

State Licensing Handbook

2018



National Association of
Insurance Commissioners

State Licensing Handbook

2018



National Association of
Insurance Commissioners

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All of the references to the Producer Licensing Working Group and Task Force will show that both have changed parent committees since the creation of the State Licensing Handbook. The change in parent committees has not changed the role for the Working Group and the Task Force.

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Introduction

The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC staff support these efforts and represent the collective views of state insurance regulators domestically and internationally. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

The NAIC has organized its work into various task forces and committees. The Executive (EX) Committee has working groups and task forces that focus on specific issues. In 2009, the NAIC formed the Producer Licensing (EX) Task Force to coordinate and oversee all NAIC groups addressing producer issues. One of the working groups that formerly reported to the Market Regulation and Consumer Affairs (D) Committee and now reports to the Producer Licensing Task (EX)Force is the Producer Licensing (EX) Working Group.

As its name suggests, the Producer Licensing (EX) Working Group focuses its efforts on the licensing process for individuals who sell insurance products. The Producer Licensing (EX) Working Group has worked toward the goal of streamlining and achieving uniformity in the insurance producer licensing process. The purpose of the *State Licensing Handbook* (Handbook) is to document current guidelines and recommended best practices.

The Producer Licensing (EX) Working Group strongly encourages all states, districts and territories to adopt, without deviation, all provisions of the NAIC's *Producer Licensing Model Act* (PLMA), because true uniformity cannot be achieved until that happens.

Part I of this Handbook contains background information on these efforts and current information on the implementation of the PLMA, reciprocity efforts, the Uniform Licensing Standards (ULS) and related topics.

Part II of this Handbook includes information on other types of licenses that some states issue and that a state licensing director may encounter.

Part III contains Appendices to this Handbook.

The NAIC and the Producer Licensing (EX) Working Group worked to achieve reciprocity, as required by the initial provisions of the federal Gramm-Leach-Bliley Act (GLBA), 15 U.S.C. § 6751 et seq., adopted in 1999, and to create and implement the ULS and procedures in all states. In 2015, the provisions of the GLBA that prohibited the creation of the National Association of Registered Agents and Brokers (NARAB) were repealed, and NARAB was established. This Handbook contains the current recommendations and guidelines from the NAIC's Executive (EX) Committee, the Producer Licensing (EX) Task Force and the Producer Licensing (EX) Working Group.

Part I Insurance Producer Licensing

Section A Governing Principles

- Chapter 1 Modern Producer Licensing
- Chapter 2 Producer Licensing Model Act
- Chapter 3 Uniform Licensing Standards
- Chapter 4 Nonresident Licensing

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 GLBA in 1999 that caused the NAIC to speed the development of the 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.

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 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)

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 appointment 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 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.

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 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. 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 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.

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 prelicensing 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.

- 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

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 preclicensing 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 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, but the producer is limited to the surety LOA held in his or her home state.

- 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.

Part I Insurance Producer Licensing

Section B Licensing Processes

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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 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 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.

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.

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.

Chapter 6

Prelicensing Education

Prelicensing education is required in some states as a condition of licensure for resident insurance producers. Neither the PLMA nor the ULS suggests that a state must have a requirement for prelicensing education. States that have a prelicensing education requirement should follow the uniform standards as adopted by the Producer Licensing (EX) Working Group.

The ULS set a minimum credit hour requirement for prelicensing education. In 2010, the Producer Licensing (EX) Working Group was charged with reviewing this standard. Updated information, if there are any changes to this standard, can be found on the Producer Licensing (EX) Working Group's web page.

States that require prelicensing education shall require 20 credit hours of prelicensing education per major line of authority. States must accept both classroom study and verifiable self-study, which includes both text and online courses. The ULS does not have a limit on the number of credits that can be obtained by self-study. States shall independently determine the content requirements for prelicensing education. The ULS require that a state have a method to verify completion of prelicensing education, but they do not prescribe a method.

The ULS provide that a person who has completed a college degree in insurance shall be granted a waiver from all prelicensing education requirements. The ULS also provide that individuals holding certain professional designations approved by the insurance department should be granted a waiver from the prelicensing education requirement. In 2008, the ULS were updated to indicate the following list of designations be provided as guidance for designations that would waive prelicensing education, but the list is not exhaustive:

Life: CEBS, ChFC, CIC, CFP, CLU, FLMI, LUTCF

Health: RHU, CEBS, REBC, HIA

P/C: AAI, ARM, CIC, CPCU

Under both reciprocity standards and the ULS, no state shall require prelicensing education for nonresident applicants or nonresident producers who change their state of residency.

Chapter 7

Application Review for Initial Licenses

Individual Application Forms

The Producer Licensing (EX) Working Group adopted a uniform application, and the ULS require its use for all producer applicants. Section 6 of the PLMA outlines the process a state is to follow in reviewing the application and in 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 the PLMA Section 12.
3. Where required by the insurance commissioner, has completed a preclicensing course of study for the lines of authority for which the person has applied.
4. Has paid the appropriate fees.
5. Has successfully passed the examinations for the lines of authority for which the person has applied. Note that the ULS provide that examinations are not generally required for limited lines, but that 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 Producer Licensing (EX) Working Group adopted a uniform application form for business entities, and the ULS require its use. Section 6 of the PLMA 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 Producer Licensing (EX) Working Group Producer Licensing (EX) Working Group's web page.

Background Checks

The GLBA allows 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. States will ask and review the answers to the standard background questions contained on the Uniform Applications;
- B. States will run a check against the NAIC Regulatory Information Retrieval System (RIRS)/SPLD and 1033 State Decision Repository (SDR) – Data Entry Tool; and
- C(1) States will fingerprint their resident producer applicants and conduct state and federal criminal background checks on new resident producer applicants; or
- C(2) 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 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 time that state and national fingerprinting is implemented.

The Producer Licensing (EX) Working Group adopted model language that will allow a state to access federal databases. (See the *Authorization for Criminal History Record Check Model* [#222].) 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 Producer Licensing (EX) 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 review 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 Complaint 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 1033 SDR – Data Entry Tool. The 1033 State Decision Repository (SDR) application allows regulators to enter and search for 1033 decisions (approved or denied), which state 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 Producer Licensing (EX) Working Group, the Producer Licensing (EX) Task Force asked the Producer Licensing (EX) 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 also should be documented and explained with consideration given the fact that the resident state already has 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

Insurance regulators should review state law to determine guidelines for approval or denial of the application. After consideration of the above factors, the 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 from the producer. (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 insurance regulator should confirm that the applicant successfully completed all terms of the sentence and probation. This option also can 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 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 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 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 delay 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 the NAIC's *Authorization for Criminal History Record Check Model Act (#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 that fingerprints are no longer required for additional lines of authority under an existing home state license.
- The PLMA 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 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 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.

Chapter 8

Testing Programs

Introduction

The states have a responsibility to ensure that licensing examinations are fair, sound, valid and secure. Directors must consider how an exam is developed, who is involved in the development process, how the exam is offered and how security is maintained. Nearly every state has contracted with an outside vendor to assist in examination development and administration. These testing vendors employ test development experts and psychometricians to construct and evaluate examinations.

The primary purpose of a state examination and licensing program is to protect consumers. Examinations should be consistent across the states in difficulty level, content and subject matter. They should be uniformly administered and scored. Examinations should be psychometrically sound, using methods for setting and maintaining passing standards (i.e., cut scores) that are in accordance with testing industry best practices. They should use resources such as: 1) the Standards for Educational and Psychological Testing, developed jointly by the American Educational Research Association (AERA), American Psychological Association (APA) and National Council on Measurement in Education (NCME); and 2) the U.S. Equal Employment Opportunity Commission's (EEOC) Uniform Guidelines on Employee Selection Procedures (29 CFR 1607). Through valid, reliable and legally defensible test development practices, candidates will have a fair and equitable opportunity to pass an exam, regardless of which state exam they take. Ideally, pass rates should be consistent throughout the states; however, statistics from national examination administration have shown that the pass rates for examinations for the same line of insurance vary significantly among the states. Other variables may contribute to pass rates, such as state education systems, demographics, the existence of a prelicensing education requirement and the quality of such prelicensing education, but the states should work with their test vendors to be sure that they eliminate any practices that do not measure the entry-level knowledge, duties and responsibilities of an insurance producer.

Different states take different approaches to the development and administration of producer license examinations. Some of the states exercise significant control over test development and review. Other states rely almost entirely on outside experts. In most of the states, the state does not pay any fee to a testing vendor, and the cost of test development and administration is passed through to the test-takers. Most of the states reserve the right to preapprove any fees charged by testing vendors.

With the state licensing system increasingly built on reciprocity, it is in the best interest of consumers, insurance regulators, industry, producers and prospective producers for state licensing directors to establish guidelines that promote efficiency and consistency throughout the licensing process. Directors also should reduce or eliminate artificial barriers that impede qualified applicants from obtaining a license.

The purpose of this chapter is to recommend best practices for states in testing administration in the following areas:

1. Test development and review.
2. Test administration.
3. Test results.
4. Expectations for test vendors.

This chapter was developed with assistance from insurance test vendors, industry representatives, education providers and insurance regulators.

PLMA Guidelines on Examinations

Section 5 of the PLMA contains guidance for administering licensing examinations. Under Section 5, all residents are expected to complete a written examination, which should include the following:

1. The entry-level knowledge required for an individual concerning the lines of authority for which the application is made.
2. The duties and responsibilities of an insurance producer.
3. The applicable insurance laws and regulations of the state.

Section 5 grants the insurance commissioner authority to hire an outside testing service to administer examinations and impose nonrefundable examination fees.

The PLMA contains several exemptions from preclicensing education and examination requirements. An individual who is licensed as a nonresident in a state and who moves into that state, or an individual who moves from his or her home state to another state and seeks a resident license, is not required to complete an examination for the line(s) of authority previously actively held in the prior resident state as long as application is made within 90 days of the change in residence and the prior resident state indicates the producer was licensed in good standing. In this situation, a nonresident state should never impose preclicensing education or examination requirements.

The ULS provide that examinations are not generally required for limited lines, but that it is acceptable to require examinations for areas such as crop and surety.

The PLMA leaves test development and administration to the discretion of the individual states. Section 5(A) of the PLMA requires that “[a] resident individual applying for an insurance producer license shall pass a written examination” and requires that the examination must test the knowledge of the individual in three areas:

1. The specific lines of authority for which the application is made.
2. The entry-level duties and responsibilities of an insurance producer.
3. The applicable insurance laws and regulations of the state.

