

Chapter 7

Application Review for Initial Licenses

Individual Application Forms

The Producer Licensing (EX) Working Group adopted a uniform application, and the Uniform Licensing Standards (ULS) require its use for all producer applicants. Section 6 of the *Producer Licensing Model Act* (#218) outlines the process a state is to follow in reviewing the application and making the determination as to whether to grant a resident producer license.

Before issuing a resident producer license to an applicant, the state must find that an applicant for a resident license:

1. Is at least 18 years of age.
2. Has not committed any act that is a ground for denial, suspension or revocation set forth in Model #218 Section 12.
3. Where required by the insurance commissioner, has completed a preclicensing course of study for the lines of authority (LOAs) for which the person has applied.
4. Has paid the appropriate fees.
5. Has successfully passed the examinations for the LOAs for which the person has applied. Note that the ULS provide that examinations are not generally required for limited lines, but it is acceptable for examinations for areas such as crop and surety.

Business Entity Applications

The following requirements are optional and would apply only to those states that have a business entity license requirement.

The Working Group adopted a uniform application form for business entities, and the ULS require its use. Section 6 of Model #218 requires that before approving an application for a resident business entity, the state shall find that:

1. The business entity has paid the appropriate fees.
2. The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules and regulations of the state.

Section 6 also gives the insurance commissioner authority to require any documents necessary to verify the information contained in an application. In 2010, the Producer Licensing (EX) Task Force considered methods to expedite and streamline business entity licensing. Updated proposals can be found on the Working Group's web page.

Background Checks

The Gramm-Leach-Bliley Act (GLBA) allows the states to perform criminal background checks on resident applicants. The ULS contain guidelines on how to perform background checks, including the following three-step process for background checks:

- A. The states will ask and review the answers to the standard background questions contained on the Uniform Applications.
- B. The states will run a check against the NAIC Regulatory Information Retrieval System (RIRS)/State Producer Licensing Database (SPLD) and 1033 State Decision Repository (SDR) – Data Entry Tool.
- C. The states will fingerprint their resident producer applicants and conduct state and federal criminal background checks on new resident producer applicants.

OR

If a state lacks the authority or resources to accept and receive data from the Federal Bureau of Investigation (FBI), it shall conduct a statewide criminal history background check through the appropriate governmental agency for new resident producer applicants until such a time as it obtains the appropriate authority.

Fingerprints

Under the ULS, the goal is that all states will electronically fingerprint their resident producers as part of the initial resident producer licensing process. States that lack the authority to run criminal history background checks through the FBI are encouraged to at least run a statewide background check until such a time that state and national fingerprinting is implemented.

The Working Group adopted model language that will allow a state to access federal databases (see the *Authorization for Criminal History Record Check Model Act* [#222]). The states are encouraged to adopt this language.

1033 Consent Waivers

The Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. §§ 1033 and 1034, commonly referred to as “1033,” establishes a ban on individuals who have been convicted of certain felony crimes involving dishonesty or breach of trust from working in the insurance business. The law provides that a banned person can apply to the state insurance commissioner for a written consent to work in the insurance business. If an individual with a felony involving dishonesty or breach of trust obtains a 1033 consent waiver from that person’s resident state, the person cannot be prosecuted for engaging in the business of insurance in violation of 18 U.S.C. §§1033 and 1034.

When one state grants a written consent waiver to an individual pursuant to 18 U.S.C. §1033, the consensus of legal opinion is that this written consent waiver is effective nationwide.

The Working Group determined that the resident state bears responsibility for consideration of applications for consent waivers. Nonresident applicants should not be subject to additional procedures, nor should producers seeking nonresident licenses have to go through the 1033 process in all states after the producer’s resident state has issued a waiver. However, producers who have received waivers are required to attach them to applications for nonresident licenses. To assist these applicants, states should include a specific reference to 18 U.S.C §1033 within the text of the document that grants a waiver. States may exercise their discretion to deny licenses based on the types of criminal convictions disclosed in consent waivers. The NAIC Antifraud (D) Task Force adopted guidelines for the reviewing and granting of these consent waivers. Under the guidelines, states are to report all activity on these consent waivers to the 1033 SDR – Data Entry Tool. The full text of the guidelines is available through I-Site.

