified as reciprocal under the 2002 reciprocity standard.

As part of a renewed push toward increased reciprocity and uniformity in licensing processes, the Working Group was assigned the task of reviewing the application of GLBA reciprocity requirements. In 2009, the NAIC membership established reciprocity criteria that represent a more detailed analysis of certain aspects of the original 2002 reciprocity standard as well as a review of issues not included specifically in the 2002 report. This enhanced "NAIC Reciprocity Standard" is more fully discussed in the Working Group's 2009 report to the membership, which is attached to this report as Appendix A and incorporated by reference. The NARAB Working Group is further responsible for determining which states are compliant with this more detailed NAIC Reciprocity Standard and making its report along with recommendations to its parent task force. As in 2002, the Working Group believes that its process for considering reciprocity issues, as detailed below, meets the criteria established for affording deference to the NAIC's reciprocity determination consistent with 15 U.S.C. § 6751(d)(2). Through this report, the Working Group recommends that 40 jurisdictions be certified for reciprocity as of October 3, 2011.¹

Review Process

This report consists of the Working Group's analysis of each jurisdiction's compliance with the revised NAIC Reciprocity Standard. The analysis relies on a detailed review, performed by the NAIC Legal Division, of each jurisdiction's current producer licensing laws, regulations, practices and other state guidance. This review was facilitated by an updated Reciprocity Checklist designed to capture the NAIC Reciprocity Standard, thereby incorporating key elements of the 2002 and 2009 reports.

The steps involved in each state's review can be summarized as follows:

- (1) States submitted Reciprocity Checklists certifying their practices and any supporting laws and regulations.
- (2) Reciprocity Checklists were posted for public comment at http://www.naic.org/committees_ex_pltf_narabwg_reciprocity.htm.
- (3) The NAIC Legal Division independently reviewed relevant state statutes, regulations and other formal guidance, as well as the Reciprocity Checklists, interested party comments, NIPR Business Rules² and documentation arising from on-site reviews of each state's licensing processes.
- (4) Secondary Legal Division review, including follow-up with each state for clarification on potential problem issues and any changes to laws, regulations and practices.

The Working Group's recommendations regarding the reciprocity status of particular states are based solely on the following:

- (1) Review and analysis of relevant statutes, regulations and other formal guidance, including NIPR Business Rules and documentation arising from on-site reviews of each state's licensing processes;
- (2) Certified Reciprocity Checklists submitted to the NAIC by state insurance departments;
- (3) Representations made regarding the application and effect of state law by state insurance department personnel, who have represented they are knowledgeable about the laws and regulations of their respective states, including the practices and procedures, regarding the licensing of non-resident insurance producers;

¹ The NARAB (EX) Working Group approved a report certifying 37 jurisdictions as reciprocal during a conference call on August 15, 2011 and approved a supplemental report certifying three additional jurisdictions during a conference call on October 3, 2011. The Producer Licensing (EX) Task Force approved both reports during a conference call on October 19, 2011 and combined those reports into this single report for consideration by the NAIC Executive Committee and Plenary.

² NIPR Business Rules are written directions governing the electronic processing of applications for initial licensing and license renewal. Each participating state's business rules are developed in consultation with producer licensing personnel and are customized to conform to applicable laws and practices of the jurisdiction.

- (4) Consultations with various state insurance department personnel who are experienced with producer licensing issues, as well as the NAIC Legal Division and other NAIC and NIPR staff who are generally knowledgeable about the licensing of insurance producers;
- (5) Recommendations of the NARAB Working Group through its previous reports regarding a framework for interpreting the reciprocity requirements under GLBA; and
- (6) Comments submitted by interested parties.

Furthermore, in developing its recommendations, the Working Group has made the following assumptions:

- (1) State insurance department personnel have made full disclosure concerning their respective state producer licensing laws and regulations, all applicable licensing practices and procedures, including but not limited to those which may be based on internal rules or procedures, and the decisions, orders, and/or findings of an administrative hearing or court of law, or other action which may be construed as having the effect of law; and
- (2) The laws and regulations reviewed for the purposes, and which form the basis, of the recommendation have not been repealed, revised or otherwise amended subsequent to its review and analysis, and if such amendment has occurred, the states would have provided notice to the NARAB Working Group or the NAIC Legal Division.

By following the described process for each jurisdiction, the Working Group has arrived at a recommendation that 40 jurisdictions presently qualify for re-certification under the NAIC Reciprocity Standard.

Recommended Reciprocal States

Based on its review, as described and qualified above, the NARAB Working Group recommends to the NAIC membership that, as of October 3, 2011, the following 40 jurisdictions be certified as reciprocal for purposes of GLBA producer licensing reciprocity in accordance with the NAIC Reciprocity Standard. Any potential issues arising in the course of reviewing these states are explained in the section that follows.

Alabama	Idaho	Maryland	New Hampshire	South Carolina
Alaska	Illinois	Massachusetts	New Jersey	South Dakota
Arizona	Indiana	Michigan	North Carolina	Utah
Arkansas	Iowa	Minnesota	North Dakota	Vermont
Colorado	Kansas	Mississippi	Ohio	Virginia
Connecticut	Kentucky	Montana	Oklahoma	West Virginia
Delaware	Louisiana	Nebraska	Oregon	Wisconsin
District of Columbia	Maine	Nevada	Rhode Island	Wyoming

Additional states may added to this total based upon resolution of any potential issues that arose in the course of reviewing Reciprocity Checklists or submission of materials for review by the NARAB Working Group.

State-Specific Results

Alabama

Alabama's responses to the Reciprocity Checklist raised no issues requiring specific follow-up. Following the review of other relevant aspects of Alabama's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes the Alabama meets the NAIC Reciprocity Standard.

Alaska

Alaska's responses to the Reciprocity Checklist raised no issues requiring specific follow-up. Following the review of other relevant aspects of Alaska's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes the Alaska meets the NAIC Reciprocity Standard.

Arizona

Arizona responded "yes" to Question E5, which asked if there are any training, education, prior experience or minimum age requirements for non-resident producers or applicants. Arizona stated there is a requirement that all producers who sell, solicit or negotiate long-term care insurance must complete long-term care training substantially similar to that offered in

Arizona. In its 2009 report, the NARAB Working Group concluded that one-time training and continuing education requirements imposed in satisfaction of a federal mandate are not inconsistent with the NAIC Reciprocity Standard. Arizona's long-term care training requirement is derived from a federal mandate for state insurance departments to assure state Medicaid agencies that anyone who sells a long-term care partnership policy receives appropriate training. Therefore, Arizona's requirement is consistent with the NAIC Reciprocity Standard.

As a result of the clarification to the above item on its Reciprocity Checklist and following the review of other relevant aspects of Arizona's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Arizona meets the NAIC Reciprocity Standard.

Arkansas

Arkansas responded "yes" to Question A2, which asked if there are any requirements or submissions imposed upon a non-resident business entity seeking licensure beyond the four requirements included in the PLMA. Arkansas stated there are statutory requirements to register fictitious names and maintain a registered agent. In subsequent correspondence, Arkansas explained that this requirement is fulfilled through the application and that an additional submission is not required. With this clarification, the NARAB Working Group does not believe Arkansas's practice is inconsistent with reciprocity.

As a result of the clarification to the above item on its Reciprocity Checklist and following the review of other relevant aspects of Arkansas's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Arkansas meets the NAIC Reciprocity Standard.

Colorado

Colorado's responses to the Reciprocity Checklist raised no issues requiring specific follow-up. Following the review of other relevant aspects of Colorado's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Colorado meets the NAIC Reciprocity Standard.

Connecticut

Connecticut's responses to the Reciprocity Checklist raised no issues requiring specific follow-up. Following the review of other relevant aspects of Connecticut's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Connecticut meets the NAIC Reciprocity Standard.

Delaware

Delaware responded "yes" to Question C2, which asked whether a state requires a non-resident applicant seeking a variable life license to also obtain a life license from your state. In subsequent correspondence, Delaware indicated this requirement has been removed. As a result, Delaware's practice in this area is consistent with the NAIC Reciprocity Standard.

Delaware responded "yes" to Question E5, which asked if there are any training, education, prior experience or minimum age requirements for non-resident producers or applicants. Delaware stated there is a requirement that a producer be 18 years old. This requirement is consistent with the NAIC Reciprocity Standard.

As a result of the clarifications to the above items on its Reciprocity Checklist and following the review of other relevant aspects of Delaware's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Delaware meets the NAIC Reciprocity Standard.

District of Columbia

The District of Columbia's responses to the Reciprocity Checklist raised no issues requiring specific follow-up. Following the review of other relevant aspects of the District of Columbia's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes the District of Columbia meets the NAIC Reciprocity Standard.

Idaho

Idaho responded "yes" to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Idaho further responded that it has a diligent search requirement and that the surplus lines producer is always required to perform the diligent search of the

admitted market. Additionally, an interested party submitted a comment letter concerning Idaho's response to this question. In subsequent correspondence, Idaho stated it is removing any underlying license requirements on surplus lines applicants or producers who do not perform the diligent search of the admitted market. This practice is consistent with the NAIC Reciprocity Standard.

As a result of the clarification to the above item on its Reciprocity Checklist and following the review of other relevant aspects of Idaho's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Idaho meets the NAIC Reciprocity Standard.

Illinois

Illinois responded "yes" to Questions A1 and A2, which asked if there are any requirements or submissions imposed upon a non-resident individual or business entity applicant or producer seeking licensure beyond the four requirements included in the PLMA. Illinois cited a general producer bond requirement. Illinois subsequently clarified that these requirements are waived as to non-residents. As a result, this practice is consistent with the NAIC Reciprocity Standard.

Illinois responded "yes" to Question C2, which asked whether a state requires a non-resident applicant seeking a variable life license to also obtain a life license from your state. In subsequent correspondence, Illinois stated this requirement has been removed. As a result, Illinois's practice in this area is consistent with the NAIC Reciprocity Standard.

Illinois responded "yes" to Question E2, which asked if there are any bond, E&O, deposit, tax clearance or trust account requirements for non-resident applicants or producers, and "yes" to Question E3, which asked if non-resident surplus lines applicants or producers are required to post a bond. In both cases, Illinois cited bond requirements. In subsequent correspondence, Illinois clarified that these requirements do not apply to non-resident applicants or producers generally or to non-resident surplus lines applicants or producers. As a result, this practice is consistent with the NAIC Reciprocity Standard.

Illinois responded "yes" to question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Illinois further responded that it has a diligent search requirement and that the surplus lines producer is always required to perform the diligent search of the admitted market. In subsequent clarification, Illinois stated it would not impose any underlying license requirements on surplus lines applicants or producers who do not perform the diligent search of the admitted market. This practice is consistent with the NAIC Reciprocity Standard.