Beyond these broad subject matter categories, Section 5 states that tests “shall be developed and conducted under rules and regulations prescribed by the insurance commissioner.”

In order to provide more uniformity in state licensing practices, the 2012 revised ULS for Exam Content or Subject Area and Testing Administration Standards establishes implementation of the “Exam Content and Testing Administration Recommended Best Practices found in Chapter 8 of the NAIC *State Licensing Handbook*” as the uniform standard.

Test Development and Review

Test development experts believe that licensing examinations should measure the minimum competency required for a candidate to perform at an entry level. Therefore, test content and curriculum development should be focused on assessing whether a candidate demonstrates sufficient knowledge to pass an examination that is appropriately targeted to an entry-level producer.

The examination should not dictate the curriculum that an entry-level insurance producer should master. Instead, the test content should be developed using the steps outlined below. Examinations and curriculums should be updated to reflect any changes in insurance laws, regulations or industry practice. An online candidate guide should be available and should provide detailed testing and licensing procedures, as well as content outlines with cross-references to the curriculum.

Input from trainers who conduct test preparation courses may assist in the development of the curriculum and the exam content outline; however, some insurance regulators believe it is not appropriate to invite these trainers to participate in reviewing final examination questions. Education providers who do not offer preclicensing education courses (such as CE providers) sometimes are used during test development. There are generally two approaches to examination construction. A bank-based test generates individual examinations from a large bank of items. A form-based examination will consist of a specified set of predesigned test forms that are rotated. The states use both methods, and both are psychometrically acceptable. Although contracted outside experts play a major role in test development in most jurisdictions, the state should have a regular process and procedures for developing and reviewing licensing examinations to ensure that those examinations are properly focused on the minimum competencies required of an entry-level producer. Some items that should be included in the plan include:

1. Procedures to ensure that a job analysis survey that includes input from insurance regulators and the industry is conducted at regular intervals to determine the requirements and work performed by an entry-level insurance producer.
2. Regular, ongoing review and assessment of producer licensing examinations in the event of legislative or regulatory changes that could affect the accuracy of exam content.
3. An annual review of the examination development process conducted with the state and the testing vendor.
4. Depending on test volume, test performance and the need for content changes, either an annual (or at least biannual) substantive review of the examination and the psychometric properties of the test. These efforts should include the involvement of content or test development professionals, department personnel and industry representatives, including recent, entry-level producers.

5. A fair and valid state-based test should incorporate knowledge, skills and abilities that measure state-specific and national expertise. This balance will shift depending on the subject matter. For example, life insurance laws and regulations tend to be more similar among the states, while health insurance standards can vary widely.
6. If the state collects demographic data, it should be reviewed annually.

Developing the Questions

Developing a valid and sound bank of test questions, often called “items,” is perhaps the most critical piece of any testing program. The items need to be at the appropriate level of difficulty. Items should be relevant to the profession and should be effective in evaluating whether the person taking the exam possesses the knowledge, skills and abilities critical to competently performing the job and safely practicing in the profession. To create this balance, most of the states use a combination of local subject-matter experts (SMEs) and content or test development professionals. The local panel should include new and experienced producers to help establish such a balance.

Using multiple item writers to develop test content is a common practice, but it can lead to variation in test item style, format and difficulty. Developing a style guide with templates, development standards and rules can go a long way in improving item consistency, format and variety. Content development training can ensure that writers have the tools they need to develop credible, legally defensible items and templates that can be leveraged to create multiple variations of the same question.

Passing Score vs. Pass Rate

A passing score, sometimes called a “cut score,” is the minimum score one needs to achieve in order to pass the exam. The “pass rate” is the percentage of candidates who actually pass the exam. The test development process will consider data from actual tests and data from reviewers rating the items and exams in evaluating the cut score.

In some of the states, the cut scores are arbitrarily established by rule or regulation. This is not a valid testing practice. Cut scores should be based on data collected through the test-development process. Regulatory licensing exams typically target a level referred to as “minimum” competency rather than “average” competency. Licensing examinations try to determine who has the minimum competency to safely practice in a profession without compromising the health and safety of the public. An arbitrary cut score, which is the practice in some of the states, tends to focus on the average, rather than minimum, competency. Thus, qualified candidates could be cut because they fall below the average, not because their competency is unacceptable.

Exam Scoring

Some of the states administer a one-part or one-score exam, while others administer two-part exams. In the one-part exam, general product knowledge and state-specific content are scored together. In the states with a two-part exam, the candidate must separately pass both the general product knowledge exam and the state-specific exam in order to be eligible to apply for a license for the line of authority requested. A third variation is to require the first-time test-taker to pass an exam on state-specific insurance laws and regulations once. All additional lines of authority are tested on general product knowledge only.

Preliminary review of pass rates indicates a tendency for more candidates to fail in the states that require two-part exams. There is no evidence that two-part exams increase consumer protections or that the states that administer one-part exams license producers who do not know applicable state law. The states are encouraged to move to one-part exams to allow for more success among candidates without jeopardizing consumer protections.

Exam Content

As of May 2013, the states have no standard exam curriculum. The NAIC is encouraging more uniform approaches by considering the best practices for testing programs listed at the end of this chapter to be standards for all jurisdictions to work toward. The Producer Licensing (EX) Task Force formed a subgroup of five states to develop a draft national content outline using the life and annuity line of authority as a pilot. The national content outline provides guidance for entry-level subject matter that the states should test for, as well as information that will assist candidates in identifying relevant knowledge to study in preparation for the exam.

Some experts have recommended that examinations should be constructed with the following considerations in mind:

1. The states should not target examinations to an artificially set passing score. A state should determine whether its test is focused on assessing the knowledge needed by potential new producers, and only applicants who lack that

level of knowledge should fail. The states should use legally defensible, recognized methodology when establishing a cut score.

2. Prior to releasing items into an exam form, the editing and review process employed is critical. This editing process should include the psychometric evaluation of the cognitive level of the items and the reading level of the items, as well as such editorial issues as grammar, sensitivity and style. Psychometric editing is best performed by test development professionals, not state SMEs or item writers. Individuals trained in the complexity of psychometric editing evaluate items in a different, critical light than SMEs or item writers. It is critical, however, to have all final items reviewed and approved by state and national SMEs in the given field for accuracy and relevancy.
3. Each examination should consist of pre-test questions that are being evaluated for performance and questions that previously have been evaluated (pre-tested) and determined to be statistically effective. Each candidate's score should be based only on the previously pre-tested and approved questions. Any time used to respond to pre-test items should not be counted against the test-takers, and responses to pre-test items should not be calculated in the test-taker's score. Pre-test items should not be used as scored items until they have been statistically proven to be effective. The test questions for any new examination should be chosen from the pool of test questions to properly represent the subject-matter outline of the examination.
4. Reports regarding exam pass rates, candidate demographics when collected and number of exams administered should be made available to the public. Reports should include first-time pass success by subject area. Whenever possible, this information should be tracked by, and be made available to, each education provider so they may evaluate their programs and instructors, and be provided with data needed for course development. The states may ask for, but generally cannot require, information on candidate population, gender, ethnicity, education level and income level. When candidate demographics are collected, reports should include the percentage and number of examinees who passed the examination by race, ethnicity, gender, education level and native language. This information is necessary for the selection of future test questions, and will aid in making testing transparent and assessing whether differences in test scores are correlated with relevant demographic factors.
5. A state advisory committee consisting of insurance regulators and the industry—including, where possible, recently licensed producers—should annually (or, if changes are not needed every year, at least biannually) work with the testing vendor to review the questions on each examination form or bank of items for substantive and psychometric requirements. Adjustments should be made to the examination to eliminate any questions that might be inaccurate or unclear, that might test subject matter that is beyond what a new producer should know or that exhibit unsatisfactory psychometric properties.
6. Licensing examinations should be reviewed at least annually, but if, during any rolling 12-month period, a licensing examination exhibits uncharacteristically high or low pass rates (such as less than 60% or more than 80%), unexplained fluctuations in testing volume or other significant deviations, that examination should be reviewed immediately.

A state testing program should include statistical analysis of test items in the field and gather feedback on the candidate performance on the individual items. The most obvious and critical use of this information is to ensure that exams are equivalent, and to evaluate the accuracy with which items differentiate between candidates who are minimally qualified and candidates who are not. The psychometric review can result in the continued use of items, the modification of items or the deletion of items from the bank.

A professional test vendor should use a comprehensive strategy for developing test items and ensuring measurement of the knowledge, skills and abilities necessary for initial insurance licensees to perform their jobs effectively. The steps may include:

1. Conducting a committee-based job analysis.
2. Developing content specifications and weightings.
3. Developing items.
4. Editing and reviewing items with SMEs to ensure items meet the required criteria.
5. Obtaining item difficulty (e.g., Angoff method) estimates to establish a passing score.
6. Developing item sampling groups to structure each examination.
7. Creating equivalent forms.

Test Development Deliverables

A state licensing director should expect to receive the following items to ensure that the testing vendor has provided all items necessary to administer a successful testing program:

1. Finalized task and knowledge statements reflecting the requirements of each licensed insurance position.
2. Content specifications for each licensing examination.
3. A set of approved, relevant and important items for use on each licensing examination.
4. A list of references used to develop the test items.
5. Candidate Information Bulletins (CIBs).
6. A technical report describing the procedures used and results obtained from the test development process for each licensing examination.

Candidate Information Bulletin

A CIB should describe the examinations, examination policies and procedures, and the consequences of violating security procedures. A testing vendor should be capable of making changes to the information contained within the CIB during any contract year at the state's request.

The CIB should be available at no charge to candidates, trainers and insurers in hard copy or in electronic format via the Internet. The state licensing director should consider including the following topics in the CIB:

1. How to contact the testing vendor.
2. Requirements for taking an examination.
3. How to apply for an examination, including receiving authorization of eligibility from the state, prelicensing education and background checks.
4. Links to current application forms.
5. How to obtain current forms in hard copy (if available in hard copy).
6. Examination fees.
7. Scheduling procedures.
8. The content outline and format of the examination.
9. Supplies provided at the test center.
10. The time limit for the examination.
11. The scoring system.
12. Security procedures.
13. Examination process and procedures.
14. Appropriate examination-taking strategies (e.g., "There is no penalty for incorrect answers, so be sure to answer every question.").
15. Appropriate use of scratch paper, calculators and/or other support material.
16. Sample questions.
17. Specific information about taking the test on the computer.
18. List of approved reference materials.
19. List of test centers, alternative test centers and driving directions to each.
20. Procedures for requesting special accommodation.
21. Examination registration forms.
22. Licensing requirements and procedures.
23. Refund policies.
24. Holiday or weather-related test center closures.
25. Instructions about how to contact the state insurance department.

