

VIRGINIA COMMENTS - 4.24.19

Greg,
Attached are Virginia's comments. If there are any questions, please feel free to reach out to either myself or Richard Tozer, our licensing supervisor.

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Chapter 1

Modern Producer Licensing

The process for licensing insurance producers has had numerous phases. The first NAIC model on this subject was the NAIC *Agent and Broker Model*. The next phase was the NAIC *Single License Procedure Model*. Although development of the newest model began in the late 1990s, it was Congress' passage of the [Gramm Leach Bliley Act \("GLBA"\)](#) in 1999 that caused the NAIC to speed the development of the [Producer Licensing Model Act \("PLMA"\)](#).

Uniformity Provisions of the Gramm Leach Bliley Act Adopted in 1999

In order to achieve the licensing uniformity standards of GLBA, a majority of states had to satisfy all five of the following requirements:

1. Adoption of uniform criteria regarding a producer's integrity, personal qualifications, education, training and experience, which must include qualification and training on suitability of products for a prospective customer.
2. Adoption of uniform continuing education (CE) requirements.
3. Adoption of uniform ethics course requirements in conjunction with other CE requirements.
4. Adoption of uniform suitability requirements based on financial information submitted by the customer.
5. Elimination of nonresident requirements posing any limitation or condition because of the place of the producer's residence or business, ~~except for countersignature requirements.~~

One of the major provisions of the GLBA was a provision to create NARAB. While much progress was made to improve uniformity and streamline nonresident producer licensing, the NAIC endorsed the provisions of Terrorism Risk Insurance Program Reauthorization Act of 2015 (Public Law 107-297), which modified NARAB. These provisions, commonly referred to as NARAB II, were signed by President Barack Obama on Jan. 12, 2015.

NARAB II is intended to streamline the nonresident producer licensing process while preserving the states' ability to protect consumers and regulate producer conduct. NARAB II does not create a federal insurance regulator but establishes a nonprofit corporation, known as NARAB, controlled by its board of directors. The stated purpose of the legislation is to provide "a mechanism through which licensing, CE, and other nonresident insurance producer qualification requirements and conditions may be adopted and applied on a multistate basis without affecting the laws, rules and regulations, and preserving the rights of a state, pertaining to certain specific producer-related conduct."

NARAB is to be governed by a 13-member governing board comprised of eight state insurance commissioners and five insurance industry representatives subject to presidential appointment and Senate confirmation. NARAB, acting through its board of directors, will establish membership criteria through which producers can obtain nonresident authority to sell, solicit or negotiate insurance. Satisfaction of membership criteria means a producer can sell, solicit or negotiate insurance (and perform incidental activities) in any state for which a producer pays that state's licensing fee for any line(s) of insurance for which the producer is licensed in the home state. NARAB membership is not mandatory for producers.

The law preserves the rights of a state pertaining to resident licensing and CE, supervision and enforcement of conduct, and disciplinary actions for nonresident producers, and leaves intact a state's full range of authorities for resident producers. The PLMA also includes important disclosures to the states, addresses business entity licensing and protects state revenues.

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Through the efforts of the Producer Licensing (EX) Task Force and the Producer Licensing (EX) Working Group, the NAIC monitors state compliance with reciprocity guidelines. The NAIC also set a goal to create uniform licensing practices. The Producer Licensing (EX) Working Group has adopted a number of Uniform Licensing Standards and ~~guidelines, and~~ [guidelines](#) [and](#) continues to strive toward a more efficient licensing system among the states.

National Insurance Producer Registry

The NAIC has long advocated for increased use of technology to streamline licensing processes. In 1996, the NAIC collaborated with industry to create the Insurance Regulatory Information Network (IRIN) as a nonprofit affiliate of the NAIC. In 1999, the organization changed its name to the National Insurance Producer Registry (NIPR). The purpose of the NIPR is to work with the states and the NAIC to re-engineer, streamline and make more uniform the producer licensing process for the benefit of insurance regulators, the insurance industry and consumers. The NIPR worked with the NAIC to

develop and implement: 1) the Producer Database (PDB), which includes licensing information from 50 states, the District of Columbia and Puerto Rico, utilized by the industry for licensing and appointment information; and 2) the State Producer Licensing Database (SPLD) for use by insurance regulators.

States use the NIPR to link state insurance departments with the entities they regulate. Applicants and licensees can transmit licensing applications, insurers can transmit appointments and terminations, and both can transmit other information to insurance regulators in multiple states, thereby creating electronic solutions that are easy and efficient to use by the states and industry.