As a result of the clarifications to the above items on its Reciprocity Checklist and following the review of other relevant aspects of Illinois's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Illinois meets the NAIC Reciprocity Standard.

Indiana

Indiana responded "yes" to Question C2, which asked whether a state requires a non-resident applicant seeking a variable life license to also obtain a life license from the state. In subsequent correspondence, Indiana stated this requirement has been removed. As a result, Indiana's practice in this area is consistent with the NAIC Reciprocity Standard.

Indiana responded "yes" to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Indiana further responded that it has a diligent search requirement and that the surplus lines producer is required to perform the diligent search of the admitted market. Additionally, an interested party submitted a comment letter concerning Indiana's response to this question. In subsequent correspondence, Indiana confirmed it removed the underlying license requirement for non-resident surplus lines applicants and producers. As a result, Indiana's practice in this area is consistent with the NAIC Reciprocity Standard.

As a result of the clarifications to the above items on its Reciprocity Checklist and following the review of other relevant aspects of Indiana's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Indiana meets the NAIC Reciprocity Standard.

Iowa

Iowa's responses to the Reciprocity Checklist raised no issues requiring specific follow-up. Following the review of other relevant aspects of Iowa's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes the Iowa meets the NAIC Reciprocity Standard.

Kansas

Kansas responded “yes” to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Kansas further responded that it has a diligent search requirement and that the surplus lines producer is always required to perform the diligent search of the admitted market. Additionally, an interested party submitted a comment letter concerning Kansas’s response to this question. In subsequent correspondence, Kansas stated it would not impose any underlying license requirements on surplus lines applicants or producers who do not perform the diligent search of the admitted market. As a result, Kansas’s practice in this area is consistent with the NAIC Reciprocity Standard.

As a result of the clarification to the above item on its Reciprocity Checklist and following the review of other relevant aspects of Kansas’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Kansas meets the NAIC Reciprocity Standard.

Kentucky

Kentucky responded “yes” to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Kentucky further responded that it has a diligent search requirement and that the surplus lines producer is always required to perform the diligent search of the admitted market. Additionally, an interested party submitted a comment letter concerning Kentucky’s response to this question. In subsequent correspondence, Kentucky stated it would not impose any underlying license requirements on surplus lines applicants or producers who do not perform the diligent search of the admitted market. This practice is consistent with the NAIC Reciprocity Standard.

As a result of the clarification to the above item on its Reciprocity Checklist and following the review of other relevant aspects of Kentucky’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Kentucky meets the NAIC Reciprocity Standard.

Louisiana

Louisiana’s responses to the Reciprocity Checklist raised no issues requiring specific follow-up. Following the review of other relevant aspects of Louisiana’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Louisiana meets the NAIC Reciprocity Standard.

Maine

Maine responded “NA” to Question D, which asked if a non-resident producer’s continuing education requirement is met if the non-resident producer fulfills his or her home state continuing education requirement and the home state also grants such reciprocity. Because Maine does not impose continuing education requirements on non-residents that otherwise would be imposed in the absence of reciprocity, this response is not inconsistent with reciprocity.

Maine responded “yes” to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Maine further responded that it has a diligent search requirement and that the surplus lines producer is sometimes required to perform the diligent search of the admitted market. Additionally, an interested party submitted a comment letter concerning Maine’s response to this question. In subsequent correspondence, Maine stated it would not impose any underlying license requirements on surplus lines applicants or producers who do not perform the diligent search of the admitted market. This practice is consistent with the NAIC Reciprocity Standard.

As a result of the clarifications to the above items on its Reciprocity Checklist and following the review of other relevant aspects of Maine’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Maine meets the NAIC Reciprocity Standard.

Maryland

Maryland responded “yes” to Question E2, which asked if there are any bond, E&O, deposit, tax clearance or trust account requirements for non-resident applicants or producers. Maryland explained that it has a statute that provides for disciplinary action against the renewal of a license for any person with a tax delinquency. No additional information is required from the

producer and all verification is performed against a Maryland database. Based on this information, this practice is consistent with the NAIC Reciprocity Standard.

Maryland responded “yes” to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Maryland further responded that it has a diligent search requirement and that the surplus lines producer is sometimes required to perform the diligent search of the admitted market. In explanatory comments, Maryland stated it would not impose any underlying license requirements on surplus lines applicants or producers who do not perform the diligent search of the admitted market. This practice is consistent with the NAIC Reciprocity Standard.

As a result of the clarifications to the above items on its Reciprocity Checklist and following the review of other relevant aspects of Maryland’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Maryland meets the NAIC Reciprocity Standard.

Massachusetts

Massachusetts responded “yes” to Question C2, which asked whether a state requires a non-resident applicant seeking a variable life license to also obtain a life license from the state. Massachusetts added that if a non-resident state offers a combined life and variable life annuity license, it would do the same. The NAIC Reciprocity Standard states that it is inconsistent with reciprocity to require an underlying life license prior to the issuance of a non-resident variable life licenses. In subsequent correspondence, Massachusetts clarified that its practice is to issue automatically a non-resident life license to a non-resident variable life applicant without any additional requirements or fees. Because Massachusetts issues the additional license automatically and without any additional requirements, this practice is not inconsistent with the NAIC Reciprocity Standard.

Massachusetts responded “yes” to Question E2, which asked if there are any bond, E&O, deposit, tax clearance or trust account requirements for non-resident applicants or producers. In subsequent correspondence, Massachusetts explained that it imposes an E&O insurance requirement for managing general agents and that this requirement is not imposed on insurance producers as a matter of course. Because this requirement is not imposed on producers for whom reciprocity is required, this practice is not inconsistent with reciprocity.

As a result of the clarifications to the above items on its Reciprocity Checklist and following the review of other relevant aspects of Massachusetts’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Massachusetts meets the NAIC Reciprocity Standard.

Michigan

Michigan responded “yes” to Questions A1 and A2, which asked if there are any requirements or submissions imposed upon a non-resident individual or business entity applicant or producer seeking licensure beyond the requirements included in the Producer Licensing Model Act (PLMA). Michigan further responded that a criminal background check is required on all applicants and that it may be necessary to request additional information from an applicant. The NAIC Reciprocity Standard provides that states may perform background checks or other due diligence without being inconsistent with reciprocity. Further, in subsequent correspondence, Michigan stated that additional information would be required only in those circumstances where the background check uncovered negative information for which licensure may be denied, or where the applicant disclosed negative information on the application and for which the application requests additional information. Michigan does not require additional information to be submitted as a regular licensure practice. Rather, any requested information concerns a matter for which licensure may be denied. Michigan’s practice may have the effect of allowing an applicant to clarify a potentially negative issue and obtain a license. As a result, Michigan’s practice in this area is not inconsistent with the NAIC Reciprocity Standard.

Michigan responded “yes” to Question E2, which asked if there are any bond, E&O, deposit, tax clearance or trust account requirements for non-resident applicants or producers. Michigan explained that the failure to pay the single business tax or the Michigan business tax or comply with any administrative or court order directing the payment of such tax may provide the basis for denying licensure to an applicant. Michigan does not request additional information as a regular licensure practice, but may request clarifying information if an applicant disclosed that such tax was not paid or that the applicant failed to comply with such orders. Michigan’s practice may have the effect of allowing an applicant to clarify a potentially negative issue and obtain a license. As a result, Michigan’s practice in this area is not inconsistent with the NAIC Reciprocity Standard.

Michigan responded “yes” to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Michigan further responded that it has a diligent search requirement and that the surplus lines producer is always required to perform the diligent search of the admitted market. Additionally, an interested party submitted a comment letter concerning Michigan’s response to this question. In subsequent correspondence, Michigan confirmed that the surplus lines producer is always required to perform the diligent search of the admitted market. Michigan’s practice is consistent with the NAIC Reciprocity Standard.

Michigan responded “yes” to Question E5, which asked if there are any training, education, prior experience or minimum age requirements for non-resident producers or applicants. Michigan stated there is a requirement that a producer be 18 years old. This requirement is consistent with the NAIC Reciprocity Standard.

As a result of the clarifications to the above items on its Reciprocity Checklist and following the review of other relevant aspects of Michigan’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Michigan meets the NAIC Reciprocity Standard.

Minnesota

Minnesota responded “yes” to Question A2, which asked if there are any requirements or submissions imposed upon a non-resident business entity applicant or producer seeking licensure beyond the four requirements included in the PLMA. Minnesota stated that business entities must designate an individual licensed producer responsible for the business entity’s compliance with Minnesota laws and regulations. In subsequent correspondence, Minnesota explained that this requirement is fulfilled through the application and that an additional submission is not required. With this clarification, the NARAB Working Group does not believe Minnesota’s practice is inconsistent with the reciprocity.

Minnesota responded “yes” to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Minnesota further responded that it has a diligent search requirement and that the surplus lines producer is required to perform the diligent search of the admitted market. Additionally, an interested party submitted a comment letter concerning Minnesota’s response to this question. In subsequent correspondence, Minnesota stated it would not impose any underlying license requirements on surplus lines applicants or producers who are licensed for surplus lines in their home states and who do not perform the diligent search of the admitted market. This practice is consistent with the NAIC Reciprocity Standard.

As a result of the clarifications to the above items on its Reciprocity Checklist and following the review of other relevant aspects of Minnesota’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Minnesota meets the NAIC Reciprocity Standard.

Mississippi

Mississippi responded “yes” to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Mississippi further responded that it has a diligent search requirement and that the surplus lines producer is required to perform the diligent search of the admitted market. Additionally, an interested party submitted a comment letter concerning Mississippi’s response to this question. Subsequently, Mississippi reported the enactment of a new statutory provision eliminating the underlying general lines or P&C license requirement if the surplus lines applicant or producer is not required to perform the diligent search of the admitted market. Mississippi confirmed this exception would apply if the surplus lines producer relies on a diligent search performed by a producer properly licensed to do so. As revised, Mississippi’s practice is consistent with the NAIC Reciprocity Standard.

As a result of the clarification to the above item on its Reciprocity Checklist and following the review of other relevant aspects of Minnesota’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Minnesota meets the NAIC Reciprocity Standard.

Montana

Montana responded “yes” to Question C2, which asked whether a state requires a non-resident applicant seeking a variable life license to also obtain a life license from the state. In subsequent correspondence, Montana stated this requirement had been removed. As a result, Montana’s practice in this area is consistent with the NAIC Reciprocity Standard.