A state should approve each CIB before it is published. The licensing director should work with the vendor to set a timeline that will allow for final publication of an updated CIB in advance of the expiration of the prior edition of the CIB. The new edition should be provided to test preparation trainers at least six weeks in advance of implementation so that training materials can be updated.

Technology Issues

A licensing director should consult with the state's information technology (IT) staff to ensure that the testing vendor can deliver data to the state insurance department. This is critical when a state changes testing vendors. This also is critical if the

state directs a vendor to send data to a different location than the state insurance department. Any transition should include a testing phase for hardware, software and state insurance department staff.

The state and the testing vendor should jointly agree on a timeline for introducing new or updated examinations. State IT staff also should be consulted.

Legal Defensibility

Items developed also must be legally defensible to protect the state in the event of a legal challenge. To protect the state from liability, each exam should be critically reviewed from a content and psychometric perspective to ensure that the exam was developed according to recognized standards. Validation procedures for licensing examinations should be designed to comply with content validation requirements of the EEOC's Uniform Guidelines on Employee Selection Procedures (29 CFR 1607).

The states should require testing vendors to follow and document standardized methods. This should include appropriate test development personnel in the process. Using the appropriate, credentialed professionals is critical, as there are multiple steps involved in the test development process and various methodologies that can be used for each step. State licensing directors should discuss all options with qualified professionals.

Vendor Responsibilities

Test vendors should be able to meet minimum guidelines for sufficient availability, facilities, personnel and openness in terms of providing information related to their operations.

The states, and not the test vendors, must be responsible for all examination content and content outlines. The vendor should provide accessible information regarding the registration system through the Internet, toll-free telephone numbers, interactive voice response, fax and other available technologies. The available information should include permitting candidates to view exam test dates and to access forms and content guidelines without requiring prior payment and scheduling of an exam.

The vendor should promptly provide the state with all pertinent information, including prompt notification of any candidate complaints, changes to test administration, conflicts at examination test sites or other information requested or required by the state.

The vendor should provide quality, accessible facilities, with an established system of examination site supervision that ensures that competent site administrators consistently provide accurate information to applicants.

Where a vendor operates test sites in multiple states, the vendor should permit any applicant to take a state's examination in another state, under the same conditions that would apply if the exam were taken at an in-state location.

Vendors should be required, on an ongoing basis, to collect the data on customer satisfaction and, if directed by the state, to make those data available to insurance regulators, the industry and the public.

Test Administration

The testing process should be fair and accessible for all candidates. A state should consider including the following elements below in its licensing process to ensure applicants have equal access to examinations.

Secure Administration

The security of the test center network is important in maintaining the integrity of a test. A vendor should be equipped with adequate security features and qualified test center administrators. Each proctor should be trained and tested on his or her ability to supervise exams. A vendor should have systems in place to ensure the fair, consistent and even administration of the exam in every location. A vendor also should have a method to detect attempts to record questions. For example, a vendor should track multiple examination attempts by individuals to assess if the candidate is intentionally failing the exam so it can be repeated. A vendor should be required to notify the state immediately if the vendor suspects that the integrity of an examination has been compromised.

Test Locations and Registration

Test locations should be set up to provide flexibility and convenience. Realizing that the states have different geographic challenges and diverse population density, a state should consider, where possible, requiring the following elements:

1. Testing should be made available at locations convenient to residents of all areas of the state.
2. Test locations should provide enough testing capacity so a candidate can test at the desired location within two to five business days of registration.
3. Exam site hours should include evening and weekend hours.
4. Test vendors should provide regular reports as required by the state detailing site usage and availability data.
5. Test registration should be available online or by telephone and allow for next day testing when space is available. A state should consider tracking telephone hold and wait times to monitor how long callers wait.
6. State guidelines should provide for flexible means for payment of fees for testing, fingerprinting and other licensing. The states should consider methods which facilitate payment by companies.

Disabilities

A state should require a vendor to develop a system that accommodates the physically impaired that is not related to a testing candidate's knowledge of insurance. Visually impaired and hearing-impaired persons should be accommodated through all steps of the licensing process, pursuant to national standards set by the federal Americans with Disabilities Act (ADA).

Examinations in Languages Other Than English

Some industry experts suggest caution about using translated or interpreted exams. The material may not directly translate into equivalent terms or meaning. Cultural biases might cause incorrect interpretation of a meaning. Some experts recommend that tests should be developed and administered in English, especially if other materials necessary to perform job duties for the profession (such as contracts) are in English. State licensing directors should review state law and consult with legal counsel about the appropriateness of offering examinations in a foreign language.

Reporting Examination Results

State licensing procedures should include guidelines that facilitate the prompt issuance of licenses once an applicant passes a test. Elements might include:

1. Pass/fail notices should be issued at exam sites upon completion of the exam. If an applicant has not achieved a passing score, the applicant should receive immediate notification of failure. The states vary as to whether successful completion is reported with a precise score or merely an indication that the candidate passed the exam. When a candidate does not pass the exam, the state should provide the precise score and the percentage of questions in each subject area that the applicant answered incorrectly.
2. If a state issues a paper license, and if it has been predetermined that an applicant has met all requirements necessary for licensure, including any required fingerprint report, a license should be issued at the exam site, or within 48 hours of completing all necessary requirements.
3. The state should send an email or other timely communication to a candidate to whom a license has been issued outside the test site or provide information to applicants as to how to check online.
4. Within 24 hours of license issuance, the new licensee's information should be added to the state's database, and the updated status should be sent to NIPR.
5. The states should work with their vendors to report aggregate results in a way that is more uniform with other states.
6. First-time pass rates should be maintained and made available to the public. First-time pass rates are defined as the percentage of candidates who pass the whole test the first time.
7. In performing background checks, the use of an electronic process should be required whenever possible.
8. In those states requiring fingerprints, where possible, exam sites should have the capability to collect electronic fingerprints.

Retesting or Notice of Failure

A state licensing plan should include a method to facilitate prompt retesting of applicants who have failed a test. The "non-passing" notice should break scores out by each subject area. If the candidate requests to make another attempt, an examination should be made available within a reasonable time period.

Producer Exam Content and Testing Administration Recommended Best Practices for Insurance Regulators

- The states should use accepted psychometric methods including job analysis to determine if the examination content falls within the content domain that a minimally competent candidate of that specific line of authority tested would be expected to know.
- The states should set passing scores (cut scores) and difficulty level using psychometric methods and appropriate SMEs based on what an entry-level producer needs to know.
- The states are encouraged to move to one-part exams to allow for more success among candidates without jeopardizing consumer protections.
- The states should require the test vendor (or other entity responsible for test development) to document the process for ensuring quality control and validity of the examination, including psychometric review and editing and analysis of item bias or cultural and gender sensitivity.
- To allow for meaningful comparison, all jurisdictions should define first-time pass rate as the percentage of candidates who pass the whole test the first time.
- At least annually, reports regarding exam pass rates, candidate demographics when collected and number of exams administered should be made available to the public. Reports should include first-time pass success and average scoring by subject area. Whenever possible, the reports should be available by education provider and provided to them.
- A state advisory committee consisting of insurance regulators and the industry—including, where possible, recently licensed producers—should annually work with the testing vendor to review the questions on each examination form for substantive and psychometric requirements. If, during any other time, any examination results exhibit significant unexplained deviations, the examination should be reviewed.
- The states should work with testing vendors and approve CIBs that describe the examinations and examination policies and procedures, and provide sufficient examination content outline and study references for the candidate to prepare for the examination. Updated editions of the CIB/content outline should be provided to prelicensing education providers at least six (6) weeks in advance of implementation so that training materials can be updated.
- Testing should be made available at locations reasonably convenient to residents of all areas of the state, with registration available online or by telephone and the ability for a candidate to schedule testing within two to five business days of registration.
- Pass/fail notices should be issued at exam sites upon completion of the exam. The fail notice should break out scores by subject area. The state should provide a method to facilitate prompt retesting, while allowing a reasonable time for candidates to review and prepare for retest.
- The states should deliver exams in a secure test center network that employs qualified test proctors.
- The states should set clear performance standards for test vendors and require accountability.

Chapter 9

Lines of Insurance

The Major Lines

A line of authority is a general subject area of insurance that a producer can be licensed to sell. The PLMA identifies and defines seven lines of authority; however, the ULS set forth six lines that are considered major lines of authority, as well as certain core limited lines. Additionally, the ULS set forth standards for non-core limited lines. The states should review all other lines of insurance and consider eliminating them in an effort to become compliant with the ULS.¹ Uniform adoption of the major lines is essential to fully implement NAIC licensing reforms.

The six major lines of authority are defined in the PLMA as follows:

1. Life – insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.
2. Accident and health or sickness – insurance coverage for sickness, bodily injury or accidental death and may include benefits for disability income.
3. Property – insurance coverage for the direct or consequential loss or damage to property of every kind.
4. Casualty – insurance coverage against legal liability, including that for death, injury or disability, or damage to real or personal property.
5. Variable life and variable annuity – insurance coverage provided under variable life insurance contracts and variable annuities.
6. Personal lines – P/C insurance coverage sold to individuals and families for primarily noncommercial purposes.

Because the ULS also require that each major line be available individually, the states should provide individual examinations for each of the major lines except variable life and variable annuity. It is acceptable for a state also to offer combined exams. The ULS contemplate that each state will require an examination for residents to qualify for all major lines. The states should give examinations only to residents, not nonresidents.

While the ULS do not specifically prohibit an examination for variable life and variable annuity products, most states do not require an examination. This line of authority is usually granted if the applicant holds a life line of authority and has successfully completed the Financial Industry Regulatory Authority (FINRA), formerly known as the National Association of Securities Dealers (NASD), examinations necessary to obtain a state securities license in that state. In most cases, this means successful completion of the FINRA Series 6 and/or Series 7 (according to the specific state's requirements) and/or Series 63 exams.