Additionally, using the subsequent launch of the Attachment Warehouse, an applicant who answers “yes” to any background question on the NAIC Uniform application can submit the required supporting documentation at the time he or she is applying for or renewing a license. The submission of a document to the Attachment Warehouse will trigger an email alert to the appropriate state(s) notifying the state(s) that supporting documentation has been submitted to fulfill document requirements pertaining to the “yes” answer on the background. The advantage to the producer and the state(s) is that the documentation can be sent to the Attachment Warehouse once, and all appropriate states will be notified and have the ability to view, download or print the document. The Attachment Warehouse also allows a producer to meet the requirement from the states to report and submit documentation related to any regulatory action taken against him/her. This enables the producer to meet this regulatory obligation quickly in order to comply with the typical state requirement for producers to report an action within 30 days. Through the use of the Attachment Warehouse, all states in which the producer is licensed -are notified with an email alert and have access to the document.

A complete list of jurisdictions using NIPR products and services is available at www.nipr.com. The website has an updated list of the states that are making active use of NIPR electronic processing. (Product List by State)

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Chapter 2

Producer Licensing Model Act Uniformity Provisions of the Producer Licensing Model Act

Through the PLMA, the NAIC created a system of reciprocity for producer licensing and also established uniform standards in key areas of producer licensing. The PLMA was initially adopted in January 2000. It was subsequently amended in October 2000 and in January 2005.

In December 2002, the Producer Licensing (EX) Working Group adopted a set of Uniform Resident Licensing Standards (URLS). In December 2008, the standards were revised and updated to incorporate standardization and uniformity for both resident and nonresident licensing. The standards were, therefore, renamed the ULS. The PLMA and the ULS are designed to complement each other and assist the states in creating a uniform system of producer licensing. In 2008, the Producer Licensing (EX) Working Group was charged with reviewing the ULS. Subsequent revisions were made to the ULS in August 2010 (limited lines definitions) and in August 2011 (definitions for certain non-core limited lines). The revised standards are included in the Appendix, and updates can be found on the Producer Licensing (EX) Working Group's web page on the NAIC website.

The key uniformity provisions of the PLMA are:

1. Definitions for "negotiate," "sell" and "solicit," and uniform exceptions to licensing requirements.
2. An application process for both resident and nonresident producer license applications that uses the NAIC Uniform Application for resident and nonresident producers.
3. Definitions for the six major lines of insurance: Life, Accident and Health, Property, Casualty, Personal Lines, and Variable Life or Annuity Products.
4. Exemptions from completing prelicensing education and examinations for licensed producers who apply for nonresident licenses.
5. Standards for license denials, non-renewals and revocations.
6. Standards regarding which individual producers and business entities may receive a commission related to the sale of an insurance policy.
7. Standards for producer appointments for states that have an appointments system.
8. Procedures for insurance regulators, companies and producers to report and administratively resolve "not for cause" and "for cause" appointment terminations.
9. A definition for limited lines insurance. The Producer Licensing (EX) Working Group has adopted a recommended list of limited lines licenses, as set forth in the ULS, and has encouraged states to eliminate licensing categories for other lines of insurance.

Other Key Provisions of the Producer Licensing Model Act

The PLMA also contains a number of provisions that promote simplified licensing procedures.

Home State

The intent of the PLMA is for a producer to have one state of residence. Section 2(B) of the PLMA defines this concept as the home state:

"Home state" means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer."

A producer is permitted to designate either the actual state of residence or the principal place of business as the home state. The PLMA does not specifically prohibit the existence of two home state licenses. The producer may select either the resident state or the principal place of business. This option was intended to accommodate a producer who lives in one state but maintains his/her/their business in another state. However, it was the intent of the drafters for one state to be designated as the home state to prevent forum shopping. The Producer Licensing (EX) Working Group has discouraged any state from adopting a stance that a producer can maintain two home states.

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Change of Home State

Under the PLMA, there is now a simplified process for producers who move from state to state and were in good standing prior to the change of residence.

Section 9 of the PLMA provides a mechanism for licensed producers to maintain an active license when changing the state of residence. Section 9 (A) creates an exemption from prelicensing education or examination for a producer who moves into a state who was previously licensed for the same lines of authority in another state. In this scenario, the producer receives a new resident license for the same lines of authority, so long as the producer applies for a resident license within 90 days of the cancellation of the producer's previous license and the producer was in good standing in the prior state.

Section 9(B) creates an exemption from prelicensing education or examination for a line of authority held by a former nonresident producer who moves into a state and becomes a resident of that state. In practice, when a nonresident becomes a resident, that producer is to be granted the same lines of authority previously held, so long as the producer applies for a resident license within 90 days of establishing legal residence. States are not to impose prelicensing education or an examination on a nonresident producer who subsequently moves into another state and declares it to be the home state, unless "the commissioner has determined otherwise by regulation."

Under the PLMA, letters of certification were eliminated as a prerequisite to granting a nonresident license. The SPLD provides verification of good standing in the producer's home state.

One unresolved issue is the long-established practice of requiring a letter of clearance for producers changing their resident state. ~~Despite the fact that~~ Even though the PLMA does not contain any reference to a letter of clearance, some states still require the producer to provide a letter of clearance from the former state before the new state will grant the producer an active resident status despite the fact that all states have access to the Producer Database ("PDB"). Other states grant the new nonresident license but continue to monitor the producer's record to make sure that the prior resident license changes in status from resident to nonresident. This is done to prevent the producer from holding two active resident licenses.