Montana responded “yes” to Question E2, which asked if there are any bond, E&O, deposit, tax clearance or trust account requirements for non-resident applicants or producers. In subsequent correspondence, Montana clarified that it imposed none of these specific requirements on non-residents.

Montana responded “yes” to Question E3, which asked if non-resident surplus lines applicants or producers required to post a bond. In subsequent correspondence, Montana clarified that it does not impose a bond requirement on non-resident surplus lines applicants or producers.

Montana responded “yes” to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Montana further responded that it had a diligent search requirement and that the surplus lines producer is sometimes required to perform the diligent search of the admitted market. Additionally, an interested party submitted a comment letter concerning Montana’s response to this question. In subsequent correspondence, Montana stated it would apply the reciprocity provisions of its producer licensing code for non-resident surplus lines licensure.

Montana responded “yes” to Question E5, which asked if there are any training, education, prior experience or minimum age requirements for non-resident producers or applicants. In subsequent correspondence, Montana stated its original response applied to resident producers and confirmed it did not impose the aforementioned requirements on non-resident applicants.

As a result of the clarifications to the above items on its Reciprocity Checklist and following the review of other relevant aspects of Montana’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Montana meets the NAIC Reciprocity Standard.

Nebraska

Nebraska responded “yes” to Question E2, which asked if there are any bond, E&O, deposit, tax clearance or trust account requirements for non-resident applicants or producers. Nebraska indicates that it imposed a financial responsibility requirement on all viatical settlement brokers and viatical settlement broker entities. Because the NAIC Reciprocity Standard provides that viatical settlement brokers are not entitled to reciprocity, this practice is not inconsistent with reciprocity.

Nebraska responded “yes” to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Nebraska further responded that it had a diligent search requirement and that the surplus lines producer is always required to perform the diligent search of the admitted market. Additionally, an interested party submitted a comment letter concerning Nebraska’s response to this question. In subsequent correspondence, Nebraska stated it would not impose any underlying license requirements on surplus lines applicants or producers who hold the underlying P&C license in their home state. Because all states require their resident surplus lines producers to hold resident P&C licenses, this practice is not inconsistent with reciprocity as applied. In the event another reciprocal jurisdiction eliminated its underlying license requirement for residents while still offering reciprocity to other jurisdictions, Nebraska’s practice may need to be revisited for consistency with reciprocity.

Nebraska responded “yes” to Question E5, which asked if there are any training, education, prior experience or minimum age requirements for non-resident producers or applicants. Nebraska stated there is a requirement that a producer be 18 years old. This requirement is consistent with the NAIC Reciprocity Standard.

As a result of the clarifications to the above items on its Reciprocity Checklist and following the review of other relevant aspects of Nebraska’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Nebraska meets the NAIC Reciprocity Standard.

Nevada

Nevada responded “yes” to Question C2, which asked whether a state requires a non-resident applicant seeking a variable life license to also obtain a life license from the state. In subsequent correspondence, Nevada clarified that this requirement has been removed. As a result, Nevada’s practice in this area is consistent with the NAIC Reciprocity Standard.

Nevada responded “yes” to Question E5, which asked if there are any training, education, prior experience or minimum age requirements for non-resident producers or applicants. Nevada stated there is a requirement that a producer be 18 years old. This requirement is consistent with the NAIC Reciprocity Standard.

As a result of the clarifications to the above items on its Reciprocity Checklist and following the review of other relevant aspects of Nevada's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Nevada meets the NAIC Reciprocity Standard.

New Hampshire

New Hampshire's responses to the Reciprocity Checklist raised no issues requiring specific follow-up. Following the review of other relevant aspects of New Hampshire's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes New Hampshire meets the NAIC Reciprocity Standard.

New Jersey

New Jersey's responses to the Reciprocity Checklist raised no issues requiring specific follow-up. Following the review of all other aspects of New Jersey's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes New Jersey meets the NAIC Reciprocity Standard.

North Carolina

North Carolina responded "yes" to Question A1, which asked if there are any requirements or submissions imposed upon a non-resident producer seeking licensure beyond the four requirements included in the PLMA. North Carolina stated there is a requirement that all producers who sell, solicit or negotiate long-term care or Medicare Supplement insurance must obtain a separate limited lines license in addition to the accident and health or sickness line of authority. In subsequent correspondence, North Carolina clarified that, if a non-resident producer's accident and health or sickness license in the producer's home state encompasses authority sell, solicit or negotiate long-term care or Medicare Supplement insurance, North Carolina's practice is to issue automatically a non-resident long-term care/Medicare Supplement insurance limited lines license without imposing any further requirements on the non-resident applicant beyond the uniform application and fee. Because North Carolina issues the additional license automatically and without any additional requirements, this practice is not inconsistent with the NAIC Reciprocity Standard.

Also in response to Question A1, North Carolina disclosed that non-resident producers seeking a variable life license are required to also obtain a life license from the state. In subsequent correspondence, North Carolina confirmed that this requirement had been removed. As a result, North Carolina's practice in this area is consistent with the NAIC Reciprocity Standard.

North Carolina responded "no" to Question C1, which asked if a non-resident license will be granted for at least the same scope of authority as the non-resident producer applicant's home state license. North Carolina disclosed the same long-term care and Medicare Supplement insurance limited lines license requirement discussed above, which is not inconsistent with the NAIC Reciprocity Standard.

North Carolina responded "yes" to Question C2, which asked whether a state requires a non-resident applicant seeking a variable life license to also obtain a life license from your state. As discussed above, this requirement was subsequently eliminated, with the result that North Carolina's practice in this area is consistent with the NAIC Reciprocity Standard.

North Carolina responded "yes" to Question E5, which asked if there are any training, education, prior experience or minimum age requirements for non-resident producers or applicants. North Carolina stated there is a requirement that a producer be 18 years old. This requirement is consistent with the NAIC Reciprocity Standard.

North Carolina responded "yes" to Question F, which asked if there are any post-licensing or other regulatory requirements on any non-resident producer that limit or condition the non-resident producer's activities because of such producer's residence or place of operations, or that otherwise subject the non-resident producer to different or discriminatory regulatory requirements than those imposed upon residents. North Carolina stated that every report of surplus lines business placed by a non-resident producer must be countersigned by a resident license or by a regulatory support organization. In subsequent correspondence, North Carolina clarified that policy countersignature is not required. Additionally, GLBA § 6751(c)(3) specifically finds that countersignature requirements imposed on nonresident producers are not deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations. As a result, North Carolina's practice in this area is consistent with the NAIC Reciprocity Standard.

As a result of the clarification to the above items on its Reciprocity Checklist and following the review of other relevant aspects of North Carolina's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes North Carolina meets the NAIC Reciprocity Standard.

North Dakota

North Dakota responded "yes" to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. North Dakota further responded that it has a diligent search requirement and that the surplus lines producer is always required to perform the diligent search of the admitted market. Additionally, an interested party submitted a comment letter concerning North Dakota's response to this question. In subsequent correspondence, North Dakota stated it would not impose any underlying license requirements on surplus lines applicants or producers who do not perform the diligent search of the admitted market. This practice is consistent with the NAIC Reciprocity Standard.

As a result of the clarification to the above item on its Reciprocity Checklist and following the review of other relevant aspects of North Dakota's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes North Dakota meets the NAIC Reciprocity Standard.

Ohio

Ohio's responses to the Reciprocity Checklist raised no issues requiring specific follow-up. Following the review of other relevant aspects of Ohio's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Ohio meets the NAIC Reciprocity Standard.

Oklahoma

Oklahoma's responses to the Reciprocity Checklist raised no issues requiring specific follow-up. Following the review of other relevant aspects of Oklahoma's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Oklahoma meets the NAIC Reciprocity Standard.

Oregon

While Oregon responded "no" to Question E1, which asked whether an appointment is required prior to on concurrent with licensure, Oregon disclosed that an appointment must be secured before transacting business. Because Oregon does not require an appointment as a pre-licensing requirement and companies, rather than producers, bear the burden of submitting appointments, this requirement is consistent with the NAIC Reciprocity Standard.

Oregon responded "yes" to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Oregon further responded that it had a diligent search requirement and that the surplus lines producer is always required to perform the diligent search of the admitted market. Additionally, an interested party submitted a comment letter concerning Oregon's response to this question. In subsequent correspondence, Oregon stated it would not impose any underlying license requirements on surplus lines applicants or producers who do not perform the diligent search of the admitted market. This practice is consistent with the NAIC Reciprocity Standard.

Oregon responded "yes" to Question E5, which asked if there are any training, education, prior experience or minimum age requirements for non-resident producers or applicants. Oregon stated there is a requirement that a producer be 18 years old. This requirement is consistent with the NAIC Reciprocity Standard.

As a result of the clarifications to the above items on its Reciprocity Checklist and following the review of other relevant aspects of Oregon's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Oregon meets the NAIC Reciprocity Standard.

Rhode Island

Rhode Island responded "yes" to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Rhode Island further responded that it had a diligent search requirement and that the surplus lines producer is sometimes required to perform the diligent search of the admitted market. Additionally, an interested party submitted a comment letter concerning Rhode Island's

response to this question. In subsequent correspondence, Rhode Island confirmed it removed the underlying license requirement for non-resident surplus lines applicants and producers.

As a result of the clarification to the above item on its Reciprocity Checklist and following the review of other relevant aspects of Rhode Island's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Rhode Island meets the NAIC Reciprocity Standard.

South Carolina

South Carolina responded "no" to Question C2, which asked whether a state requires a non-resident applicant seeking a variable life license to also obtain a life license from the state, but subsequently disclosed that the underlying life license requirement remained in place. South Carolina later confirmed that the underlying life license requirement was removed for non-resident variable life applicants. As a result, South Carolina's practice in this area is consistent with the NAIC Reciprocity Standard.

South Carolina responded "no" to Question E5, which asked if there are any training, education, prior experience or minimum age requirements for non-resident producers or applicants, but also disclosed there is a requirement that a producer be 18 years old. This requirement is consistent with the NAIC Reciprocity Standard.

As a result of the clarifications to the above items on its Reciprocity Checklist and following the review of other relevant aspects of South Carolina's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes South Carolina meets the NAIC Reciprocity Standard.

South Dakota

South Dakota responded "yes" to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. South Dakota further responded that it has a diligent search requirement and that the surplus lines producer is always required to perform the diligent search of the admitted market. This practice is consistent with the NAIC Reciprocity Standard.

As a result of the clarification to the above item on its Reciprocity Checklist and following the review of other relevant aspects of South Dakota's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes South Dakota meets the NAIC Reciprocity Standard.