The Producer Licensing (EX) Working Group has not specifically stated that states should not require an active state securities license of residents or nonresidents as a condition of granting the variable life and variable annuity products line of authority. The ULS do contemplate that no such requirement shall be imposed. For nonresident applicants, it is not appropriate to pend a request for the variable life/annuity products line of authority to verify existence of the underlying life line of authority in the home state. If a proper request for licensure is received and the applicant is in good standing in the home state with the variable life and variable annuity line of authority, the nonresident license should be granted. If a state cannot verify through the SPLD that the applicant holds a variable authority, it is permissible to pend the application and contact the applicant's home state to verify the variable authority.

Information regarding an applicant's status as to securities registration and securities examinations passed currently are easily accessible on FINRA's public Web site (under "Check Out Brokers & Advisors" at www.finra.org/InvestorInformation/index.htm). Information available includes: employment history; states where the individual is securities licensed; securities examinations passed; and formal and final disciplinary history. To obtain Central Registry Depository (CRD) information regarding pending complaints and unresolved cases, a state insurance department must contact its state's securities regulator.

¹ The PLMA does not address title insurance, which is considered a major line by some of the states and a limited line by others.

Recommended Best Practices for Regulators

- Adopt the major lines and the definitions exactly as stated in the PLMA and provide separate testing for each line, except variable
- Allow combined examinations, as appropriate

Limited Lines

A limited line of insurance is a line of insurance that covers only a specific subject matter. Limited line licenses generally have simpler licensing requirements than required by the major lines. Some states require an examination for credit insurance. For the other limited lines, some states require an examination, while some require only a simplified application process. In some states, a business entity is permitted to maintain a limited lines license on behalf of individuals who make the limited line of insurance available to its customers. Often, a limited line is adopted by regulation and not by statute.

The PLMA contains a specific definition for credit insurance and allows states to define other limited lines. The Producer Licensing (EX) Working Group adopted definitions for specific “core” limited lines of insurance for producers, which have become part of the ULS. States are encouraged to adopt the definitions of those limited lines and to review and eliminate as many non-uniform limited lines as possible. The PLMA requires states to grant to a nonresident a nonresident limited line producer license with the same limited line of authority as the license issued by the home state. Many states have adopted a special licensing category to accommodate this type of situation.

The core limited lines are:

1. Car rental insurance.
2. Credit insurance.
3. Crop insurance.
4. Travel insurance.

The ULS provide that examinations are not generally required for limited lines, but that it is acceptable for examinations for areas such as crop and surety. The states should give examinations only to residents, not nonresidents. The ULS specifically state that CE is required for only the major lines of insurance. (See specifics for crop insurance.)

In 2009, the Producer Licensing (EX) Working Group was charged with reviewing limited line licensing issues, with particular focus on: 1) the establishment of a limited lines that encompasses several insurance products where the business of insurance is ancillary to the business of the person offering the product; 2) the licensing requirements of individuals selling limited line products; and 3) the fingerprinting of individuals selling limited line insurance products. Throughout the year, the Producer Licensing (EX) Working Group had discussions; however, no consensus was achieved. As a result, the Producer Licensing (EX) Working Group reported to the Producer Licensing (EX) Task Force and requested further guidance on its charge. For 2010, the Producer Licensing (EX) Working Group was asked to:

Finalize the review of limited-line licensing issues, with particular focus on the following: 1) individually review the licensing requirements for each core limited line; 2) review other limited lines, and determine what licensing requirements should apply to them; and 3) determine if another “catch all” limited line was needed to address licensing requirements for insurance products not already encompassed within the list of limited lines. Updates to the limited line charge may be obtained on the Producer Licensing (EX) Working Group’s web page on the NAIC website.

The NAIC has adopted a specific resolution rejecting a prior request by industry to adopt a new limited line for term life insurance. The full text of the resolution is in the Appendices.

As part of its 2010 charges, the Producer Licensing (EX) Working Group conducted a review of the ULS and adopted several amendments. Specifically related to this chapter, revisions were made to Standard 16 (Lines of Authority), Standard 33 (Definition of Core Limited Lines), Standard 34 (Travel) and Standard 37 (Non-Core Limited Lines).

Recommended Best Practices for Regulators

- Allow resident and nonresident limited lines license applications to be filed electronically.
- Eliminate state-specific applications.
- To further reciprocity, report all limited lines licensees to the SPLD.
- Adopt the applicable revisions to the ULS related to limited lines.

A. Limited Line of Car Rental Insurance

Under the ULS, car rental insurance is defined as:

[I]nsurance offered, sold or solicited in connection with and incidental to the rental of rental cars for a period of [per state law], whether at the rental office or by pre-selection of coverage in master, corporate, group or individual agreements that (i) is non-transferable; (ii) applies only to the rental car that is the subject of the rental agreement; and (iii) is limited to the following kinds of insurance:

- (a) personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs with the rental car during the rental period;
- (b) liability insurance that provides protection to the renters and other authorized drivers of a rental car for liability arising from the operation or use of the rental car during the rental period;
- (c) personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period;
- (d) roadside assistance and emergency sickness protection insurance; or
- (e) any other coverage designated by the insurance commissioner.

The states vary in their methods of supervising the sale of car rental insurance. In the states that require a license, there are generally three methods in use. The first is a registration requirement through submission of an application. The second is the successful completion of an exam and submission of an application. The states should give examinations only to residents, not nonresidents. Under the third method, a car rental company registers with the state insurance department. The company holds the license and is responsible for supervising the training and testing of its counter agents. The company reports to the department and pays all fees.

B. Limited Line of Credit Insurance

The PLMA defines limited lines credit insurance as:

Credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance or any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation and that is designated by the insurance commissioner as limited line credit insurance.

Credit insurance products are designed to protect the borrower against the risk of not being able to pay a debt. Credit life, disability and involuntary unemployment insurance are typical lines of coverage. These products are generally made available by the creditor at the time the loan transaction occurs. Because the insurance is purchased at the time the borrower completes the loan, policy and certificate forms, premium structures and underwriting conditions are generally simpler than other limited lines of insurance.

Credit insurance is issued under individual and group policies. This allows market flexibility for different distribution systems and variations in product design to insure the different types of credit risks. If an individual enrolls customers under a group insurance policy, the individual must obtain a limited lines license, if a commission is paid. Section 4(B)(2) of the PLMA provides an exception from licensing if no commission is paid to the enroller and the enroller does not engage in

selling, soliciting or negotiating.

Section 6(D) of the PLMA provides that each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide its producers a program of instruction that may be approved by the insurance commissioner.

Recommended Best Practices for Insurance Regulators

- A state should establish a method to verify that each credit insurer has established a program of instruction.

C. Limited Line of Crop Insurance

Under the ULS, crop insurance is defined as:

Insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease, or other yield-reducing conditions or perils provided by the private insurance market, or that is subsidized by the Federal Crop Insurance Corporation (FCIC), including multi-peril crop insurance.

There are two types of crop insurance: multiple peril crop insurance (MPCI) and crop hail insurance.

The federal government is involved with crop insurance because a single event (such as drought) often results in multiple losses. Automobile accidents or health problems generally are independent, random events that do not trigger multiple insurance losses. For crop insurance, multiple losses are the norm rather than the exception. For many years, capital requirements to maintain adequate reserves to cover widespread losses were so high that commercial development of MPCI policies by companies was unrealistic. As a result, the federal government created a federally subsidized risk management program.

Multiple Peril Crop Insurance

An MPCI policy provides protection against crop losses from nearly all natural disasters, including: adverse weather conditions; fire; insects, but not damage due to insufficient or improper application of pest control measures; plant disease, but not damage due to insufficient or improper application of disease control measures; wildlife; earthquake; volcanic eruption; or failure of the irrigation water supply if due to an unavoidable cause of loss occurring within the insurance period.

MPCI is subsidized by the federal government and delivered by private insurance companies. The insurer's functions include hiring and training producers; paying for marketing and advertising; hiring and training loss adjusters; and carrying out loss adjustment activity, billing and collecting premiums, processing and verifying applications, conducting actual production history reviews, processing and verifying acreage reports, paying claims, auditing and verifying claims data, paying uncollected premiums, and maintaining the necessary automated data processing infrastructure to communicate data with the Risk Management Agency (RMA) on a routine basis for all MPCI policies.

The MPCI policy is a contract between the producer and the insurance company and not with the federal government. However, a farmer cannot receive the federal subsidy attached to the program unless the insurance policy followed the federal standards and rates. Like many insurance companies, crop insurance companies have reinsurance agreements to transfer risk to other private companies known as reinsurers. Unlike most other insurance lines, the private insurance companies also transfer some of the risk associated with the crop insurance program directly to the federal government.

There are many MPCI plan options available: yield-based, revenue-based or a combination of both. The basic policy provisions for all these plans, as well as the rates, are set by the FCIC. A combination of commodity markets results and the U.S. Department of Agriculture (USDA) establish the maximum price for each crop each year for insurance purposes (i.e., the value of each bushel in the event of loss).

While the RMA controls pricing and policy forms, producer licensing and enforcement of proper sales practices are left to the states.

Crop/Hail Insurance

Crop/hail insurance is offered through companies licensed by state insurance departments. A private market has existed for crop/hail insurance for more than a century. Companies have developed stand-alone full coverage and deductible crop hail policies, as well as companion policies that function very well in conjunction with the different MPCPI plans that are offered at varying coverage levels. The premium rates for these crop/hail policies are determined by historical loss experience and are set by the companies.

Continuing Education

Subsequent to the adoption of the ULS, the Producer Licensing (EX) Working Group considered and agreed that a CE requirement for crop insurance shall not be a violation of the uniform standards. Under federal law, insurance producers selling MPCPI are required to attend CE classes each year.

D. Limited Line of Surety

As part of the discussion of limited lines, the Producer Licensing (EX) Working Group made the determination to remove surety as a limited line. Although this determination was made, it is understood that surety is considered a major line by some of the states and a limited line by others.

E. Limited Line of Travel Insurance

Under the ULS (as revised Aug. 6, 2010), travel insurance is defined as:

Insurance coverage for personal risks incidental to planned travel, including, but not limited to,:

1. Interruption or cancellation of trip or event.
2. Loss of baggage or personal effects.
3. Damages to accommodations or rental vehicles.
4. Sickness, accident, disability or death occurring during travel.

Travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting six months or longer, including, for example, those working overseas as an ex-patriot or military personnel being deployed.

Standard 34 recognizes and sets the guidelines for the creation of an additional business entity licensing model under the travel limited line licensing structure. This structure creates the concept of a “travel retailer” in which the entity and a certain number of its employees may disseminate travel insurance under the direction of a responsible licensed producer. Said producer maintains responsibility for the training and conduct of any and all associated travel retailer(s).