The Producer Licensing (EX) Working Group and NIPR have identified this as an issue that could best be resolved by the establishment of an electronic method for the producer to communicate the desired changes to all affected states in one transaction. NIPR's launch of the Contact Change Request (CCR) service allows individual producers for many states to change their physical addresses, email addresses, phone numbers and fax numbers. The Producer Licensing (EX) Working Group will turn its attention to solving the issues surrounding a change of resident state once all states have fully implemented the CCR service.

Commissioner Discretion

The PLMA contains language that allows a state to adopt regulations to cover a state-specific situation. States should carefully consider the impact that deviation from the PLMA might have on NAIC uniformity and reciprocity initiatives.

Section-by-Section Summary of the Producer Licensing Model Act

The full text of the PLMA is in the Appendices.

Section 1: Purpose and Scope

- To promote efficiency and uniformity in producer licensing.

Section 2: Definitions

- Defines the terms "home state," "limited lines insurance," "sell," "solicit," "negotiate" and other pertinent terms.

Section 3: License Required

Section 4: Exceptions to Licensing

- Lists the persons and entities that do not need licenses, even though they participate in the insurance industry.

Commented [RT5]: Note regarding the inability for agencies to update their contact information and NIPR's desire to resolve that issue?

Commented [RT6]: All states have implemented CCR.

Section 5: Application for Examination

- Requires that producers must pass an examination in the lines of authority for which application is made.
- Allows use of outside testing services to administer examinations.

Section 6: Application for License

- Sets forth the qualifications for licensure as an individual or business entity.
- Provides that limited line credit insurers must provide instruction to individuals who will sell credit insurance.

Section 7: License

- Sets forth the six major lines of authority, the limited line of credit insurance and any other line of insurance permitted under state laws or regulations.
- Provides guidelines for license continuation and reinstatement.
- Provides for hardship exemptions for failure to comply with renewal procedures.
- Lists the information the license should contain.
- Requires licensees to notify the insurance commissioner of a legal change of name or address within thirty (30) days of the change.

Section 8: Nonresident Licensing

- Requires states to grant nonresident licenses to persons from reciprocal states for all lines of authority held, including limited lines and surplus lines insurance, if those persons are currently licensed and in good standing in their home states.
- Requires a nonresident licensee who moves from one state to another to file a change of address and certification from the new resident state within thirty (30) days with no fee or application.

Section 9: Exemption from Examination

- Exempts licensed individuals who change their home state from preclicensing and examination.
- Requires a licensed nonresident who becomes a resident to register in the new home state within ninety (90) days of establishing legal residence, unless "the commissioner determines otherwise by regulation."

Section 10: Assumed Names

- Requires a producer to notify the insurance commissioner prior to using an assumed name.

Section 11: Temporary Licensing

- Allows temporary licensure for up to 180 days without requiring an exam when the insurance commissioner deems that the temporary license is necessary for the servicing of an insurance business in specific cases.

Section 12: License Denial, Non-renewal or Revocation

- Lists 14 grounds for denial, non-renewal or revocation of a producer license.

- Provides that a business entity license may be revoked if an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation, and the violation was not reported to the insurance commissioner nor was corrective action taken.

Section 13: Commissions

- Prohibits payment of commissions or other compensation to or acceptance by an unlicensed person for "selling, soliciting or negotiating" insurance.
- Allows payment of renewal commissions to an unlicensed person if the person was licensed at the time of the sale, solicitation or negotiation.
- Permits payment or assignment of commissions or other compensation to an insurance agency or to persons who do not sell, solicit or negotiate, unless the payment would violate rebate provisions.

Section 14: Appointments (optional)

- Prohibits a producer from acting as a producer for an insurer unless appointed. The insurer appoints the producer either within 15 days from the date the agency contract is executed or within 15 days from the date that the first insurance application is submitted.
- Sets forth processes for initial and renewal appointments.

Section 15: Notification to the Insurance Commissioner of Termination

- Requires the insurer to notify the insurance commissioner within 30 days following the effective date of termination of a producer's appointment, if the termination is for cause. The insurer also has a duty to promptly notify the insurance commissioner of any new facts learned after the termination. When requested by the insurance commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.
- If termination of a producer is not for cause, the insurer must notify the insurance commissioner within 30 days following the effective date of termination.
- Sets forth a detailed process for notifying the producer and for a producer to submit comments to the state.
- Provides that in the absence of actual malice, insurers have immunity from any actions that result from providing information required by or provided pursuant to this section.
- Contains penalties for insurers who fail to report or who report with actual malice.
- Requires that documents furnished to the insurance commissioner pursuant to this section shall be confidential and privileged.