Utah

While Utah responded "no" to Question A1, which asked if there are any requirements or submissions imposed upon a non-resident producer seeking licensure beyond the four requirements included in the PLMA, Utah disclosed two practices concerning its response. First, Utah stated it does not specifically require that the non-resident's home state also extend reciprocity to Utah residents. The NARAB Working Group does not believe the lack of this requirement to be inconsistent with the NAIC Reciprocity Standard. Second, Utah stated that it required the applicant to execute a form whereby the applicant agrees to be subject to the jurisdiction of the Utah insurance commissioner for that applicant's activities in Utah. In subsequent correspondence, Utah explained that this requirement is fulfilled through the application and that an additional submission is not required. With this clarification, the NARAB Working Group does not believe Utah's practice is inconsistent with the NAIC Reciprocity Standard.

While Utah responded "yes" to Question D, which asked if a non-resident producer's continuing education requirement is met if the non-resident producer fulfills his or her home state continuing education requirement and the home state also grants such reciprocity, Utah stated it does not require reciprocity from the non-resident's home state in order for the non-resident licensee to be deemed to satisfy Utah's continuing education requirements. Because Utah does not impose continuing education requirements on non-residents that otherwise would be imposed in the absence of reciprocity, this response is not inconsistent with reciprocity.

As a result of the clarifications to the above items on its Reciprocity Checklist and following the review of other relevant aspects of Utah's non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Utah meets the NAIC Reciprocity Standard.

Vermont

Vermont responded “yes” to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Vermont further responded that it has a diligent search requirement and that the surplus lines producer is always required to perform the diligent search of the admitted market. This practice is consistent with the NAIC Reciprocity Standard.

As a result of the clarification to the above item on its Reciprocity Checklist and following the review of other relevant aspects of Vermont’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Vermont meets the NAIC Reciprocity Standard.

Virginia

Virginia responded “yes” to Question C2, which asked whether a state requires a non-resident applicant seeking a variable life license to also obtain a life license from the state. In subsequent correspondence, Virginia confirmed this requirement had been removed through a legislative change that took effect after its Reciprocity Checklist was submitted. As a result, Virginia’s practice in this area is consistent with the NAIC Reciprocity Standard.

Virginia responded “no” to Question D, which asked if a non-resident producer’s continuing education requirement is met if the non-resident producer fulfills his or her home state continuing education requirement and the home state also grants such reciprocity. Virginia stated non-resident producers are exempt from Virginia continuing education requirements if they are compliant with home state continuing education requirements and pay the licensing continuation fee to Virginia. Because Virginia does not impose continuing education requirements on non-residents that otherwise would be imposed in the absence of reciprocity, this response is not inconsistent with the NAIC Reciprocity Standard.

Virginia responded “yes” to Question E2, which asked if there are any bond, E&O, deposit, tax clearance or trust account requirements for non-resident producers. Virginia stated all producers must maintain a fiduciary account for all funds received. In subsequent correspondence, Virginia explained this requirement is not applied in a manner that requires non-resident producers to establish an account with a Virginia financial institution. As a result, Virginia’s practice in this area is consistent with the NAIC Reciprocity Standard.

Virginia responded “yes” to Question E5, which asked if there are any training, education, prior experience or minimum age requirements for non-resident producers or applicants. Virginia stated there is a requirement that a producer be 18 years old. This requirement is consistent with the NAIC Reciprocity Standard.

As a result of the clarifications to the above items on its Reciprocity Checklist and following the review of other relevant aspects of Virginia’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Virginia meets the NAIC Reciprocity Standard.

West Virginia

West Virginia responded “yes” to Question C2, which asked whether a state requires a non-resident applicant seeking a variable life license to also obtain a life license from the state. In subsequent correspondence, West Virginia stated this requirement has been removed. As a result, West Virginia’s practice in this area is consistent with the NAIC Reciprocity Standard.

As a result of the clarification to the above item on its Reciprocity Checklist and following the review of other relevant aspects of West Virginia’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes West Virginia meets the NAIC Reciprocity Standard.

Wisconsin

Wisconsin’s responses to the Reciprocity Checklist raised no issues requiring specific follow-up. Following the review of other relevant aspects of Wisconsin’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Wisconsin meets the NAIC Reciprocity Standard.

Wyoming

Wyoming responded “yes” to Question E4a, which asked if non-resident surplus lines applicants or producers are required to obtain an underlying general lines or P&C license as a condition to surplus lines licensure. Wyoming further responded that it had a diligent search requirement and that the surplus lines producer is sometimes required to perform the diligent search of the admitted market; however, Wyoming indicated that an underlying license had been waived through Memorandum 01-2010. An interested party submitted a comment letter concerning underlying license requirements imposed by Wyoming. In subsequent correspondence, Wyoming stated it would not impose any underlying license requirements on surplus lines applicants or producers who do not perform the diligent search of the admitted market. This practice is consistent with the NAIC Reciprocity Standard.

As a result of the clarification to the above items on its Reciprocity Checklist and following the review of other relevant aspects of Wyoming’s non-resident producer licensing laws, regulations and practices, the NARAB Working Group believes Wyoming meets the NAIC Reciprocity Standard.

REPORT OF THE NARAB WORKING GROUP

CONTINUING COMPLIANCE WITH RECIPROCITY REQUIREMENTS OF THE GRAMM-LEACH-BLILEY ACT

ADOPTED 6-15-09

The purpose of this report is to present to the NAIC membership an updated framework for determining the continuing compliance of the states with the producer licensing reciprocity requirements of the Gramm-Leach-Bliley Act (GLBA), 15 U.S.C. §§ 6751 et seq. This report is also intended to meet the following charge to the NARAB Working Group:

Finalize the evaluation of the reciprocity standard developed by the NAIC's 2002 NARAB (EX) Working Group and make final recommendations by the 2009 Summer National Meeting for revisions or additions to the standard to address the issues identified in the Producer Licensing Assessment Aggregate Report of Findings including the various state requirements that are imposed upon non-residents but may not have been specifically addressed in the 2002 reciprocity standard.

As detailed herein, the Working Group reviewed several subjects relevant to non-resident producer licensing to determine their conformity with the 2002 standard. Our conclusions are stated below. In order to have all relevant guidance in one document, we have reproduced, and thereby reaffirmed, certain conclusions from the 2002 reciprocity standard. To achieve consistency and clarity, much of the information in this report is re-produced from previous materials.

The Working Group makes no finding concerning continuing compliance of any state with the 2002 standard, as updated and supplemented today. This report will provide the basis for initiating a formal reassessment of state compliance with the reciprocity framework.

EXECUTIVE SUMMARY

The specific analysis related to individual topics is detailed below, but the Working Group has determined the following requirements imposed on non-resident producers or applicants are inconsistent with GLBA reciprocity:

- Fingerprint requirements;
- Requiring a surplus lines producer not required to perform or not performing the diligent search of the admitted market to obtain an underlying general lines license;
- Surplus lines bonds;
- Requiring the designated responsible producer to be appointed prior to the issuance of a non-resident business entity license;
- Requiring the business entity to submit articles of incorporation;
- Requiring an underlying life license prior to the issuance of a variable life license;
- Requiring individuals seeking a fraternal license to have a fraternal certificate from a company;
- Requiring the submission of additional information to verify an applicant's age;
- Offering inconsistent terms of licensure for residents and non-residents; and
- Requiring trust accounts as a condition to licensure or applying trust account requirements against non-residents in a discriminatory manner;

The Working Group does not believe the following requirements are inconsistent with GLBA reciprocity:

- Performing background checks or other due diligence without requiring additional submissions by the applicant;
- Requiring a surplus lines producer required to perform or performing the diligent search of the admitted market to obtain an underlying general lines license;
- Appointments not required during the licensing process;
- Requiring the designated responsible producer to be licensed prior to the issuance of a non-resident business entity license, provided the applications are accepted concurrently;
- Requiring a business entity to register to do business in the state;
- Requesting proof of Secretary of State registration as a prerequisite for business entity licensure;
- Not adopting the major lines of authority definitions of the Producer Licensing Model Act;
- Verifying legal work authorization for non-U.S. citizen applicants;

- Enforcing minimum age requirements;
- Non-discriminatory trust account requirements of general application if not tied to licensure or applied discriminatorily against non-residents;
- Verifying an applicant for license renewal has paid all undisputed taxes and unemployment insurance contributions;
- Continuing education requirements based on federal mandates; and
- Not offering reciprocal licensing treatment to viatical settlement brokers.

The above lists are, by no means, exhaustive of the licensing and regulatory issues that may impact reciprocity. These are, however, the issues upon which the NARAB Working Group has opined. As new issues are brought to our attention, we will analyze such issues under the reciprocity standard described in this report.

BACKGROUND

Following passage of GLBA in 1999, the NAIC established the NARAB Working Group in order to interpret and apply the producer licensing reciprocity requirements of GLBA, determine which states were compliant therewith, and make a report with recommendations to that effect. The details of the NARAB provisions of GLBA are stated in the next section of this report.

On August 8, 2002, the NARAB Working Group adopted the *Report of the NARAB Working Group: Certification of States for Producer Licensing Reciprocity* (“2002 Report”), which established a reciprocity framework and recommended that 35 states be certified as reciprocal jurisdictions. Since the adoption of the 2002 Report, 12 additional jurisdictions have been certified as reciprocal, raising the total number of reciprocal jurisdictions to 47. The NARAB Working Group was disbanded in September 2002, and the Producer Licensing Working Group (PLWG) became the focal point for uniformity efforts in producer licensing.

In 2007, the NAIC commenced a producer licensing assessment process intended to review continuing GLBA reciprocity and compliance with the NAIC’s Uniform Resident Licensing standards. The assessment process included a comprehensive and searching analysis of state producer licensing procedures involving an initial self-assessment, peer review, and direct Commissioner or senior insurance department staff engagement. This state-by-state review culminated in the *NAIC Producer Licensing Assessment Aggregate Report of Findings* (“Producer Licensing Assessment Report”), which was issued on February 19, 2008. With respect to reciprocity, the Producer Licensing Assessment Report determined that all states previously certified as GLBA-compliant remained compliant with the standard established in the 2002 Report. The Producer Licensing Assessment Report also identified various requirements imposed upon non-residents that were not specifically addressed within the 2002 Report. The NAIC re-constituted the NARAB (EX) Working Group in order to determine whether these requirements impacted reciprocity. The Working Group, in turn, engaged the NAIC Legal Division to provide legal analysis of these issues.