Recommended Best Practices for Regulators

- A state adding the travel limited line should do so in accordance with applicable ULS.

F. Non-Core Limited Lines

After much discussion about the concept of “auxiliary” or “miscellaneous” lines, the Producer Licensing (EX) Working Group formally adopted Standard 37 as a basis for any future addition of other non-core limited line. The standard states, in part, that:

A state is not required to implement any non-core limited line of authority for which a state does not already require a license or which is already encompassed within a major line of authority; however, the states should consider products where the nature of the insurance offered is incidental to the product being sold to be limited line insurance products. If a state offers non-core limited lines (such as pet insurance or legal expense insurance), it shall do so in accordance with the following licensing requirements. Individuals who sell, solicit or negotiate insurance, or who receive commission or compensation that

is dependent on the placement of the insurance product, must obtain a limited line insurance producer license. The individual applicant must: 1) obtain the limited lines insurance producer license by submitting the appropriate application form and paying all applicable fees as set forth in applicable state law; and 2) receive a program of instruction or training subject to review by the insurance department

No prelicensing or testing shall be required for the identified non-core limited lines insurance.

Chapter 10

Surplus Lines Producer Licenses

In order to operate in a state, P/C insurance companies are generally categorized in one of two ways. An admitted company obtains a certificate of authority to operate in a given state and is fully subject to and regulated by the laws of the state. Its policyholders are protected, at least to some extent, by the state's guaranty fund.

A nonadmitted company, otherwise known as a surplus lines company, has limited authority to operate in a state. These companies may be required to be eligible in a state but are subject to significantly less regulation. States allow surplus lines companies to operate because they recognize that certain types of insurance, or insurance at certain amounts, are not available from admitted companies. Generally, surplus lines companies are not subject to rate and policy form regulation, and their policyholders are not covered by state guaranty funds.

Under the ULS, a producer who wishes to engage in the sale of surplus lines insurance (SLI) must first obtain a surplus lines producer license. Under the ULS, this is considered a license type and not a line of authority; however, in some of the states, it is treated as a line of authority. The ULS require that a resident producer hold both property and casualty lines of authority before an SLI producer license can be issued. Under the previous reciprocity provisions of the GLBA, surplus lines producers were entitled to reciprocal licensing if they were licensed for surplus lines and in good standing in the producer's home state. The NAIC uniform application is to be used for application as a surplus lines producer.

Some of the states also require a resident producer placing SLI to complete an examination or post a bond. However, to comply with the reciprocity provisions of Section 8 of the PLMA, these requirements cannot be imposed on nonresidents. States cannot impose an additional CE requirement on nonresident SLI producers.

The Nonadmitted and Reinsurance Reform Act

The federal Nonadmitted and Reinsurance Reform Act (NRRRA) was signed into law by President Barack Obama on July 21, 2010, as part of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5301. The NRRRA set federal standards for the collection of surplus lines premium taxes, insurer eligibility, producer licensing and commercial purchaser exemptions. Most of the provisions of the NRRRA went into effect on July 21, 2011.

For licensing of surplus lines brokers, the most significant change was to limit the licensing requirements to only the home state of the insured. Specifically, to place a surplus lines multistate risk policy, the broker needs only to be licensed as a surplus line broker in the insured's home state, not in all of the states where the policy risk is located. The NRRRA defines the home state of the insured as "(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or (ii) if 100% of the premium of the insured risk is located out of the state referred to in clause (i), the state to which the greatest percentage of the insured's taxable premium for that insurance contract is located." The definition goes on to clarify that, with respect to affiliated groups, "[i]f more than one insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term 'home state' means the home state, as determined pursuant to [clauses (i) and (ii) above], of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract."

The NRRRA also prohibits a state from collecting fees relating to the licensing of a surplus lines broker unless the state participates in the NAIC's national insurance producer database for surplus lines broker licensure by July 21, 2012. Currently, all states accept applications and renewals for surplus lines broker licenses for individuals through the NIPR and all but one state accept applications and renewals for surplus lines broker licenses for business entities.

Surplus Lines Distribution Systems

Surplus lines insurance is generally produced through one of two distribution systems. One, generally referred to as a retail distribution system, involves a single broker accessing the surplus lines company directly to place insurance. The second, generally referred to as a wholesale distribution system, involves a surplus lines broker that operates as an intermediary between a "retail agent" and a surplus lines company. In the retail distribution system, there is only one producer in a transaction, so that producer would need to conduct the diligent search of the admitted markets prior to accessing the surplus lines markets (unless there is some exception such as a large commercial purchaser or an export list). In the wholesale

distribution system, the diligent search is often conducted by the retail broker, who determines there is no admitted market prior to contacting the surplus lines wholesale broker; however, some of the states have different requirements.

The vast majority of the states take the position that a broker conducting a diligent search would need a P/C agent's license because it is necessary to solicit insurance, take an application and make a submission to an admitted company. Many states do not require a retail producer to obtain a surplus lines broker's license unless the broker is going to access the surplus lines companies directly. There are a couple of states that require a retailer to have a surplus lines license before using the services of a surplus lines wholesale broker.

Diligent Search Requirements

The vast majority of the states require a "diligent search" of the admitted market to determine if there is an admitted carrier willing to write the risk, prior to accessing the surplus lines markets. A couple of states have abolished the diligent search requirement. Many of the states require that brokers search those admitted companies that are actually writing the coverages sought. If there is no admitted carrier willing to write the risk, the risk can be placed in the surplus lines markets. Many of the states require an affidavit to be completed documenting that the diligent effort was completed. Recently, a number of the states have replaced the affidavit, which was sworn under penalty of perjury, with a report from the surplus lines licensee that the diligent search was conducted. Some of the states also have replaced the requirement that the affidavit (or report) be filed with the insurance department or Surplus Line Association (SLA) with a requirement that the report of the diligent search be maintained in the office of the broker and available for audit by the insurance department.

Many of the states specify that the diligent search can be conducted by the retail broker (commonly called producing broker), when a surplus lines wholesaler accesses the surplus lines markets. The retail broker has access to admitted markets. The retailer uses the services of a surplus lines wholesale broker only after the retail broker has determined that the admitted markets are not willing to underwrite the risk.

The most common diligent search standard requires declinations from three admitted carriers, but as many as five are required. Other states simply require the producing broker to make an effort, a reasonable effort or a good faith effort to place the coverage in the admitted markets. A couple of states require that the insurance not be procurable after a diligent effort has been made to place the coverage among a majority of insurers, but this standard has been called into question as unclear and impractical. A number of exceptions to the diligent search requirement exists in state law, and the NRRRA implemented a national exception to the diligent search rules for insureds that qualify as exempt commercial purchasers. Twenty-two states have laws authorizing an "export list" of coverages that the insurance commissioner has determined are not generally available in the admitted markets. Coverages on the export list can be placed in the surplus lines market without a diligent search. In some of the states, the state insurance department is required to conduct an annual public hearing regarding the export list. The purpose of the hearing is to take testimony on the export list to determine whether any items should be added or removed.

The former NARAB (EX) Working Group updated the NAIC's standard for determining compliance with the GLBA's previous reciprocity provisions. In a report that was adopted by the NAIC in September 2009, the Working Group refined its approach to reciprocity relating to any underlying P/C licensing requirements for nonresident surplus lines producers. The Working Group determined that if a state requires the surplus lines producer to perform the diligent search of the admitted market, then the state may require the nonresident surplus lines producer to obtain an underlying nonresident P/C license in addition to a nonresident surplus lines license. However, the Working Group determined that a state may not require a nonresident surplus lines producer also to obtain a nonresident P/C license if they do not perform the diligent search. Many surplus lines producers do not perform diligent searches because the retailer has already conducted the diligent search, and the law does not require a second diligent search. In such instances, the surplus lines producer is not accessing the admitted market. Consequently, the Working Group determined that it was inconsistent with the previous GLBA reciprocity requirements to require an underlying P/C license for a surplus lines wholesale broker unless they are required by law to conduct a diligent search or conduct diligent searches in their agency.

The NRRRA established a single "exempt commercial purchaser" exemption from state diligent search requirements that is applicable in every state. As of July 21, 2011, a diligent search in the admitted market is not required to place a policy for an exempt commercial purchaser if: 1) the broker has disclosed to the exempt commercial purchaser that coverage may be available from the admitted market, which may provide greater protection with more regulatory oversight; and 2) the exempt commercial purchaser has requested in writing that the broker procure/place such coverage with a surplus lines insurer.

An "exempt commercial purchaser" is defined in the NRRRA as a purchaser of commercial insurance that:

1) employs or retains a qualified risk manager to negotiate insurance coverage; 2) has paid aggregate nationwide commercial P/C insurance premiums in excess of \$100,000 in the immediately preceding 12 months; and 3) meets at least one of the following criteria: (i) possesses a net worth in excess of \$20 million (as adjusted for inflation); (ii) generates annual revenues in excess of \$50 million (as adjusted for inflation); (iii) employs more than 500 full-time employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate; (iv) is a not-for-profit organization or public entity generating annual budgeted expenditures of at least \$30 million (as adjusted for inflation); or (v) is a municipality with a population of more than 50,000.

A number of the states elected to maintain their statutory exemptions from diligent search requirements, which were sometimes known as industrial insured exemptions. If the state's industrial insured exemption was more liberal than the NRRA exempt commercial purchaser (ECP) exemption, then the state's requirements were not in conflict with the NRRA, and the exemption in the NRRA would not apply.

SLI producers are routinely subject to additional state administrative requirements that are considered to be outside the scope of licensing reciprocity considerations or the ULS. The regulations regarding the administration of surplus lines are different from other types of insurance because the states typically require the licensed surplus lines producers to perform certain compliance activities that would usually be the responsibility of the licensed insurance company in a transaction in the admitted market. In a surplus lines transaction, the compliance obligations are imposed upon the producer because the producer is the licensed party. The surplus lines insurer is unlicensed and often referred to as a "nonadmitted insurer" in some of the states or "unauthorized insurers" in other states.