Section 16: Reciprocity

- A state cannot impose additional requirements on nonresident license applicants who are licensed in good standing in their home state other than the requirements imposed by Section 8 of the PLMA, if the applicant's home state grants nonresident producer licenses on the same basis.
- A nonresident's satisfaction of CE in the producer's home state shall constitute satisfaction of all CE requirements in the nonresident state, if the home state practices CE reciprocity.

Section 17: Reporting of Actions (By Producers)

- A producer must report any administrative actions taken in another jurisdiction or by another government agency in the home jurisdiction within thirty (30) days of the final disposition of the matter.

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- A producer shall report any criminal prosecution taken in any jurisdiction within 30 days of the initial pretrial hearing date. The report must include the legal order, relevant court documents and the original complaint.

Section 18: Compensation Disclosure

- In any instance when a producer will receive compensation from a customer for placing an insurance policy and also will receive compensation from an insurer for that placement, prior to placing that policy, the producer is required to disclose to the customer the amount and sources of compensation the producer will receive, if the customer makes an insurance purchase.

Section 19: Regulations

- The insurance commissioner may promulgate reasonable regulations to carry out the purposes of the PLMA.

Section 20: Severability

Section 21: Effective Date

Frequently Asked Questions

The Producer Licensing (EX) Working Group has created several documents that answer frequently asked questions (FAQ) about reciprocity, uniformity and how to administer the PLMA. The current version of the FAQ as of the publication date appears below. The latest version of these documents can be found on the Producer Licensing (EX) Working Group's web page on the NAIC website.

PLMA Implementation - FAQ

This document has been prepared by the NAIC's Producer Licensing (D) Working Group for informational purposes only. The following questions and answers are based upon the language of the PLMA. This document is not intended as legislative history or to replace a state insurance department's independent review and analysis of these questions. The contents of this document should not be interpreted as representing the views or opinions of the NAIC or of any individual NAIC member or state insurance department.

Question 1: Is Section 14 of the PLMA regarding appointments, which is labeled "optional," intended to be optional for adoption by a state that requires insurer appointments of producers?

Answer 1: No. If a state requires appointments, it should adopt Section 14. It was labeled "optional" only to accommodate those states that do not require appointments—e.g., [Colorado](#).

Question 2: PLMA Section 14B starts a clock of 15 days for insurer compliance by providing that "the appointing insurer shall file ... within 15 days from the date the agency contract is executed or the first insurance application is *submitted*" (emphasis added). When is an application deemed "submitted"?

Answer 2: An application is *submitted* when it is dated received by the insurer. The use of any other event will undermine the ability of the states and insurers to achieve uniform national practice for regulatory notifications. This is because any other temporal event is unknown to the insurer, which has the compliance responsibility. That is, "submitted" should not mean when a producer mails an application, since different producers might use different means of communicating applications; different producers will mail applications at different times; mail pick-up and delivery varies among localities, etc. The one certain time of submission is when the application is dated received by the insurer.

Question 3: If a state adopts PLMA Section 14, is there an option for the state to require an insurer to execute an agency contract with a producer prior to accepting the first insurance application from a producer that has not yet been appointed?

Answer 3: No. PLMA Section 14B provides that "the appointing insurer shall file, in a format approved by the insurance commissioner, a notice of appointment within 15 days from the date the agency contract is executed **or** the first insurance application is *submitted*" (emphasis added). The use of the word "or" in the model act clearly allows an insurer to notice

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Commented [RT9]: A lot of debate and confusion regarding when an appointment should be filed in the past. Different interpretations of the PLMA. In 2015 questions were raised about the PLMA language to the PLWG. The primary issue was some states interpreted the language to mean that appointments shall be filed within 15 days from the date the agency contract was executed, OR the first insurance application was submitted, whichever comes first. Most insurers were interpreting the language as a choice for appointment processing, or Just In Time. The WG debated and decided to research further and perhaps update the FAQ for clarification.

appointment upon the earliest of the two events. Pennsylvania has adopted modified language and is not in complete agreement with this answer.

Question 4: Since the PLMA works toward uniform national procedures by eliminating the traditional distinctions between agents and brokers for purposes of licensure, is it appropriate to require appointments of producers acting as brokers?

Answer 4: No. PLMA Section 14A makes clear that an insurer need only appoint producers “*acting as agents on behalf of the insurer.*” Inasmuch as brokers are not appointed, notification of appointments of brokers is not required.

Question 5: Must a business entity reside in a state to obtain a producer license?

Answer 5: No. Section 8 outlines the requirements that a person must fulfill in order to obtain a nonresident license, and the definition of “person” (see PLMA §2L) makes clear that this section applies to the licensing of both individuals and business entities. Section 8 is devoid of any residency requirement, and a nonresident business entity should be able to obtain a nonresident producer license if business entities are required to be licensed by the insurance department at all. In addition, states that impose residency requirements on business entities are likely not compliant with National Archives and Records Administration (NARA) provisions of the GLBA.

Question 6: Should the record of producer qualifications obtainable from the NIPR SPLD satisfy all certification requirements for state licensing?