On May 23, 2008, the NAIC Legal Division provided the NARAB Working Group with memorandum on “Additional Issues Identified in Producer Licensing Assessment Report” (“May 2008 Memorandum”). The May 2008 Memorandum provided recommendations to the NARAB Working Group as to whether the issues noted in the Producer Licensing Assessment Report impacted reciprocity. By conference call on June 26, 2008, the NARAB Working Group adopted the recommendations contained within the memorandum. The May 2008 Memorandum noted that the NARAB Working Group received written comments from regulators and interested parties identifying additional possible reciprocity issues not addressed in the Producer Licensing Assessment Report. In a legal memorandum dated November 19, 2008 on “Additional Potential Reciprocity Issues Raised in Written Comments” (“November 2008 Memorandum”) the NAIC Legal Division analyzed the possible reciprocity impact of these additional items. In some areas, the November 2008 Memorandum provided a recommendation; in other areas, additional information and study was required. The Working Group’s determination of the impact of these latter matters upon reciprocity is stated within this report.

In meeting our charge to “make final recommendations by the 2009 Summer National Meeting for revisions or additions to the [2002 reciprocity] standard,” the NARAB Working Group has utilized the 2002 Report, the Producer Licensing Assessment Report, the May 2008 Memorandum, the November 2008 Memorandum, regulator and interested party comments, and other additional research. Our intent is not to establish a new reciprocity standard. Rather, in adopting this report, we restate and reaffirm the basic analytical framework within the 2002 Report and supplement that reciprocity standard by applying it to issues not considered by our predecessor working group. The Working Group intends this report to provide greater clarity to the NAIC’s reciprocity standard. Upon NAIC adoption of this report, the NARAB Working Group will initiate a formal re-evaluation of state compliance with GLBA reciprocity utilizing the findings of this report in doing so.

NARAB PROVISIONS OF GLBA

GLBA requires that at least 29 jurisdictions meet the uniformity or reciprocity requirements of 15 U.S.C. § 6751 by November 12, 2002, in order to avoid the preemption of certain state producer licensing laws and the establishment of the National Association of Registered Agents and Brokers. The NAIC elected to pursue the reciprocity option with uniformity remaining the long-term goal for non-resident (and resident) producer licensing. Thus, pursuant to 15 U.S.C. § 6751(a)(2), a minimum of 29 jurisdictions must have enacted “reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those States” by November 12, 2002.

According to the reciprocity standard developed by the 2002 NARAB Working Group and included in the 2002 Report, a state must satisfy the following four conditions in order to be considered reciprocal for non-resident producer licensing under 15 U.S.C. § 6751(c) of GLBA:

- (1) Permit a producer with a resident license for selling and soliciting insurance in its home state to receive a license to sell or solicit the purchase of insurance as a non-resident to the same extent that the producer is permitted to sell or solicit insurance in its home state, if the home state also licenses reciprocally, without satisfying any additional requirements other than submitting (A) a request for licensure; (B) the application for licensure submitted to the home state; (C) proof of licensure and good standing in home state; and (D) payment of any requisite fee;
- (2) Acceptance of a producer’s satisfaction of its home state’s continuing education requirements as satisfying that state’s continuing education requirements, provided that the home state recognizes continuing education satisfaction on a reciprocal basis;
- (3) No requirements are imposed upon any producer to be licensed or otherwise qualified to do business as a non-resident that have the effect of limiting or conditioning that producer’s activities because of its residence or place of operations (excepting countersignature requirements); and
- (4) Each state meeting (1), (2) and (3) grants reciprocity to residents of all other states that satisfy (1), (2) and (3).

Additionally, the savings provision of Section 15 U.S.C. § 6751(f) provides that state laws or regulations purporting to regulate insurance producers (including laws on unfair trade practices, consumer protections, and countersignatures) need not be altered or amended for purposes of satisfying the reciprocity criteria unless that law or regulation is inconsistent with a specific requirement noted above and only to the extent of the inconsistency. While unfair trade practices and consumer protection laws are specifically mentioned, these types of laws are afforded no heightened protection and also are subject to the requirement of consistency with 15 U.S.C. § 6751(c). The savings provision should be construed in such a way as to allow state laws regulating producers generally to be saved while still achieving the Congressional intent to streamline licensing procedures and prevent discrimination against non-resident producers.

Under 15 U.S.C. § 6751(d)(1), the NAIC was required to determine whether the requisite number of states achieved reciprocity. As stated, the earlier NARAB Working Group was assigned the task of interpreting and applying the reciprocity requirements under GLBA, determining which states were compliant therewith, and making its report along with recommendations to its parent committee.

The expertise of the state insurance regulators in determining whether states meet reciprocity is recognized under 15 U.S.C. § 6751(d)(2). In the event of a legal challenge to the NAIC’s conclusion, 15 U.S.C. § 6751(d)(2) provides that the reviewing court shall apply the standards set forth in the Administrative Procedure Act. In relevant part, this statute states that a determination will not be overturned unless it found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” 5 U.S.C. § 706(2)(A). Furthermore, case law indicates that a reviewing court will consider three factors in examining a determination: scope of authority, whether the determination was arbitrary and capricious, and whether the decision-making process was procedurally valid. *Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc.*, 467 U.S. 837 (1984); *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971), *overruled on other grounds*, *Califano v. Sanders*, 430 U.S. 99 (1977). The Working Group believes that its process for considering reciprocity issues in 2002 and today meets the criteria established for affording deference to the NAIC’s reciprocity standard and determinations of state compliance therewith.

GLBA ANALYSIS OF SPECIFIC ISSUES

In 2002 and today, the NARAB Working Group has analyzed whether states may impose certain requirements on non-residents and remain compliant with GLBA reciprocity. The Working Group recognizes that many of these requirements are imposed in good faith as part of a state’s consumer protection regime. Where such requirements appear to go beyond the

letter of 15 U.S.C. § 6751(c), the Working Group has considered whether the requirements may be maintained as consistent with GLBA. In 2002 and today, the Working Group has utilized the expertise of state producer licensing directors, other interested regulators, the NAIC Legal Division and interested parties in developing a recommendation about the consistency of these requirements with reciprocity.

Following this introductory section is an issue-by-issue analysis of certain specific issues within the context of GLBA reciprocity. In some cases, we have re-produced in substantial part the recommendations of our predecessor NARAB Working Group. In doing so, we intend to reaffirm those findings by incorporating them directly within the report we adopt today.

A. Fingerprints and Background Checks

The following is re-produced, in substantial part, from the 2002 Report:

The Working Group addressed the issue of the due diligence states may perform in reviewing the qualifications of a non-resident applicant, including whether states may require fingerprints of non-resident applicants. With respect to state review of application materials, the Working Group determined that GLBA affords states the opportunity to determine that an applicant meets a particular state's qualifications for licensure, provided such due diligence required no additional submissions beyond the items permitted by 15 U.S.C. § 6751(c)(1). Therefore, the Working Group believes that states may perform background checks or other due diligence without being inconsistent with reciprocity.

During the course of its discussions, the Working Group considered whether fingerprints may be required as a means of performing an effective review of the applicant's qualifications. Within the context of reciprocity, the principal argument favoring a fingerprint requirement was that GLBA protected this requirement as an important consumer protection through application of the savings clause of 15 U.S.C. § 6751(f), and that fingerprints provide the most effective means of performing a background check. Arguments against fingerprints as a permissible requirement also focused on the savings provision and questioned whether such a requirement is “consistent” with the provisions of 15 U.S.C. § 6751(c).

After careful review, analysis, and extensive debate, the Working Group adopted the position that a fingerprint requirement for non-resident producer applicants is inconsistent with the reciprocity requirements under GLBA. 15 U.S.C. § 6751(c)(1) provides that non-resident producers be permitted to receive a license “without satisfying any additional requirements other than submitting” a request for licensure, the home state application or Uniform Application, proof of licensure and good standing in the home state, and the payment of required fees. After considering several alternatives for allowing fingerprints within the GLBA reciprocity formula, the Working Group determined that pre-licensing fingerprint requirements for non-resident producers constituted an “additional requirement” which is inconsistent with reciprocity under 15 U.S.C. § 6751(c)(1).

B. Surplus Lines Issues

1. Underlying Licensing Requirements for Surplus Lines Producers

In response to comments from interested parties, the Working Group evaluated whether states requiring non-residents to obtain non-resident general lines producer licenses – namely, property and casualty licenses – as a prerequisite to surplus lines licensure is inconsistent with GLBA reciprocity. This issue was addressed in the 2002 Report, which concluded that requiring a general lines license relates to regulation of the surplus lines market and was not an additional administrative requirement being imposed on non-residents. This conclusion was based on the following analysis:

As part of its analysis, the Working Group recognized the unique nature of the surplus lines market, relative to general lines of authority such as life and property. Surplus lines brokering is a specialized insurance producer function whereby producers secure insurance coverage generally unavailable from carriers licensed in that jurisdiction

Almost all States require resident surplus lines producers to first obtain a license to act as a general lines producer. **Generally, surplus lines producers must first search the admitted market as a prerequisite to searching the non-admitted market. Thus, both general lines and surplus lines authority are required in order to operate as a surplus lines producer.** In many cases, the rationale for the admitted market prerequisite is generally one of consumer protection. The surplus lines insurer, being a non-admitted carrier, is not subject to the jurisdiction of insurance regulatory authorities in that State. Further,

there is typically no guaranty fund coverage for risks insured in the non-admitted market. Many States require that insureds be notified of these facts.

In the non-resident licensing context, the question is whether a State requirement that non-residents obtain both general lines and surplus lines authority is an administrative or regulatory requirement. The Working Group concluded that requiring a general lines license relates to regulation of the surplus lines market and is not an additional administrative requirement being imposed on non-residents. **The general lines license gives the non-resident producer the authority, otherwise lacking, to search for coverage within the admitted market.** Generally speaking, without this authority, a surplus lines producer would be unable to fulfill his or her duty to first attempt to place business in the admitted market. Thus, the general lines license gives effect to the surplus lines license. Many States issue these two licenses in tandem. (Emphasis added.)

Interested parties recently commented that the factual premise upon which the NARAB Working Group reached this conclusion was flawed. In 2002, the Working Group appeared to have assumed that all surplus lines producers would be required to conduct diligent searches of the admitted market. Accordingly, the Working Group adopted an approach that states could require surplus lines producers to obtain an underlying general lines producer license as a condition to licensure as a non-resident surplus lines producer. Because it appears that all surplus lines producers are not required in all states and in all situations to conduct the diligent search, we have considered whether states may impose underlying general lines license requirements upon those non-resident surplus lines producers not conducting the diligent search.