There are additional administrative requirements in some of the states for licensed surplus lines producers that apply once the coverage is placed. These may include:

1. Filing reports with state insurance departments or state stamping offices of placements made.
2. Collecting and paying surplus lines premium taxes.
3. Maintaining a record of all surplus lines placements made.
4. Providing the insured with a disclosure stating that the policy he or she has purchased is being issued by an insurer that is not licensed in the state, is not subject to the financial solvency regulation and enforcement that apply to the state's licensed insurers, and does not participate in any of the insurance guarantee funds created by the state's law.
5. Using a designated stamping office.
6. Including declaration or binder pages with the surplus lines tax filings.
7. Filing a report stating that no policies were written that are known as "zero reports" (as discussed later in this section).

In order for a producer to place business in the surplus lines market, the producer must first determine that the company is an eligible surplus lines company in a given state. Most of the states require that a surplus lines company be deemed "eligible" by meeting certain financial criteria or by having been designated as "eligible" on a state-maintained list. Prior to the enactment of the NRRA, state eligibility standards varied widely from state to state.

As of July 21, 2011, a surplus lines transaction is subject only to the eligibility requirements of the NRRA. The NRRA eligibility requirements are based on two provisions from the *Nonadmitted Insurance Model Act (#870)*.

Specifically, the NRRA requires surplus lines carriers to comply with Section 5A(2) and Section 5C(2)(a) from *Model #870*, which require an insurer to be authorized in its domiciliary state to write the type of insurance that it writes as surplus lines coverage in the state where it is eligible and to have capital and surplus, or its equivalent, under the laws of its domiciliary jurisdiction, equaling the greater of: 1) the minimum capital and surplus requirements under the law of the home state of the insured; or 2) \$15 million. The insurance commissioner in the insured's home state may reduce or waive the capital and surplus requirements (down to a minimum of \$4.5 million) after the insurance commissioner makes a finding of eligibility based on several factors set out in *Model #870*, such as the quality of management, the surplus of a parent company and reputation within the industry.

In addition to eligibility requirements for U.S. domiciled insurers, the NRRA requires the states to permit the placement of surplus lines coverage with surplus lines companies organized in a foreign country (alien insurers) that are listed on the NAIC *Quarterly Listing of Alien Insurers*. The states cannot prohibit a broker from making a placement with an NAIC-listed

alien insurer. A state also may allow placement of coverage with alien insurers not on the NAIC list. A number of the states have authority to individually approve an alien carrier that is not listed on the *Quarterly Listing of Alien Insurers*.

The Quarterly Listing of Alien Insurers is available for reference and download on the NAIC Products – AVS, Data & Publications website at http://www.naic.org/prod_serv_alpha_listing.htm# (Quarterly Listing of Alien Insurers)

Premium Taxes

Surplus lines premium tax generally is the obligation of either the policyholder or the surplus lines producer, depending on the applicable state law. In all states, the producer or the insured, rather than the insurance company, remits the surplus lines tax. If the policy covers risks that are located entirely in one state, the tax is assessed at that state's tax rate.

Under the NRRA, the home state of the insured has sole regulatory authority over the collection of surplus lines premium taxes. The NRRA prohibits any state other than the home state of the insured from requiring any premium tax payment for surplus lines insurance.

The NRRA permitted, but did not require, allocation of the surplus lines taxes among the states where the exposure was located. The states initially pursued three different approaches to allocation of taxes following the adoption of the NRRA: 1) the Nonadmitted Insurance Multi-State Agreement (NIMA); 2) the Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT); and 3) taxing and keeping 100% of surplus lines premium tax on policies in the home state of insureds. NIMA is no longer operational and SLIMPACT never became operational. The prevailing rule is that states are taxing and keeping 100% of the premium. The NRRA requires surplus lines brokers to adhere to the law of the home state of the insured to determine the amount of premium tax owed on a surplus lines transaction and for any other regulatory requirements the state may require in connection with the payment of the premium tax, such as the timing of tax payments and whether the state requires the submission of risk allocation information for multi-state transactions. The NRRA requires surplus lines brokers to submit the premium tax payment on a surplus lines transaction only to the insured's home state. In the case of a state that has joined NIMA, the payment will be made to the clearinghouse in accordance with the home state's law. Should SLIMPACT become operational, it also could elect to require multistate payments to be made to the clearinghouse.

Many of the states require brokers to submit documentation regarding allocation by state of the risks covered by a surplus lines transaction. If the home state of the insured is a state that has joined NIMA, the broker will be required to use the NIMA risk-allocation formula. If the home state is a state that has joined SLIMPACT, the broker will be required to use the SLIMPACT risk-allocation formula. As of May 2013, both NIMA and SLIMPACT have adopted the same allocation formula. Other states require the broker to submit allocation data in accordance with individual state laws and regulations, but the vast majority of states do not require allocation data because there are very few states allocating premium at this time. In some of the states, taxes are paid to a state agency other than the insurance department, such as the department of revenue.

Guaranty Fund Warning

Nearly all of the states require a disclosure regarding the unavailability of guaranty fund coverage for a surplus lines policyholder, even if the state represents a small portion of the risk. Prior to the NRRA, when a multistate risk was involved, the company would be required to include several pages of guaranty fund notices, many of which had nearly the same language with minor variations. Brokers may choose to continue to use this approach following the enactment of the NRRA, but the NRRA initiated a compliance system that requires compliance only with laws of the home state of the insured.

As an example, a typical disclosure statement is as follows:

NOTICE TO POLICYHOLDER

This contract is issued, pursuant to Section ___ of the (State) Insurance Code, by a company not authorized and licensed to transact business in (State), and as such, is not covered by the (State) Insurance Guaranty Fund.

After review of this and other issues by a special NAIC subgroup in 2006, the Producer Licensing (EX) Working Group adopted its recommendation that, on a multistate risk, the home state's disclosure should fulfill all other states' disclosure requirements.

Stamping Offices

Stamping offices are entities that are not governmental agencies but whose existence is authorized by law. These offices act as the liaison between the surplus lines producer and the state insurance departments. The stamping offices have varied responsibilities, which may include evaluation of insurance companies for inclusion on a white list, review of surplus lines policies and education. Stamping offices also provide reports of premiums and taxes to the state insurance department.

Stamping offices are nonprofit and are funded by stamping fees assessed on each policy of surplus lines insurance written in the state. As of April 2017, there are stamping offices in 14 states.

Zero Reports

In some of the states, a producer is required to file a report, known as a "zero report," stating that the producer has not placed any SLI business during a specified time period.

In 2006, a special NAIC study group documented that five states require this report monthly, 12 quarterly, seven semi-annually and 27 annually. The states also use the reports for different recording purposes, so it was not determined if it would be possible to eliminate these reports altogether. However, the study group concluded and recommended to the Producer Licensing (EX) Working Group that zero reports be eliminated. The group also recommended further study to determine feasibility of any other use of a zero report. As of January 2017, the Producer Licensing (EX) Working Group has not taken any formal action on this issue.

Chapter 11

Appointments

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

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

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

In states that renew appointments, the key elements include:

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

Appointment Terminations

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

Recommended Best Practices for Insurance Regulators

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

Chapter 12

Business Entities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommended Best Practices for Insurance Regulators

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

Chapter 13

Temporary Licenses

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

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

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

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

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

Part I Insurance Producer Licensing

Section C License Continuation

- Chapter 14 Continuing Education
- Chapter 15 Reporting of Actions and Compensation Disclosure
- Chapter 16 License Renewal and Reinstatement
- Chapter 17 Post Licensing Producer Conduct Reviews

Chapter 14

Continuing Education

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

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

Section 16(B) of the PLMA specifically states:

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

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

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

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

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

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

Course Approvals

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

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

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

The key elements are:

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

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

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

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

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

Continuing Education Providers

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

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

Recommended Best Practices for Insurance Regulators

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

Chapter 15

Reporting of Actions and Compensation Disclosure

Reporting of Actions

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

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

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

Recommended Best Practices for Insurance Regulators

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

Compensation Disclosure

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

Chapter 16

License Renewal and Reinstatement

License Renewal

Under the PLMA, the general rule is that a producer license remains in effect unless suspended, cancelled or revoked. All states have a procedure for individual producers to verify compliance with CE requirements. In states that renew licenses, the CE compliance period should coincide with the license renewal.

The Producer Licensing (EX) Working Group has adopted a uniform license renewal application that is recommended for use by states that renew producer licenses. The current version of the application can be found on the Producer Licensing (EX) Working Group web page. States should use the data elements from the uniform renewal application, whether renewal is done via paper application or electronically.

The previous reciprocity provisions of the GLBA also applied to license renewal of nonresidents. The process should be similar to initial licensing:

1. The proper application and fee are submitted.
2. If the answers to any of the questions on the renewal application indicate conduct prohibited by Section 12 of the PLMA, a state can require additional documentation.
3. No other attachments should be required.

A number of states use the electronic license renewal process. This process automatically checks the NAIC and NIPR databases to verify the producer's standing in the home/resident state. The NIPR process uses the data elements from the uniform renewal application.

The PLMA contains a special process for producers who cannot comply with CE requirements due to military service or other extenuating circumstances.

Reinstatement

The PLMA allows a producer to reinstate a lapsed license within 12 months of expiration. No examination is required as long as the producer was otherwise eligible to renew. The PLMA also provides that a penalty fee can be assessed.

Chapter 17

Post Licensing Producer Conduct Reviews

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

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

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

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

The following considerations should be taken into account:

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

License Reinstatement or Reissuance After Disciplinary Action

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

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

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

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

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

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

Collaboration and Referrals Among Insurance Regulators

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

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

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

Recommended Best Practices for Insurance Regulators

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

Part II

Miscellaneous Licenses

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| Chapter 18 | Adjusters |
| Chapter 19 | Bail Bond Agents |
| Chapter 20 | Charitable Gift Annuities |
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| Chapter 25 | Multiple Employer Welfare Arrangements |
| Chapter 26 | Reinsurance Intermediaries |
| Chapter 27 | Risk Retention Groups and Risk Purchasing Groups |
| Chapter 28 | Third-Party Administrators |
| Chapter 29 | Title Insurance Agents |
| Chapter 30 | Viatical and Life Settlement Brokers |

Chapter 18

Adjusters

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

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

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

Under the model, a public adjuster is defined as:

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

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

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

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

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

14. A person authorized to adjust workers' compensation or disability claims under the authority of a third-party administrator (TPA) license pursuant to [applicable licensing statute].
 Drafting Note: This guideline is drafted to eliminate redundant licensure requirements with respect to the activities engaged in by a licensee. If licensed as an independent adjuster, TPA or similar business entity, licensees should not be required to obtain separate independent adjuster licenses, provided that the types of claims adjusted do not include life, health, annuity or disability insurance claims.