NAIC Databases Relevant to Initial Application Review

The NAIC maintains three databases that should be consulted as part of application review:

1. The Complaints Database System (CDS) contains information on closed complaints as reported by the states.
2. The RIRS contains any action taken by a state insurance department where the action is against an entity and where the disposition is public information. All final adjudicated actions taken and submitted by a state insurance department are reflected in the RIRS. The information typically includes: administrative complaints, cease and desist orders, settlement agreements and consent orders, receiverships, license suspensions or revocations, corrective action plans, restitutions, closing letters, and letter agreements. The RIRS does not include exam report adoption orders without regulatory actions.
3. A record of 1033 actions is maintained in the 1033 SDR – Data Entry Tool. The 1033 SDR application allows state insurance regulators to enter and search for 1033 decisions (approved or denied) that state insurance regulators have made for individuals who requested to work in the business of insurance but who

have been prohibited to do so by section 1033 of the Violent Crime Control and Law Enforcement Act of 1994.

Review of Applications When Criminal History is Disclosed

As part of the 2009 charges for the Working Group, the Producer Licensing (EX) Task Force asked the Working Group to develop uniform guidelines for background check reviews of producers. For all jurisdictions to have a comfort level with licensing determinations made by a resident state when the applicant has a criminal history, a uniform process of review is warranted. If all jurisdictions implement these guidelines, in most situations, nonresident states will be able to defer to the resident state's licensing decision. A copy of the Uniform Criminal History and Regulatory Actions Background Review Guidelines is included in the Appendix of this Handbook.

When an application contains a disclosure with a "yes" answer to a criminal history question, in determining whether to issue a license, states should consider the following factors:

- *Resident vs. Nonresident*

If the application is for a resident producer license, it is incumbent upon the resident state to scrutinize all "yes" answers on the application and to request and obtain documentation and a detailed explanation for all criminal charges. Nonresident applicants' criminal histories should also be documented and explained with consideration given the fact that the resident state has already issued a license to the applicant.

- *Severity and Nature of the Offense*

Felony convictions should always be considered in determining whether to issue a license to an individual and may require the applicant to apply for a 1033 consent waiver prior to application (see the section on 1033 consent waivers).

A criminal conviction is only relevant to the licensing decision if the crime is related to the qualifications, functions or duties of an insurance producer. Examples include theft; burglary; robbery; dishonesty; fraud; breach of trust or breach of fiduciary duties; any conviction arising out of acts performed in the business of insurance; or any actions not consistent with public health, safety and welfare. Special scrutiny should be given to financial and violent crimes.

- *Frequency of Offenses*

While a producer's past criminal history is a red flag and may be a predictor of future behavior, the frequency of offenses should be considered, with more weight given to a pattern of illegal behavior than to a one-time minor indiscretion.

- *Date of the Offense*

The application form requires the applicant to disclose all criminal charges, except minor traffic offenses. A reviewer should consider when the offenses occurred and the age of the applicant at the time of the offense.

- *Completion of Terms of Sentencing*

Applicants should provide evidence that they have completed all the terms of their sentences, including paying restitution or completing any probationary periods or community service.

- *Evidence of Rehabilitation*

The applicant should be required to provide evidence of rehabilitation. Completion of the terms of sentencing alone does not demonstrate rehabilitation. A state may request a statement from the applicant's probation officer or other appropriate official.