In urging our re-consideration of the factual premise supporting the 2002 Report, the National Association of Professional Surplus Lines Offices, Ltd. (NAPSLO) pointed to the example of the wholesale business model by which many surplus lines transactions are accommodated. In this model, surplus lines producers are generally brought into the transaction *after* a general lines producer has already made a diligent search of the admitted market and has been unable to obtain traditional admitted insurance. NAPSLO further argued that the surplus lines producer often is not specifically required under state law to conduct its own search, such that a general lines license would not be necessary.

The potential reciprocity issue presented by the requirement that a surplus lines producer hold an underlying non-resident general lines license as a prerequisite to qualify for non-resident surplus lines licensure arises when the non-resident surplus lines applicant is not required to and does not perform the diligent search of the admitted market in the non-resident state. In this example, the general lines license requirement could result in the applicant being forced to qualify for a line of authority not sought – and not needed - from the non-resident state.

In providing a legal analysis of this issue in November 2008, the NAIC Legal Division noted that state laws and practices varied with respect to diligent search requirements. While many states appeared to permit the general lines producer to conduct or certify the diligent search, there were some states that required the surplus lines producer to perform the diligent search.

The Working Group recently surveyed state producer licensing directors and general counsels in order to determine which states required an underlying general lines license as a condition to licensure as a surplus lines producer and upon whom states imposed the requirement to conduct the diligent search. The results of this survey indicated a variance among state laws and practices, such that states appeared to fall into the following broad categories:

- (1) States that do not require a non-resident surplus lines producer to obtain an underlying general lines license;
- (2) States that require a non-resident surplus lines producer to obtain an underlying general lines license and specifically require the surplus lines producer to conduct the diligent search of the admitted market; and
- (3) States that require a non-resident surplus lines producer to obtain an underlying general lines license but impose the diligent search requirement upon the underlying producer in the transaction or upon the “producing broker.”

From this analysis, it is apparent that state underlying license and diligent search requirements are not as clear or as uniform as may have been understood in 2002. In adopting an approach to be utilized as part of an updated and ongoing reciprocity framework, the Working Group returns to the premise of its 2002 Report; that is, if a non-resident surplus lines producer is conducting the diligent search of the admitted market, the producer is performing both the surplus lines and general lines functions. It is not inconsistent with GLBA reciprocity to require the producer to secure authority to act as a general lines producer prior to performing this function. Provided the general lines producer license was also issued consistently with reciprocity requirements, the Working Group does not believe such an approach would be inconsistent with GLBA.

Returning to the categories listed above, the Working Group sees no reciprocity issues for states within categories (1) and (2). Where the state imposes no general lines producer licensing requirement, this issue is not present. Where states require the surplus lines producer to conduct the diligent search, the Working Group believes that state is justified in imposing an underlying general lines producer license requirement and that such requirement is not inconsistent with GLBA reciprocity for reasons stated in the 2002 Report.

For states falling within category (3), the Working Group is concerned about imposing underlying license requirements upon surplus lines producers who are not required by law or practice to conduct the diligent search. If the surplus lines producer is not conducting the diligent search, there does not appear to be another justifiable reason for imposing such requirement consistent with GLBA reciprocity.

The Working Group is mindful that some states may have adopted underlying license requirements for non-resident surplus lines producers in reliance on the 2002 Report, but we believe this clarification is necessary to preserve a reciprocity framework consistent with GLBA. For these states, the Working Group notes that we believe it would be consistent with reciprocity to continue to require underlying licenses for those surplus lines producers actually conducting the diligent search. For those surplus lines producers not performing the diligent search, we urge states to examine their statutes for provisions similar to Sections 8D and 16A of the Producer Licensing Model Act (PLMA) for authority to waive or otherwise remove any underlying license requirements. Section 8D of the PLMA provides that “[n]otwithstanding any other provision of this Act, a person licensed as a surplus lines producer in his or her home state shall receive a nonresident surplus lines producer license [by satisfying the four requirements listed in Section 8A of the PLMA].” Section 16A of the PLMA states that “[t]he insurance commissioner shall waive any requirements for a nonresident license applicant with a valid license from his or her home state, except the requirements imposed by Section 8 of this Act, if the applicant’s home state awards nonresident licenses to residents of this state on the same basis.” Further, the Working Group is willing to assist in developing a model bulletin for use by states in explaining any changes in interpretation or application of laws or procedures necessary to accommodate reciprocity requirements.

We note our opinion is limited to the issue of underlying license requirements for non-resident surplus lines producers. It should not be construed to raise questions about a state’s regulation of its surplus lines market through non-discriminatory application of general regulatory requirements, such as the filing of certifications or attestations about surplus lines transactions and premium tax reporting.

2. Surplus Lines Bonds

The following is re-produced, in substantial part, from the 2002 Report:

The Working Group examined the use of surplus lines bonds as both a pre- and post-licensing non-resident requirement. As a pre-licensing requirement, the Working Group determined that a surplus lines bond is inconsistent with reciprocity under GLBA. A consumer protection justification was not found to be available within the context of reciprocity. The savings provision is not a broad exemption for laws based upon a valid consumer protection justification. Rather, 15 U.S.C. § 6751(f) saves laws generally — including those related to consumer protection — provided they do not violate a specific requirement of the reciprocity provisions of 15 U.S.C. § 6751(c). The Working Group determined that a pre-licensing surplus lines bond is inconsistent with 15 U.S.C. § 6751(c), i.e., a pre-licensing surplus lines bond is an “additional requirement” and, therefore, states imposing such a requirement do not satisfy reciprocity under 15 U.S.C. § 6751(c)(1).

Likewise, with respect to post-licensing surplus lines bonds, the Working Group determined that these post-licensing requirements, which condition the use of the license on having such a bond in place, are inconsistent with GLBA reciprocity. The Working Group found that such a bond would be a de facto licensing requirement due to the inability of the producer to use the license without first posting a bond.

C. Appointments

1. Appointments and “Agent-Only” States

The following is re-produced, in substantial part, from the 2002 Report:

The Working Group identified states that do not recognize brokering activities in the sense that all producers/“agents” are agents of the insurer and thus require that producers/“agents” be appointed by an insurer even though such a requirement ordinarily may not exist for “brokers.” As a general rule, the Working Group believes that appointments are permissible under GLBA as long as they are not required as part of the licensing process. The “agent-only” states do not require an

appointment as a pre-licensing requirement, thereby avoiding the imposition of an additional requirement to licensure. Furthermore, appointment requirements are imposed upon companies, rather than producers, thus removing the burden from the producer seeking licensure. Accordingly, the Working Group did not find the imposition of such an appointment requirement to be inconsistent with reciprocity.

2. Requiring the Designated Responsible Producer (DRP) to be Licensed or Appointed Prior to the Issuance of a Non-Resident Business Entity License

The Working Group believes that requiring the DRP to be appointed prior to the issuance of a non-resident business entity license is inconsistent with GLBA reciprocity requirements.

GLBA does not distinguish between individuals and business entities with respect to the requirements that a reciprocal state may impose. The general reciprocity framework has been accepted to apply to business entity licensing as well as individual producer licensing. Therefore, to the extent a state conditions the acceptance of a non-resident business entity application on an additional submission as to the licensure status of the business entity's DRP, this practice would be inconsistent with GLBA reciprocity requirements.

The designation of a licensed producer responsible for the business entity's compliance with a state's insurance laws, rules and regulations stems from Section 6B(2) of the PLMA. This provision requires the commissioner to find the DRP has been designated "before approving the [business entity's] application." The DRP requirement serves to attach responsibility for regulatory enforcement issues to the individual DRP in addition to the associated business entity. Potential inconsistency with GLBA reciprocity arises if states inadvertently create a *de facto* additional submission requirement by barring the concurrent submission of business entity and DRP applications for licensure. In other words, the practice of requiring the DRP's individual application to be submitted and approved separately prior to the business entity's application creates the appearance of an impermissible additional submission requirement for the business entity application.

The potential reciprocity issue is remedied when states accept the business entity's application and the DRP's individual application at the same time. Clearly, the individual application must be processed first to ensure that the DRP is, in fact, licensed. As stated in the Producer Licensing Assessment Report, states should ensure there is a method of concurrent licensure and work to facilitate the licensing of a business entity and DRP at the same time. While requiring the DRP to be licensed prior to the issuance of a non-resident business entity license is a potential violation of the GLBA reciprocity requirements, the NARAB Working Group believes it is easily remedied by attention to the timing with which business entity and DRP applications are accepted for processing. Accepting business entity and DRP applications concurrently would be consistent with GLBA reciprocity.

With regard to requiring a business entity's DRP to be appointed by a carrier prior to the issuance of a non-resident business entity license, the 2002 Report found that, generally, appointments are permitted under GLBA provided they are not required as part of the licensing process. There appears to be no statutory or administrative basis for conditioning a business entity's licensure on the submission of appointment documentation for an individual producer, especially given that companies rather than producers are subject to appointment requirements. Therefore, the Working Group believes that requiring the DRP to be appointed prior to the issuance of a non-resident business entity license is inconsistent with GLBA reciprocity requirements.

D. Non-Resident Business Entity Licensing Issues

1. Requirement for Foreign Corporation to Register with Secretary of State to do Business in Another State

The Working Group believes that requiring a non-resident business entity to register to do business in the state is not inconsistent with GLBA reciprocity requirements. The Working Group further believes that requests for proof of Secretary of State corporate registration as a prerequisite for non-resident business entity licensing is also not inconsistent with GLBA reciprocity requirements.

This issue was addressed in the 2002 Report, which included the following analysis:

Corporate registration requirements are matters of State corporate law, whereby States require all business entities (not just those that are insurance-related) to register with the Secretary of State or an equivalent office. The Working Group believes that such requirements transcend issues of insurance licensing and relate to basic police powers of States to require registration of business entities. Thus, this requirement is not inconsistent with reciprocity.

No new facts or inconsistencies have been presented in the comments which would lead to the determination that the earlier conclusion of the 2002 NARAB Working Group was either incorrect or inappropriate. Absent any new information to consider, the Working Group is not inclined to alter its approach on this issue.

With respect to the practice of requiring proof of foreign corporation registration to do business in another state, we believe that this also relates to the basic police powers of the states and is not inconsistent with reciprocity. Nevertheless, NAIC members, the Working Group and PLWG have encouraged states to develop alternative means to verify this registration to ease the administrative burden on business entity applicants; e.g., direct electronic verification with the Secretary of State. Continued elimination of requests for proof of Secretary of State corporate registration as a prerequisite for non-resident business entity licensing was identified in the Producer Licensing Assessment Report as an issue that continues to necessitate Commissioner-level attention so that progress can be measured and nationwide elimination of this prerequisite as an insurance department licensing requirement is achieved. Therefore, while this practice is actively being discouraged by NAIC membership, the NARAB Working Group does not believe it is inconsistent with GLBA reciprocity requirements.