Answer 6: Yes. PLMA Section 7G, Section 8B and Section 9 make clear that states should adopt and use the SPLD record for all regulatory purposes.

Question 7: Should a state require that a resident be licensed as a producer if he or she is entitled to renewal or other deferred commissions produced in another state?

Answer 7: No. PLMA Section 3 and Section 13C indicate that a producer license is required to sell, solicit or negotiate the sale of insurance, but do not suggest that a license is needed after such activity has ceased. The person’s receipt of renewal or other deferred commissions does not result in any licensing requirement.

Question 8: Are insurers alone responsible for educating those persons who sell limited lines credit insurance products?

Answer 8: Yes. PLMA Section 6D requires such insurers to furnish the program of instruction to those who sell limited lines insurance. The program is filed with the insurance commissioner in most states.

Question 9: Does reciprocity pursuant to Section 8 of the PLMA require recognition of a nonresident line of authority when the state in which the nonresident license is sought does not recognize a line of authority for resident producers?

Answer 9: Yes. For example, the reciprocity mandates of Section 8E should be respected for a limited line of authority, as is the case with any other line of authority. Consequently, states should be prepared to recognize the authority on a nonresident basis.

Question 10: What process is to be followed by a producer in identifying a new “home state” without the loss of his or her license to do business in the prior home state?

Answer 10: The producer should notify the prior home state of his or her change of address and intent to apply for a resident license in the new home state. The producer must apply for resident license in his or her new home state. Pursuant to Section 9 of the PLMA, the producer or applicant is not required to complete any prelicensing education or examination in order to secure the new resident license.

Question 11: What process is to be followed by the new home state insurance regulator with regard to a producer changing his or her state of residency?

Answer 11: The new home state should process the producer’s application, issue a resident license if warranted and, if issued, notify the SPLD of the producer’s new status as a resident licensee.

Question 12: What is the process to be followed by the prior home state insurance regulator?

Answer 12: At the time the producer notifies the prior home state insurance regulator of a change of address, the prior home state insurance regulator should send to the SPLD a report of “active with notice of transfer of residency to [the new home state],” identifying the new state of residency. Upon PDB notification of the new resident state licensure, the prior home state resident license is replaced with a nonresident license for the duration of its term. It is noted that time frames for notice to the states of a change in address are stated in the PLMA.

Question 13: If a commission is paid to enroll a customer in a group credit insurance policy, must the enroller be licensed?

Answer 13: Yes. An individual who enrolls customers under a group insurance policy must obtain a limited lines license if a commission is paid. PLMA Section 4B(2) provides an exception from licensing if no commission is paid to the enroller and the enroller does not engage in selling, soliciting or negotiating.

Question 14: May an individual sell, solicit or negotiate group credit insurance coverage without a license?

Answer 14: No. An individual must have a limited lines license before he or she can sell, solicit or negotiate the purchase of group insurance. While PLMA Section 4B(2) provides an exception for securing and furnishing information in connection with group insurance coverage, there is no such exception from licensing for selling, soliciting or negotiating group insurance coverage.

Question 15: Can a person enrolling someone in a group insurance policy secure and furnish information about the policy to a customer and still be exempt from licensure?

Answer 15: Yes. As set forth in Section 4B(2) of the PLMA, there is an exception that allows a group enroller to secure and furnish information about the group insurance policy to a customer, provided no commission is paid or there is no selling, solicitation or negotiation. However, Section 4B(2) generally recognizes an exception for purposes of enrolling individuals under plans, issuing certificates under plans, assisting with the administration of plans, and performing administrative services related to the mass marketing of property/casualty (P/C) insurance.

Note: It is important to note that individual state laws and factual circumstances will control in determining whether an activity involves selling, solicitation or negotiation. Likewise, the states will have discretion in interpreting what activities constitute the “securing or furnishing” of information.

Question 16: With regard to products sold by life insurers, does the qualification in the PLMA that a person shall not sell, solicit or negotiate insurance “in this state” without a license mean that the producer must be licensed in the state(s) where the: 1) sale, solicitation or negotiation occurs; or 2) policyholder principally resides?

Answer 16: In those states that have adopted the PLMA, licensure should be based upon where a producer “sells, solicits or negotiates” insurance, as specifically stated in the PLMA. In traditional insurance sales transactions, licensure should be determined solely by this PLMA standard without reference to the state of residence of the insured. Application of the “sells, solicits or negotiates” standard where an insurance transaction takes place purely by electronic or telephonic means is more complex. In such transactions, application of the PLMA licensure standard should turn on the state of residence of the customer.

Question 17: Section 14B of the PLMA states: “To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the insurance commissioner, a notice of appointment within 15 days from the date the agency contract is executed or the first insurance application is submitted.” In a situation where a producer is not currently appointed by an insurer, but was previously appointed by and submitted an application to that insurer, must that producer now obtain a new appointment before submitting a new application to that insurer because it would not be the first application the producer ever submitted to that insurer?