Statutory Obligations and Discretion

State insurance regulators should review state law to determine guidelines for approval or denial of the application. After consideration of the above factors, the state insurance regulator has several options:

1. Request additional information or documentation.
2. If the producer failed to report an action, contact the producer and request an explanation. Technical violations, such as bad address or failure to timely report, generally do not merit formal action. However, the failure to report an action in itself can be cause for administrative penalty or a warning letter, depending on the particular state's law.
3. Approve the application with no conditions.
4. Approve the application with conditions.
5. Deny the application.

In some cases, it may be appropriate to grant a conditional license. This option may not be available in all states and may be limited by state law or regulation. Some options include:

1. Issue a probationary license that will expire after six months or a year, or that will coincide with the applicant's criminal probationary period. At the end of the probationary period, and prior to consideration of full licensure, the state insurance regulator should confirm that the applicant successfully completed all terms of the sentence and probation. This option can also be used for a producer with a record of prior administrative action.
2. Enter into a supervisory agreement, whereby another established licensed producer agrees to be responsible for the applicant during a certain period of time of the applicant's license term. This is a good option for producers who have criminal records in another state or some other evidence of past bad conduct. The supervisory agreement should include a requirement that the supervising producer report to the state insurance regulator any inappropriate behavior that is relevant to the agreement and to the applicant's license status.
3. Issue only a limited or restricted license for a particular product, such as credit life insurance. The theory of this option is that some types of products present individuals with less opportunity to commit bad acts.
4. Issue the license along with a requirement that the producer must report all complaints received against the producer and under the condition that there will be an immediate suspension for any bad act.

Recommended Best Practices for State Insurance Regulators

- Work with state officials to adopt a fingerprint program that allows your state criminal justice agency to receive electronic prints, as well as electronically submit the reports back to the state department of insurance (DOI).
- If no fingerprint program is in place, inquire of the state criminal investigation department to determine if an alternative system for meaningful state background checks can be arranged.
- Allow pre-exam and post-exam fingerprinting.
- Make electronic fingerprinting available at test sites.
- Allow re-fingerprinting, if necessary, on a walk-in basis with no additional cost.
- Include registration for fingerprinting with registration for the exam or link the online websites to allow for electronic registration.
- Streamline the background check process to avoid delays in the overall licensing process, such as allowing for a temporary work authority pending receipt of the background check results.
- Check with other state agencies to determine what vendor(s) are used for the submission of electronic fingerprints (agencies that oversee programs such as teachers, bus drivers, social workers, foster parents, etc.)
- Adopt Model #222 for all license classes—allow some lag time before the effective date to provide sufficient time to establish procedures. Note that ULS 14 has since been updated to fingerprint new resident producers, and fingerprints are no longer required for additional LOAs under an existing home state license.
- Model #218 allows a producer to reinstate a lapsed license within 12 months of expiration, so only resident producers who are reinstating a license lapsed over 12 months should be required to submit fingerprints.

- Work with your state district attorney official to coordinate the review and approval of the enabling statute, which must be approved by the U.S. attorney general to access the Criminal Justice Information Services (CJIS) Division of the FBI criminal history record information.
- Establish a set number of times an applicant should be re-fingerprinted—at times, fingerprints are rejected. If re-fingerprinting is required, and the fingerprints are still rejected, establish a process to perform a state and federal NAME check.
- If your state is unable to use a vendor to electronically collect the cost of the criminal history background check from applicants, work with the National Insurance Producer Registry (NIPR) to collect this fee from new resident producer applicants during the electronic resident licensing application.
- Work with state officials to establish a reimbursement services agreement (RSA) for the payment of fingerprint or background checks.
- If your jurisdiction is just implementing fingerprinting, reach out to other jurisdictions for suggestions and best practices.
- Develop a system for review of 1033 consent waiver applications, and post relevant information on the department website.
- Post all information regarding 1033 consent waiver requests, approvals and denials on the 1033 SDR – Data Entry Tool.
- Accommodate applicants to the greatest extent possible with flexible hours of operation.
- Allow payment by check, credit card or debit card.