Qualifications of an Adjuster

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

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

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

Fitness and Character Considerations

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

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

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

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

Reciprocity

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

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

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

The NAIC Independent Adjuster Guidelines defines home state as:

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

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

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

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

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

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

Continuing Education

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

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

Emergency/Catastrophic Adjusters

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

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

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

Recommended Best Practices for Regulators

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

Chapter 19

Bail Bond Agents

A bail bond is one method used to obtain the release of a defendant awaiting trial upon criminal charges from the custody of law enforcement officials. A bail bond can be based on an insurance product or collateral. The defendant, the defendant's family and friends, or a professional bail bond agent executes a document that promises to forfeit the sum of money determined by the court to be commensurate with the gravity of the alleged offense if the defendant fails to return for the trial date. A bail bond is considered a three-part contract between the defendant, the government and the insurance company.

Some states regulate bail bonds through the insurance department, and others leave the administration to the discretion of the court system. It is usually required that a bail bond insurer file a power of attorney with the local court authority. This power of attorney is proof to the court that the bail agent is authorized to write bonds for that insurer up to a certain dollar amount.

State insurance departments vary in the manner in which bail bond activities are regulated. There is no NAIC model to guide state licensing directors for bail bond agents. A number of states use the surety line of authority to regulate only the bonds that are insurance-based. In other states, a more comprehensive system has been developed that includes examinations, background checks and personal integrity bonds. The majority of bail bond transactions are executed by resident bail bond agents. Some states prohibit nonresident bail bond agents. In many states, the state court system and local county sheriff may also have a process for approval of bail bond agents.

States that regulate bail bond agents should consider including the following elements in their regulatory scheme:

1. Minimum content and disclosure requirements for the bail bond contract.
2. Detailed record-keeping.
3. Requirement that bail funds be segregated in a trust account.
4. Appointments for all bail bond agents.
5. Written examination.
6. Background check, including fingerprints.
7. Prelicensing education on state laws and bond procedures.
8. Completion of CE.
9. Laws that clearly place liability on insurers' appointed bail bond agents who fail to comply with state law on bail bonds and return of collateral.
10. Cross reference the PLMA and the state's unfair trade practices act to apply penalties for misconduct.
11. Laws that create a fiduciary relationship between the bail bond agent and the criminal defendant.
12. Dialogue with the appropriate state court and law enforcement officials to coordinate efforts at regulating bail bond agents.
13. Adoption of a specific list of prohibited activities by bail bond agents.

Bond Forfeiture

Forfeiture enforcement may or may not be the responsibility of the state insurance department. In some states, enforcement is left to the court system. This may result in a bail agent's bond privileges being revoked in a particular county. If enforcement is the responsibility of the state insurance department, the state likely will have authority to suspend or revoke the license of a bail agent.

Prohibited Activities

The following list contains excerpts from several states' laws and regulations regarding bail bond agent licenses. This is a suggested starting point for states to draft a list of prohibited activities for bail bond agents and insurers:

1. Pay, rebate, give or promise anything of value to a jailer, peace officer, magistrate or any other person who has power to arrest or hold a person in custody, or to any public official or public employee for the purpose of securing a settlement, compromise, remission or reduction of the amount of bail bond, or to secure delay or other advantage. This section does not prohibit public reward paid for the return of a fugitive.
2. Pay, rebate, give or promise anything of value to an attorney in a bail bond matter, except in defense of an action on a bail bond, collateral or indemnification agreement.

3. Pay, rebate, give or promise anything of value to a defendant or anyone acting on the defendant's behalf in exchange for a referral of bail bond business.
4. Recommend a particular attorney to represent a defendant.
5. Solicit business where a prisoner is confined in or near a courtroom if otherwise prohibited by court order or law.
6. Sign or countersign a bail bond that the licensee did not execute.

Immigration Bonds

An immigration bond guarantees the Immigration and Naturalization Service (INS) that an alien will comply with one of several obligations under U.S. immigration laws. Most often, an immigration bond guarantees the alien while released from U.S. custody during the pendency of the government's case for unlawful entry into the country. An immigration bond can be in the form of a surety product or collateral. (See INS Form I-352.) With respect to surety products, the underlying guarantee is an insurance product permitted to be issued solely by a licensed insurer. Consequently, an individual selling, soliciting or negotiating an immigration bond must maintain a resident or nonresident producer license in order to legally sell the bond in a state.

States should recognize that immigration bonds are a form of insurance required to be issued by a licensed insurer and that the sale, solicitation and negotiation of immigration bonds constitute activities for which an individual must maintain a license as a resident or nonresident producer under the respective states' licensing laws. New Jersey Bulletin No. 09-09 contains an example of notification regarding appropriate treatment of immigration bonds.

Chapter 20

Charitable Gift Annuities

A charitable gift annuity (CGA) is a transfer by a donor to a charitable organization. In return, the donor receives an annuity payable over one or two lives. If the actuarial value of the annuity is less than the value of the property transferred, then the difference in value constitutes a charitable deduction for federal tax purposes. CGAs are not investments. Annuity payments are tax-free partial returns of the donor's gift based on actuarial tables of life expectancy.

To qualify as a charitable organization under the federal law, the entity must be one described in either Section 501(c)(3) or Section 170(c) of the Internal Revenue Code (IRC).

The maximum rates of return that are typically paid on these uninsured annuities are established by the American Council on Gift Annuities (ACGA).

Gift annuity payments are fixed. They never go down or up. CGAs are not insured. A charity could become insolvent and be unable to make annuity payments. Most gift annuities are not protected by any state guaranty fund.

The NAIC has adopted two models to regulate CGAs. *The Charitable Annuities Model Act (#240)* contains a detailed licensing scheme for CGAs. *The Charitable Gift Annuities Exemption Model Act (#241)* calls for a simplified registration mechanism.

Chapter 21

Fraternal and Small Mutuals

Fraternal Benefit Societies

A fraternal benefit society is a membership organization that is legally required to offer life, health and related insurance products to its members, be not-for-profit, and carry out charitable and other programs for the benefit of its members and the public. It must be composed of members having a common bond and be organized into lodges or chapters (local membership groups). A fraternal benefit society exists solely for the benefit of its members and their beneficiaries. Fraternal benefit societies must have a representative form of governance.

Federal law allows a fraternal to offer life and health insurance products. Section 501(c)(8) of the IRC defines a fraternal beneficiary society as:

- (a) a nonprofit mutual aid organization;
- (b) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system; and
- (c) providing for the payment of life, sick, accident or other benefits to the members of such society, order or association, or their dependents.

Fraternal benefit societies offer insurance products, are chartered and licensed according to state insurance laws, and are regulated and examined by state insurance departments. Individuals who sell, solicit or negotiate insurance products for a fraternal benefit society are required to obtain a state insurance producer license.

The NAIC has adopted the *Uniform Fraternal Code* (#675). However, this model is not widely in use. At this writing, 45 states had adopted a version of the *Model Fraternal Code* as drafted by the National Fraternal Congress of America (NFCA). Both the NAIC model and the NFCA model contain a section about producer licensing that pre-dates the PLMA. States should check the fraternal law that has been adopted in their state and update it to reference the PLMA.

Small Mutual Insurers

Small mutual insurers are risk-bearing entities that historically formed around common interests of farmers, householders, and ethnic and religious groups. Small mutuals, commonly known as farm mutuals, may also be called “town” or “county” or “state” mutuals.

Small mutuals provide, with only a few exceptions, property insurance for homes, farmsteads, crops and some small businesses. They do not, except for the legal liability associated with those risks, write casualty insurance. In some states, small mutuals are allowed to offer liability coverage through an affiliation with an insurer. State laws usually limit small mutuals to either a certain premium volume or geographic area or both. Most states also impose a lighter regulatory burden than that applied to larger mutual and investor-owned insurers.

Mutual insurers are owned and operated by the policyholders. Unlike a stock company, a mutual policyholder has an indivisible interest in the enterprise that, in general, cannot be bought or sold like a share of stock. Policyholders often are referred to as “members.” In some cases, a dividend or return of premium is paid when the mutual’s board of directors judges it has sufficient capital. Members of the board also are policyholders.

Individuals who sell products for small mutuals should be licensed as producers as outlined in the PLMA and the ULS.

Chapter 22

Insurance Consultants

An insurance consultant is a person who charges a fee for giving advice about insurance products. Not all states require a separate consultant license. In those states, the individual can obtain a producer license and abide by the disclosure provisions for insurance consultants. In states that do require a special license, the applicant usually is required to pass an examination. The exam may be either one of the same subject-matter examinations that insurance producers must pass or an examination specific to consultants. In states that require an examination, a waiver may be granted if the applicant can demonstrate a specified amount of insurance experience.

States usually adopt exemptions from the consultant licensing requirement. The exemptions are available as long as the person is acting in his or her professional capacity or in the normal course of business. Common exemptions are:

1. A licensed attorney.
2. A trust officer of a bank.
3. An actuary or certified public accountant.
4. A risk manager who consults for his or her employer only.

If a state requires appointments for insurance producers, appointments should not be required of insurance consultants. The consultant represents the insured and is not an agent of the insurance company. Some states prohibit an individual from holding both an insurance producer license and an insurance consultant license. Other states allow an insurance producer to function in either capacity with full disclosure. In all cases where an individual is acting as an insurance consultant, a written contract should be used to clearly explain the terms of the consultant arrangement.

In states that have a separate insurance consultant license, it is a common practice to have a CE requirement that mirrors the CE requirement for insurance producers.

Chapter 23

Managed Care Providers

Health Maintenance Organizations

A health maintenance organization (HMO) is a type of managed care organization that provides a form of health care coverage that is fulfilled through hospitals, doctors and other providers with which the HMO has a contract. Unlike traditional health insurance, an HMO sets out guidelines under which doctors can operate. On average, an HMO costs less than comparable traditional health insurance, with a trade-off of limitations on the range of treatments available. Unlike many traditional insurers, HMOs do not merely provide financing for medical care. The HMO actually delivers the treatment as well. Doctors, hospitals and insurers all participate in the HMO business arrangement.

The NAIC has adopted a model law and regulation that governs the licensure of HMOs: Health Maintenance Organization Model Act (#430) and Model Regulation to Implement Rules Regarding Contracts and Services of Health Maintenance Organization (#432). In most cases, access to an HMO is only available to employer group plans.