Answer 17: No. Section 14B of the PLMA requires appointment within 15 days of the date an insurer receives the first application submitted by a producer who is not currently appointed, even if that producer was previously appointed by that insurer and submitted business in the past. Reference to the agency contract or the first application is based on the current time period. If a producer's prior appointment with the insurer was terminated, each jurisdiction would consider the time period to start again with the new contract execution or the time period when the agent submits his first insurance application following the prior termination.

Chapter 3

Uniform Licensing Standards

In 2002, the Producer Licensing (EX) Working Group adopted the Uniform Resident Licensing Standards (URLS). The standards were revised and updated to incorporate standardization and uniformity for both resident and nonresident licensing. The standards were renamed to the [Uniform Licensing Standards \(ULS\)](#) in 2008. These standards will be referenced throughout this Handbook. The full text of the ULS is in the Appendices. The latest information can be found on the Producer Licensing (EX) Working Group's web page on the NAIC website.

These standards establish an important baseline to assure insurance regulators that all states are applying the same standards to resident applicants. The Producer Licensing (EX) Working Group monitors compliance with the uniform standards. Since the adoption of the ULS, the Producer Licensing (EX) Working Group has adopted interpretative guidelines and clarifications to further explain the proper implementation of the ULS.

The ULS contain guidelines in the following categories:

1. Licensing qualifications.
2. Prelicensing education training.
3. Producer licensing test.
4. Integrity/personal qualifications/background checks.
5. Application for licensure/license structure.
6. Appointment process.
7. CE Requirements.
8. Limited lines uniformity.
9. Surplus lines standards.
10. Commercial line multistate exemption standard.
11. Commission sharing.

Initial and Renewal Producer License Applications

The Producer Licensing (EX) Working Group has adopted initial and renewal NAIC Uniform Applications for resident and nonresident individuals and business entities. Under the ULS, states are directed to use the Uniform Applications rather than state-specific applications. The Producer Licensing (EX) Working Group has established a schedule for review and update of the applications. States are encouraged to use the most current form of the Uniform Applications. The forms are available on the NAIC website. All NIPR online applications use the most recent approved uniform initial and renewal application forms.

Recommended Best Practices for Insurance Regulators

- Conduct a regular review of state business rules, as well as any state-specific requirements for paper and electronic applications that are posted on NIPR's website, with the NIPR or other vendor to maintain compliance with reciprocity and the ULS.
- Consider whether existing business rules are statutorily required. To the extent they are not statutorily required, they should be removed. To the extent they are statutorily required, the state licensing director should consider whether they are necessary. To the extent they are not necessary for consumer protection, the insurance commissioner should take steps to attempt to have such statutory requirements repealed (e.g., sponsor legislation).
- Carefully consider whether licensing staff should be given authority to change internal business rules or to give direction to a vendor without the licensing director's approval. A change in procedure that may seem to be appropriate could cause problems with reciprocity or the ULS.
- If a state uses an outside vendor to receive and process license applications, monitor the vendor to ensure that applicants are provided only the most current NAIC uniform application, whether the applicant applies or renews online or via paper application.
- Adapt the department website to direct applicants to a single electronic location to obtain the most current version of the NAIC uniform forms, or specifically to the link for the electronic process.
- Departments should encourage the use of electronic processes, when available, rather than paper processes to expedite the licensing process.
- Eliminate all state-specific application forms, and use only the most recent version of the NAIC uniform forms.

- Develop a procedure manual, and cross-train staff so that several personnel can perform all licensing tasks.
- Provide adequate notice of changes to licensing and appointment fee structures, as well as changes to applications and other forms required to be submitted by applicants. With regard to the transition from an old application form to a new form, states should continue to accept original, signed applications up to a reasonable transition period beyond the inception date for the new form. Prior to the effective revision date, the state should provide adequate notice by way of email, website updates and any other appropriate communication device to interested parties.

Chapter 4

Nonresident Licensing

The previous reciprocity provisions of the GLBA adopted in 1999 required that barriers to nonresident producer licensing be eliminated. The PLMA contains specific guidance on this issue. A producer licensed in good standing in the home state must be granted a nonresident license unless good cause for denial exists under Section 12 of the PLMA.

There are four key components to licensing reciprocity:

1. Administrative procedures.
2. CE requirements.
3. Elimination of any limitations on nonresident.
4. Reciprocal reciprocity.

Administrative Procedures

Under the previous administrative procedures for reciprocal licensing mandated by the GLBA, a nonresident person received a nonresident producer license if:

1. The person was currently licensed as a resident and is in good standing in the person's home state.
2. The person submitted the proper request for licensure and paid the fees required by the nonresident state's law or regulation.
3. The person submitted or transmitted to the insurance commissioner the application for licensure that the person submitted to the person's home state or, in lieu of that, a completed NAIC Uniform Application.
4. The person's home state awarded nonresident producer licenses on the same basis to residents of the state in which the applicant is seeking a nonresident license.