2. Requiring a Non-Resident Business Entity to Submit Articles of Incorporation

The Working Group believes that requiring a non-resident business entity to submit articles of incorporation is inconsistent with GLBA reciprocity requirements.

Organizational document requirements typically arise in conjunction with the concept of Secretary of State registration. The NAIC membership has worked actively to address the industry's concerns in this area, as detailed in the Producer Licensing Assessment Report. The 2002 Report discussed the reciprocity implications of the requirement to file proof of Secretary of State registration, concluding such requirements were not inconsistent with reciprocity.

With respect to requirements pertaining to organizational documents required by the insurance regulator independent of Secretary of State registration requirements, the Working Group believes that documentation of a business entity's organizational structure outside of information provided on the NAIC's Uniform Application for Business Entity Insurance Producer Licensing/Registration is an additional submission requirement. An organizational documentation requirement for non-resident entities appears to be aimed at facilitating communication by providing director and officer contact information to the insurance regulator. This is an administrative aid rather than a consumer protection measure, particularly because the applicant's resident state may collect the same information and corporate information is readily available in most, if not all, states through the Secretary of State or equivalent Web site. The requirement also appears to be imposed by administrative practice rather than statute or regulation.

It does not appear that the savings clause of 15 U.S.C. § 6751(f) is available to protect this practice. The savings clause only protects state requirements that are consistent with the GLBA reciprocity framework. As discussed above, this practice is not consistent with the reciprocity requirement limiting the documentation that may accompany non-resident producer license applications; therefore, the practice cannot be preserved pursuant to the savings clause. The Working Group believes that requiring a non-resident business entity to submit articles of incorporation is inconsistent with GLBA reciprocity requirements.

E. Requirements to Obtain Additional Licenses or Qualifications

1. Requiring an Underlying Life License Prior to the Issuance of a Non-Resident Variable Life License

The Working Group believes that requiring an underlying life license prior to the issuance of a non-resident variable life license is inconsistent with GLBA reciprocity requirements.

Variable life is a separate line of authority under Section 7A(5) of PLMA. Unlike other major lines of authority, most states do not have a separate insurance examination for variable life, and applicants must take a life insurance examination in order to be licensed to sell variable life insurance. As a result, states often require resident applicants to hold both a variable life and life producer license. Because the same examination qualifies applicants for both lines of authority, the common assumption is that applicants seek to obtain both licenses provided other qualifications are met. GLBA reciprocity concerns are raised when a state requires a non-resident variable life applicant to obtain qualifications for a life license or to submit proof of a valid life license, because this appears to be an additional requirement under 15 U.S.C. § 6751(c). Accordingly, the Working Group believes it would be inconsistent with reciprocity to require a producer to obtain a life license in order to sell variable life insurance in a non-resident state.

2. Requiring Individuals Seeking a Fraternal Non-Resident License to Have a Fraternal Certificate from a Company

The Working Group believes that requiring a non-resident applicant to submit a fraternal certificate is inconsistent with GLBA reciprocity requirements.

On its face, a fraternal certificate requirement for non-resident applicants is inconsistent with the GLBA reciprocity framework. It is documentation required to be submitted in addition to the permitted request for licensure, application, proof of licensure in good standing and applicable fee. It does not appear that the savings clause of 15 U.S.C. § 6751(f) is available to protect this practice because it creates an additional submission requirement inconsistent with the GLBA reciprocity framework. States with this requirement should consider whether the requirement can be waived as to non-resident applicants under Section 16A of the PLMA. The Working Group believes that requiring a non-resident applicant to submit a fraternal certificate is inconsistent with GLBA reciprocity requirements.

F. States Not Adopting the Major Lines of Authority Definitions of the PLMA

GLBA does not impose any requirement that states adopt uniform line of authority definitions. The specific requirement concerning the scope of license authority is that states “permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home state to receive a license to sell or solicit the purchase of insurance [in other reciprocal states] as a nonresident *to the same extent* that such producer is permitted to sell or solicit the purchase of insurance in its State.” 15 U.S.C. § 6751(c)(1) (emphasis added). Therefore, GLBA requires not definitional uniformity but that non-resident producer have the ability to sell or solicit “to the same extent” as permitted in the home state. Presumably, states have the flexibility to determine how to provide “to the same extent” authority to non-residents. Through the PLWG, states have established the goal of consistent scopes of authority by developing uniform definitions.

The Working Group believes uniform adoption of line of authority (LOA) definitions in Section 7A of the PLMA is the preferred approach to LOA consistency. In fact, it is important to note that adoption of the PLMA definitions of major LOAs, as well as definitions of the core limited LOAs, is part of the Uniform Resident Licensing standards. A state’s compliance status with any specific resident licensing uniform standard, however, does not necessarily translate into a reciprocity issue. Non-resident licensing reciprocity can be affected by how a state implements the uniform standards.

Inconsistent LOA definitions from state to state could possibly implicate the anti-discrimination element of GLBA reciprocity: whether any requirement is imposed upon any otherwise qualified non-resident producer that has the effect of limiting or conditioning the producer’s activities because of the producer’s residence or place of operations. If a difference in scope of authority between two states results in a producer being required to satisfy additional conditions in a non-resident state beyond those permitted under the GLBA reciprocity framework, then the LOA definitions, as applied in practice, may result in a barrier to entry based on the producer’s residence or place of operations.

The Working Group is not aware of specific examples of how LOA definitions have created, in practice, an obstacle to non-resident licensing. While a lack of definitional uniformity can lead to some difficulty in administering and tracking the qualifications of producers, the Working Group does not believe that inconvenience necessarily translates into a violation of reciprocity. To be sure, the potential exists for non-compliance with reciprocity. To avoid such a result, the Working Group urges states to enact the LOA definitions in Section 7A of the PLMA. For states that have not done so, the Working Group encourages such states to maintain department procedures to ensure non-residents can, in fact, sell or solicit “to the same extent” as permitted in the home state. The state assessment reviews indicate that practices are in place to accommodate minor wording differences in LOA definitions. Likewise, the PLWG has devoted considerable time to mapping and coordinating state LOAs to avoid any difficulties in practical application. These efforts have been carried through to NIPR business rules, which also serve to minimize LOA differences. Accordingly, the Working Group does not believe that lack of LOA definitional uniformity, standing alone, necessarily translates into inconsistency with GLBA reciprocity.

G. Verifying Legal Work Authorization for Non-U.S. Citizens Non-Resident Applicants

The Working Group believes that verifying the legal work authorization for non-resident applicants who are non-U.S. citizens is not inconsistent with GLBA reciprocity requirements.

The NAIC Legal Division previously noted that several states that may require non-resident producer license applicants to provide evidence of a legal work authorization if the non-resident applicant is not a citizen of the U.S. Most states implemented this practice because of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the “Welfare Reform Act”), 8 U.S.C. § 1601 et seq., which restricts the eligibility of non-U.S. citizens to receive state and

local benefits. Specifically, Section 1621(c)(1)(A) provides that state or local public benefits are broadly defined to include any “professional license . . . provided by an agency of a State or local government.” This has been generally interpreted to include insurance producer licenses.

The Welfare Reform Act does not address the issue of resident and non-resident license applicants, but simply requires the states to verify work status prior to issuing a license. While some have argued that checking a non-resident producer application for verification of legal work authority would be an “additional requirement” under GLBA, the Welfare Reform Act directs states to carry out this requirement. The rules of statutory construction provide that an implied repeal will only be found where the provisions in the two statutes are in irreconcilable conflict. In the absence of specific authority providing that GLBA is in conflict with the Welfare Reform Act, it may be inappropriate for the non-resident state insurance regulator to delegate this responsibility to the non-resident applicant’s state of residence. Therefore, the Working Group believes that verifying the legal work authorization for non-resident applicants who are non-U.S. citizens is not inconsistent with GLBA reciprocity requirements.

H. Enforcing/Verifying Minimum Age Requirements for Non-Resident Applicants

The Working Group believes that it is not inconsistent with GLBA reciprocity requirements for states to enforce minimum age requirements for non-resident applicants; however, the Working Group believes it is inconsistent with GLBA reciprocity for states to verify the age of a non-resident applicant through the submission of additional documentation.

The 2002 Report found that minimum requirements respecting the age of contracting parties in an insurance transaction do not contravene the spirit or letter of producer licensing reciprocity: “Minimum age requirements are grounded in state contract law, which allows minors to contract in very limited circumstances.” Age requirements can therefore be characterized as consumer protection laws, which are specifically mentioned under the savings provisions of 15 U.S.C. § 6751(f). Therefore, a state can enforce a minimum age requirement as to a non-resident applicant who is properly licensed and of minimum age in the applicant’s home state. For example, a state with a minimum age of 21 may decline to issue a license to a non-resident applicant who is 19 years old, even though the applicant is properly licensed in a home state where the minimum age is 18.

The question of “verifying,” as opposed to enforcing, minimum age requirements is different. The distinction hinges on whether a state requires the submission of documentation establishing an applicant’s legal age in addition to the date of birth collected on the uniform application. As stated previously, 15 U.S.C. § 6751(c) limits the submission requirements that may be imposed upon non-resident applicants. The savings clause of 15 U.S.C. § 6751(f) would not necessarily operate to protect a state requirement inconsistent with these four permitted steps. Therefore, if a state can confirm from either the application or by other means independent of an additional submission from the applicant that an applicant does not meet the state’s minimum age requirement, it may deny the issuance of a license. Accordingly, the Working Group believes it is inconsistent with GLBA reciprocity requirements to require the submission of additional documentation to verify a non-resident applicant’s age.

I. Requiring Non-Resident Producers to Renew Licensure Annually, while Resident Producers Renew Biennially

The Working Group believes that offering inconsistent terms of licensure for residents and non-residents is inconsistent with GLBA reciprocity requirements.

This requirement does not call for any specific additional submission on the part of the producer, nor is the term of licensure a specified element of the GLBA reciprocity framework. This requirement implicates the third element of GLBA’s reciprocity conditions: whether any requirement is imposed upon any otherwise qualified non-resident producer that has the effect of limiting or conditioning the producer’s activities because of the producer’s residence or place of operations. This element is traditionally cited as prohibiting residency limitations on the placement of certain business, such as state-funded projects or statutory funds. However, the effect of the requirement at issue limits the duration of a producer’s license because of the producer’s place of residence. This would seem to conflict with the anti-discrimination element of the GLBA reciprocity framework, even though no extra documentation is required to be presented with the renewal/continuation application.