States were required to license nonresident applicants for at least the line of authority held in the home state. This was true even if the line of authority held in the applicant's home state may not have precisely aligned with the major or limited lines of authority in the other state. States were not allowed to charge a licensing fee to a nonresident that was so different from the fee charged a resident so as to be considered a barrier to nonresident licensure. States also were not allowed to collect fingerprints from nonresident applicants.

Section 8(C) of the PLMA makes it clear that a licensed nonresident producer who changes residency is not required to surrender the license and submit a new application. All that is required is a change of address within thirty (30) days of the change of legal residence. The model provides that a state should not charge a fee for processing this change of address.

The reciprocity provisions of the PLMA also extend to surplus lines producers. A majority of states treat surplus lines as a distinct license type. Persons holding surplus lines producer licenses in their home states shall receive nonresident surplus lines producer licenses, unless some other reason for disqualification exists.

A producer holding a limited line of insurance is eligible for a nonresident limited lines producer license for the same scope of authority as granted under the license issued by the producer's home state. The nonresident state may require only what is permitted under Section 8 of the PLMA for limited lines applicants. A limited line is any authority that restricts the authority of the licensee to less than the total authority prescribed in the associated major line.

Continuing Education Requirements

Pursuant to the PLMA, a nonresident state must accept the producer's proof of the completion of the home state's CE requirements as satisfaction of the nonresident state's CE requirements, if the nonresident producer's home state recognizes the satisfaction of its CE requirements imposed upon producers from the nonresident state on the same basis.

Limitations on Nonresidents

States had to eliminate licensing restrictions that required a nonresident producer to maintain a residence or office in the nonresident state so long as the nonresident's license was from one of the U.S., the District of Columbia or the U.S. territories. The NARAB Working Group stated it was not a violation of GLBA reciprocity requirements if a state required nonresidents to provide proof of citizenship; however, under the ULS, it is the responsibility of the resident state to verify an applicant's citizenship status.

Reciprocal Reciprocity

To comply with the reciprocal reciprocity provisions of the GLBA, a majority of the states had to meet all three of the above components and grant reciprocity to all residents of the other states who have met those components.

Reciprocity Examples

The PLMA contains specific guidance on the proper reciprocal treatment that a state licensing director should grant. This chapter contains illustrative examples of these provisions. Unless otherwise specified, these examples assume that the applicant is in good standing in the home state and has not requested a change in line of authority (LOA). There are some states that did not adopt all the reciprocity standards previously required by the GLBA in 1999 and currently reflected in the PLMA. The answers to the following examples will vary when a nonreciprocal state is involved. Examples also can be found in the Producer Licensing (EX) Working Group *Frequently Asked Questions* contained in Chapter 1.

- Example A

A producer whose home state is State A has a nonresident license from State B and State C and moves to State D as the producer's new home state.

What should happen: The producer timely files a change of address in State A, State B and State C. State A changes the license from resident to nonresident. State B and State C record a change of address. The producer should apply for a license with State D within 90 days. State D should issue the license and may not require the producer to complete either an examination or prelicensing education; State D should verify that the license was in good standing in State A via the SPLD.

- Example B

A producer who holds a line of authority for surety in the home state, State A, applies for a nonresident license in State B, which does not have a separate surety line of authority.

What should happen: State B issues a license that has multiple LOAs, including surety LOA, that the producer holds in the home state, [State A](#), but the producer is limited to the surety LOA [in State B](#), held in his or her home state, [State A](#).

- Example C

A producer's home state, State A, does not have a prelicensing education requirement for any LOA, and the producer holds a life insurance LOA. The producer applies for a nonresident license in a state that has a prelicensing education requirement.

What should happen: State B issues a nonresident license with the life LOA and does not require any prelicensing education before issuance.

- Example D

A producer's home state, State A, does not have a prelicensing education requirement for any LOA, and the producer holds a life insurance LOA. The producer holds a nonresident license from State B that has a prelicensing education requirement. The producer moves into that state.

What should happen: State B should issue a resident license to the producer with a life LOA and does ~~not~~ require prelicensing education or completion of an examination before issuance, “except where the commissioner determined otherwise by regulation.” (See PLMA Section 9B.)

- Example E

A producer’s home state, State A, has a prelicensing education requirement and a CE requirement that is less than the ULS, and the producer holds a life insurance LOA. The producer applies for a nonresident license in State B, which has a prelicensing requirement that matches or exceeds the ULS and a CE requirement that matches the ULS.

What should happen: State B issues the nonresident license with the life LOA and does not require the completion of either additional prelicensing education or additional CE.

- Example F

A nonresident producer applies for the variable products LOA in State A. A check of the SPLD reveals that the applicant is not licensed for variable products in the home state, State B. Upon investigation, it is learned that State B either issues life or variable as a combined LOA or has a requirement for variable products licensing, but it is not specifically tracked by the Department of Insurance (DOI).

What should happen: This is a challenge, as State B has failed to adopt the variable products line of authority as defined in the PLMA. A second challenge is that the records on the SPLD and/or the NIPR may not accurately reflect the home state business rule. In this example, the nonresident state will have to pend the application and contact the home state to verify if the applicant is in compliance with the home state law on variable products. The nonresident state must then decide if the applicant should be granted a license.

Chapter 5

Activities Requiring Licensure

License Required to Sell, Solicit and Negotiate

The PLMA uses three key words to determine when a person is required to have an insurance producer license:

“Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

“Solicit” means attempting to sell ~~insurance, or~~ insurance or asking or urging a person to apply for a particular kind of insurance, ~~from~~ a particular company.

“Negotiate” means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

The specific requirement to hold a license is found in Section 3 of the PLMA and reads as follows:

A person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance, unless the person is licensed for that line of authority in accordance with this Act.

The Producer Licensing (EX) Working Group clarified in 2006 that in traditional life insurance sales transactions, licensure should be determined solely by the PLMA’s “sells, solicits or negotiates” standard, without reference to the insured’s state of residence. The key is to determine if the producer was properly licensed in the state in which the activity requiring a license took place. See also FAQ Number 16 in Chapter 2.

During the drafting of the PLMA, there was considerable discussion about who should be required to hold an insurance producer license. Prior to the adoption of the PLMA, the Producer Licensing (EX) Working Group discussed guidelines for “licensable” and “non-licensable” activities. The main thrust of that effort was to distinguish acts that constitute the sale, solicitation or negotiation of insurance from administrative or clerical acts. The guidelines document gives numerous examples of “Agent” activities that do require an insurance producer license and “Clerical” activities that do not. The document is included in the Appendices. Check the Producer Licensing (EX) Working Group’s web page for any updates.

Commissions

Section 13 of the PLMA provides guidance regarding the relationship between being licensed and receiving commissions. Section 13(A) prohibits the payment of commission to a person who is required to be licensed. Section 13(B) prohibits a person from receiving a commission if that person was unlicensed and was required to hold a license under the Act.

Section 13(C) of the PLMA states that it is not ~~neecessary~~necessary, nor should any state require a producer to maintain an active license solely to continue to receive renewal or deferred commissions.

Section 13(D) of the PLMA provides that an insurer or a producer licensed in a state may assign commissions, services fees, brokerages or similar compensation to an insurance agency (business entity) or to persons (individuals) who are not selling, soliciting or negotiating in that state and who are not licensed in that state. For example, if a regional manager in State A is, by contract with an insurer, to receive an override commission on all sales activities from subagents located in States B and State C, but the manager does not engage in any activity that would require licensure under Section 3 of the PLMA, no license should be required by State B or State C in order for the manager to receive commission payments.

Another example: A trade association with members in all states is headquartered in State A. An insurer pays a fee to the association for each member who purchases insurance from that insurer through an affinity marketing program. The association does not have to be licensed in any state because the association does not sell, solicit or negotiate insurance.

Commented [RT10]: Section 13 (D) also includes the following caveat - “unless the payment would violate a state’s anti-rebating statutes”.

In 2008, the Producer Licensing (EX) Working Group provided guidance on uniform interpretation of the commission sharing provision in PLMA and recommended that adoption of Section 13 be included in the ULS. The Commission Sharing guidance document is included in the Appendix of this Handbook.

Exceptions to Licensing

The PLMA contains two key sections that clarify when a license is not required. When considering whether to require a license, states should carefully review Section 4 and Section 13 of the PLMA.

Section 4 of the PLMA contains a specific list of exceptions from the licensing requirement. States should take special note of Section 4(B)(6), which provides an exception for producers placing commercial insurance for a multistate risk with an incidental exposure in several states. As the section provides, in this situation a license is only required in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

The following is a summary of types of persons and entities that are exempted from licensing:

1. An officer, director or employee of an insurer or insurance producer, provided that the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in the state.
2. A person who secures and furnishes information for, or enrolls individuals in, group life insurance, group P/C insurance, group annuities or group, or blanket accident and health insurance.
3. An employer or association; its officers, directors, employees; or the trustees of an employee trust plan.
4. Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks.
5. A person whose activities in a state are limited to advertising without the intent to solicit insurance in that state.
6. A person who is not a resident of a state who sells, solicits or negotiates a contract of insurance for commercial P/C risks to an insured with risks located in more than one state insured under that contract.
7. A salaried, full-time employee who counsels or advises the employer relative to the insurance interests of the employer.

Commented [RT11]: Should match PLMA language. Missing caveat “where no commission is paid to the person for the service.”

Commented [RT12]: Match PLMA language. Missing a caveat “not in any manner compensated, directly or indirectly, by the company issuing the contracts.”

Commented [RT13]: Match PLMA language. “who does not receive commission.”

Recommended Best Practice for Insurance Regulators

- For uniformity purposes, states that still use a “transaction-based licensure” approach should eliminate that standard and change to the PLMA standard.