It does not appear that the savings clause of 15 U.S.C. § 6751(f) is available to protect this practice because the basis for the practice appears to be inconsistent with the reciprocity framework even if there is consumer protection or other regulatory value inherent to this requirement. Therefore, the Working Group believes that offering inconsistent terms of licensure for residents and non-residents is inconsistent with GLBA reciprocity requirements.

J. Trust Accounts

The Working Group believes it is inconsistent with reciprocity to impose trust account requirements during the licensing process or in a discriminatory manner against non-residents, but does not believe trust account requirements of general application are necessarily inconsistent with reciprocity. The Working Group considered whether specific trust account requirements identified by the Independent Insurance Agents and Brokers of America (IIABA), as applied to non-resident producers, are inconsistent with GLBA reciprocity requirements. In written comments, the IIABA urged further consideration of whether these requirements are consistent with reciprocity: (1) obligating non-resident producers to maintain trust accounts in a financial institution with an office in the non-resident state; and (2) obligating non-resident producers to maintain funds related to business generated within the non-resident state in a separate state-specific trust account. The Producer Licensing Assessment Report and the individual state reports, including the underlying documentation, do not indicate that these requirements exist in any jurisdiction. Anecdotal information indicates that such requirements are not enforced as a prerequisite to licensure or through a licensure action.

The 2002 Report included a brief discussion of trust account requirements, but the Report did not specifically address the requirements raised by IIABA. The 2002 Report indirectly indicated that a requirement as to where a trust account should be maintained could have some bearing on GLBA reciprocity. Hypothetically, the requirements raised by IIABA could be inconsistent with GLBA reciprocity if implemented in a way that establishes submission requirements beyond those permitted by GLBA; e.g., the non-resident producer applicant might be required to submit proof of access to an account at a financial institution with an office in the non-resident state. It does not appear the savings clause of 15 U.S.C. § 6751(f) would protect such practices. Therefore, if trust account requirements specific to non-residents are imposed as a condition to licensure, the Working Group believes such requirements would be inconsistent with reciprocity.

The Working Group, however, does not believe trust account requirements imposed upon non-residents are inconsistent with reciprocity as a general rule. If a state imposes on all producers the general requirement to maintain a trust account, the Working Group believes such requirements would not implicate GLBA reciprocity unless they “limit or condition” the producer’s activities because of the producer’s residence or place of operation. Thus, the Working Group believes it is permissible for a state to require a non-resident producer to maintain a trust account somewhere as a general regulatory requirement unrelated to licensing, but we do not believe it would be consistent with reciprocity to require non-resident producers to maintain specific trust accounts in the non-resident state.

To the extent states impose trust account requirements as a condition to licensure or otherwise limit or condition the non-resident producer’s activities because of residence or place of operations, we encourage states to consider utilizing waiver authority or modifying statutory application to ensure general trust account requirements are applied in a manner consistent with reciprocity.

K. Verifying an Applicant for a Non-Resident License Renewal Has Paid All Undisputed Taxes and Unemployment Insurance Contributions

The Working Group believes that a tax verification requirement applicable to non-residents and implemented in such a way that it does not depend on additional documentation supplied by the applicant is saved under 15 U.S.C. § 6751(f), because it is not inconsistent with GLBA reciprocity requirements.

States’ tax clearance practices have been part of the reciprocity analysis since the 2002 Report but a detailed analysis has not been published. State consideration or verification of information derived from sources other than the applicant does not trigger the additional submission requirement element of the GLBA reciprocity framework. While GLBA limits the types of documentation a reciprocal state can require a non-resident applicant to submit, it does not address the information a state may consider or verify through sources other than the applicant.

This reasoning holds true for tax clearance as implemented in certain states as well as many other conditions of licensure such as the possible grounds for license denial, nonrenewal or revocation included in Section 12 of the PLMA. The background questions section of the NAIC Uniform Applications solicits a “yes” or “no” response on most questions and, with regard to tax clearance, asks for the applicable jurisdiction where a delinquency action exists. Thus, the implementation of a tax clearance requirement that does not require submission of proof by the applicant is not inconsistent with GLBA reciprocity. GLBA serves to limit the applicant’s documentation responsibilities and discriminatory state requirement practices as applied to non-residents; it does not serve to limit the information a state may consider in issuing or renewing a license.

Accordingly, the Working Group does not believe that a tax verification requirement applicable to non-residents and implemented in such a way that it does not depend on additional documentation supplied by the applicant is inconsistent with GLBA reciprocity requirements.

L. One-Time Training and Continuing Education Requirements

The Working Group believes that continuing education requirements based on federal mandates are not inconsistent with GLBA reciprocity requirements.

The issue is whether it is permissible to obligate non-residents to complete continuing education on a particular subject matter or product in order to obtain or renew a license to sell, solicit or negotiate insurance policies involving the specific subject matter or product. States regularly count specialized subject-matter training toward the total continuing education requirements applicable to resident producers. Assuming a producer maintains the same scope of licensure in both resident and non-resident jurisdictions, the potential reciprocity issue arises if the producer is forced to satisfy continuing education requirements in a non-resident state irrespective of the training completed in the producer's resident state. In 15 U.S.C. § 6751(c)(2), GLBA specifically provides that a reciprocal state must accept a non-resident producer's satisfaction of the home state's continuing education requirements as satisfying the non-resident state's own continuing education requirements.

Continuing education requirements specific to crop insurance and long term care partnership, as well as flood insurance, derive from federal mandates. Similar to the above analysis of the practice of verifying legal work authorization for non-resident applicants in accordance with a federal mandate, in the absence of any federal directive to the contrary, it appears that the specialized continuing education requirements described above must stand regardless of any perceived conflict with the GLBA continuing education element. The federally-mandated training described above is imposed by the federal government rather than the non-resident state, which arguably removes the training from the reciprocity analysis.

Further, some of the federal mandates were enacted post-GLBA: the flood insurance training requirement in 2004 and the long-term care training requirement in 2005. The canon of statutory construction known as *in pari materia* calls for statutes on the same general subject to be interpreted in harmony with each other whenever possible. The enactment of specific subject-matter training requirements subsequent to the continuing education reciprocity element of GLBA may be read to mean that Congress' intent was to apply the training requirements despite the potential conflict with producer licensing reciprocity.

Therefore, the Working Group does not believe that continuing education requirements based on federal mandates are inconsistent with GLBA reciprocity requirements.

M. Viatical Settlements

The following is re-produced, in substantial part, from the 2002 Report:

Two comment letters were received from an interested party dealing with the issue of whether reciprocal treatment should be afforded viatical settlement brokers. The interested party contended that those states requiring separate licensing for viatical settlement activities could not be considered reciprocal. Because GLBA includes a broad definition of "insurance producer" in 15 U.S.C. § 6766, the interested party argued that the term included persons who advise or facilitate viatical or life settlements, which would thus embrace viatical settlement brokers. Characterizing GLBA as envisioning licensing reciprocity or uniformity for this broad range of "insurance producers," the interested party concluded that states requiring separate viatical settlement licensure are not reciprocal. Additionally, during the Working Group's meeting on June 10, 2002, a representative of the interested party commented that he did not advocate reciprocity for viatical settlement brokers. Rather, it was argued that states failed to achieve reciprocity where producers may perform certain services in some states but require separate licensing to do so in others.

For purposes of the Working Group's task, this issue *is* one of reciprocity. The NAIC Legal Division previously examined the question of which insurance producers were entitled to reciprocity under GLBA. In May 2000, in response to requests from several state insurance regulators, the Legal Division issued a memorandum on this topic. The memorandum noted GLBA's broad definition of "insurance producer," but reviewed particularly the provisions requiring producer licensing reciprocity. The standards for achieving reciprocity provided in 15 U.S.C. § 6751(a) and (c) refer only to producers that sell or solicit the purchase of insurance. Therefore, GLBA only requires that reciprocity be extended to those classes of producers that sell or solicit insurance. Because they do not sell or solicit the purchase of insurance, viatical settlement brokers are not entitled to reciprocity regardless of the broad definition of "insurance producer."

Thus, the Working Group rejected the argument that GLBA entitles viatical settlement brokers to reciprocity in non-resident producer licensing or otherwise requires states to eliminate requirements that those who engage in viatical settlement activities be separately licensed to do so.

N. Limited Lines Issues

Consumer Credit Industry Association (CCIA) and World Access urged for special reciprocity and uniformity treatment for limited lines that are very narrow in scope and resemble service contracts. These issues have been referred to the PLWG for consideration. Because we are not presented with any specific reciprocity-related issues, the NARAB Working Group offers no specific comments on whether certain limited lines should be subject to special treatment. The Working Group notes that GLBA reciprocity applies to limited lines as well as major lines, but we will leave the present issues with the PLWG for consideration.

NEXT STEPS

GLBA appears to assume some process exists for measuring continuing compliance by states with the reciprocity mandates of 15 U.S.C. § 6751(c). Without mandating a particular process, 15 U.S.C. § 6751(e) states, in relevant part, that “[i]f, at any time, the . . . reciprocity required by subsection[] . . . (c) of this section no longer exists, the provisions of this subchapter shall take effect 2 years after the date on which such . . . reciprocity ceases to exist, unless the . . . reciprocity required by those provisions is satisfied before the expiration of that 2-year period.” The NARAB Working Group understands this provision to mean that, upon a determination by the NAIC that the required level of reciprocity among states no longer exists, the states would have two years to come back into compliance. If the states failed to do so, the NARAB entity would be established as set out in 15 U.S.C. §§ 6752-6765.

In adopting this updated reciprocity standard, the NARAB Working Group makes no specific finding about any individual state’s continuing compliance with GLBA reciprocity requirements. If this updated standard is accepted by the Executive Committee and Plenary, the Working Group will initiate a process for re-evaluating all states for reciprocity compliance, likely incorporating some form of checklist and self-certification as was done with the 2002 Report. Our re-evaluation of state compliance is not intended to raise any issues or concerns about certification of states based on the standards of the 2002 Report. This report is intended to supplement, rather than supersede, the conclusions of the 2002 Report. Because of the state producer licensing assessments and the consideration of additional issues not raised in 2002, more information is available to the Working Group. We intend to utilize this information to implement a reciprocity framework that reinforces and strengthens producer licensing reciprocity.

The Working Group recognizes that some states may need to seek legislative or administrative changes in order to meet an updated reciprocity standard. Additionally, states may wish to evaluate whether continuing compliance may be achieved through waiver or other insurance department action. The Working Group is committed to working with NAIC members and individual states in developing, by the 2009 Fall National Meeting, a detailed process for carrying out a formal reassessment of producer licensing reciprocity under the updated reciprocity standard described in this report.