Preferred Provider Organizations

A preferred provider organization (PPO) is a group of doctors and/or hospitals that provides medical service only to a specific group or association. The PPO may be sponsored by a particular insurance company, by one or more employers, or by some other type of organization. PPO physicians provide medical services to the policyholders, employees or members of the sponsor(s) at discounted rates and may set up utilization review programs to help control the cost of medical care.

In some states, managed care providers may be licensed by an agency outside the insurance department.

Chapter 24

Managing General Agents

A managing general agent (MGA) is an insurance producer authorized by an insurance company to manage all or part of the insurer's business in a specific geographic territory. Activities on behalf of the insurer may include marketing, underwriting, issuing policies, collecting premiums, appointing and supervising other agents, paying claims, and negotiating reinsurance. Many states regulate the activities and contracts of MGAs.

The NAIC has adopted the *Managing General Agents Act (Model #225)* to guide states in regulating MGAs. Under the model, an MGA is defined as any person who engages in all of the following:

1. Negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer—including the management of a separate division, department or underwriting office—and who acts as an agent for such insurer whether known as a managing general agent, manager or other similar term or title.
2. With or without authority and either separately or together with affiliates, directly or indirectly produces and underwrites an amount of gross direct written premium equal to or greater than 5% of the policyholder surplus in any one quarter or year, as reported in the last annual statement of the insurer.
3. Engages in either or both of the following:
 - (a) Adjusts or pays claims in excess of an amount determined by the insurance commissioner.
 - (b) Negotiates reinsurance on behalf of the insurer.

Under the model, an MGA does not include any of the following:

1. An employee of the insurer.
2. A manager of a U.S. branch of an alien insurer who resides in this country.
3. An underwriting manager who, pursuant to contract, manages all insurance operations of the insurer, who is under common control with the insurer, subject to [cite to state law] relating to the regulation of insurance holding company systems, and who is not compensated based upon the volume of premiums written.
4. An insurance company, in connection with the acceptance or rejection of reinsurance on a block of business.
5. The attorney-in-fact authorized by or acting for the subscribers of a reciprocal insurer or interinsurance exchange under a power of attorney.

In most states, MGAs must be licensed as producers and are not allowed to place business until a written contract exists among all parties. Under the *Model #225*, insurers are required to monitor the financial stability of MGAs under contract.

Chapter 25

Multiple Employer Welfare Arrangements

Multiple employer welfare arrangements (MEWAs) are arrangements that allow a group of employers collectively to offer health insurance coverage to their employees. MEWAs are most often found among employer groups belonging to a common trade, industry or professional association.

MEWA plans are generally available to the employees (and sometimes their dependents) of the employers who are part of the arrangement. People who do not have an employment connection to the group cannot obtain coverage through the MEWA plan. MEWA plans cannot be sold to the public.

To qualify as an MEWA, the organization must be nonprofit, in existence for at least five years and created for purposes other than that of obtaining health insurance coverage. In other words, employers cannot group together solely for the purpose of offering health insurance. However, employers that already have grouped together for another common purpose (for example, a trade association) may also offer health insurance coverage to their member employers.

States and the federal government coordinate the regulation of MEWAs pursuant to a 1982 amendment to the federal Employee Retirement Income Security Act (ERISA). This dual jurisdiction gives states primary responsibility for overseeing the financial soundness of MEWAs and the licensing of MEWA operators. The U.S. Department of Labor (DOL) enforces the fiduciary provisions of ERISA against MEWA operators to the extent a MEWA is an ERISA plan or is holding plan assets. State insurance laws that set standards requiring specified levels of reserves or contributions are applicable to MEWAs even if they also are covered by ERISA.

The NAIC has adopted a model regulation, *Prevention of Illegal Multiple Employer Welfare Arrangements (MEWAs) and Other Illegal Health Insurers Model Regulation (#220)*, to give guidance to states in the supervision of MEWAs.

Chapter 26

Reinsurance Intermediaries

A reinsurance intermediary acts as a broker in soliciting, negotiating or procuring the writing of any reinsurance contract or binder. Reinsurance intermediaries act as insurance producers in accepting any reinsurance contract or binder on behalf of an insurer.

The NAIC has adopted the *Reinsurance Intermediary Model Act (#790)*, which contains a simplified registration process for nonresident reinsurance intermediaries. Nonresident reinsurance intermediaries verify that they are licensed in their home states under similar laws as in the nonresident states, i.e., the NAIC Model, and the nonresident reinsurance intermediaries are granted reciprocity.

Chapter 27

Risk Retention Groups and Risk Purchasing Groups

Risk Retention Groups

Congress enacted the federal *Risk Retention Act (RRA)* in 1981. This federal law enabled product sellers to form RRGs to provide group self-insurance. RRGs are insurers licensed and fully regulated in one state pursuant to that state's laws. In the mid-1980s, general liability insurance premiums skyrocketed, and certain lines were unavailable. Coverage for some classes of businesses was typically either unavailable or extremely expensive for the desired limits and coverages. Congress intervened again in 1986, this time expanding the RRA to permit RRGs to cover broader liability risks. The RRA is now referred to as the federal *Liability Risk Retention Act (LRRA)*.

Under the *Model Risk Retention Act (#705)*, an RRG "registers" in non-domicile states and is then exempt from most insurance laws in non-domicile states. RRGs are limited to providing non-workers' compensation commercial lines liability insurance to its members. All owners of an RRG must be insureds, and all insureds must be owners.

RRGs can be required by states to:

1. Comply with the unfair claim settlement practices law.
2. Pay applicable premium and other taxes that are levied on admitted insurers and surplus lines insurers, brokers or policyholders.
3. Participate in residual market mechanisms.
4. Register and designate the insurance commissioner as agent for service.
5. Submit to a financial examination in any state in which the group is doing business if:
 - a. The domiciliary insurance commissioner has not begun or refused to initiate an examination.
 - b. Any examination shall be coordinated to avoid unjustified duplication and repetition.
6. Comply with a lawful order issued in a delinquency proceeding commenced by the insurance commissioner if there has been a finding of financial impairment or in a voluntary dissolution proceeding.
7. Comply with deceptive, false or fraudulent acts or practices laws, except that if the state seeks an injunction regarding the conduct, it must be from a court of competent jurisdiction.
8. Comply with an injunction issued by a court of competent jurisdiction, upon a petition by the state insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired.
9. Provide the following notice, in 10-point type, in any insurance policy:

NOTICE

This policy is issued by your risk retention group (RRG). Your RRG may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your RRG.

A state may require that a person acting, or offering to act, as a producer or broker for an RRG obtain a license from that state, except that a state may not impose any qualification or requirement that discriminates against a nonresident producer or broker.

Risk Purchasing Groups

The second type of entity allowed to operate under the RRA is a risk purchasing group (RPG). RPGs are vehicles for any insurer to market on a group basis, with the ability to discriminate as to rates for those groups. But as with RRGs, RPGs are only allowed to place liability coverage. RPGs are formed so that similar risks may pool purchasing power. RPGs are purchasing entities, not insurers, and are not generally subject to state insurance laws.

Insurance departments generally do not actively regulate RPGs. The insurer writing for an RPG is subject to all insurance laws, with few exceptions. The transaction of insurance for an RPG in a state generally follows a traditional transaction based on the form of the insurer in relation to that state. Hence, if the insurer is licensed in the state, then producer licensing and, if applicable, appointment procedures apply. If the insurer is a writer of surplus lines, then the traditional surplus lines producer

licensing rules apply. As with RRGs, a state may require that a person acting, or offering to act, as a producer or broker for a purchasing group obtain a license from that state. A state may not impose any qualification or requirement that discriminates against a nonresident producer or broker.

Chapter 28

Third-Party Administrators

A TPA is an entity that directly or indirectly underwrites, collects charges or premium from, or adjusts or settles claims on residents of a state, in connection with life, annuity or health coverage offered or provided by an insurer, unless accepted by statute.

When an employer offers its employees a self-funded health care plan (the employer helps finance the health care costs of its employees), the employer often contracts with a TPA to administer the plan. The employer also may contract with a reinsurer to pay amounts in excess of a certain threshold in order to share the risk for potential catastrophic claims experience.

In most states, a TPA is required to register with the state. Some states require a bond. The TPA is required to answer inquiries from the state insurance department, but, if the TPA is working for a self-funded ERISA plan, a state has limited authority to take enforcement action against the TPA. An insurer also may act as a TPA for certain customers. This can be confusing to a consumer who has an identification card that has a name similar to a well-known health insurance company. The consumer often thinks coverage is provided by that insurance company instead of the employer plan.

Chapter 29

Title Insurance Agents

Title insurance is insurance indemnifying against financial loss from defects in title of real property arising from conditions of title that exist on the date of issuance of the policy. While most insurance coverage indemnifies insureds against loss caused by future events, title insurance is unique as it focuses on the elimination of risk before the policy is issued. Title insurance policies are typically purchased when real property is conveyed or financed. Insureds pay one premium for coverage that has no expiration. In many states, title insurance has essentially replaced abstracts of title, and it is often required as a condition for obtaining a loan secured by a lien on real property.

Title insurance policies commonly guarantee or indemnify the fee title of owners or the lien priority of a lender from losses or damages from liens, encumbrances, defects or unmarketability of title, or adverse claims to title in the real property, and defects in the authorization, execution or delivery of an encumbrance on the real estate. Coverage is subject to standard exceptions, as well as specific exclusions listed on a schedule attached to the policy limiting the extent of the insurer's liability. Coverage is often expanded or amended through endorsements attached to the policy.

Two types of title insurance policies are commonly issued: the owner's policy and the lender's policy. The owner's policy ensures that the title to the real property is vested as described in the policy, that the title is marketable, that there is a right of access to the property, and against defects in or lien or encumbrances on the title. Title insurance does not require a written application. Policies often are ordered by real estate agents or lenders. The title insurance agent issues a commitment or binder basically revealing the current state of title to the property and agreeing to insure the property, provided that the requirements in the commitment are met to the satisfaction of the title insurer.

The effective date of the policy is typically the date that transactional documents (deed, deed of trust, etc.) are recorded in the public real estate records. Losses under the policy are subject to the limits listed on the title page, plus any costs of defense. The policy limit of an owner's policy is generally the purchase price of the real property, and the policy limit of a lender's policy is generally the original amount of the loan. Losses from title defects are rare, and loss ratios for insurers are relatively low. The goal of a title insurer is to find defects in title prior to issuing a policy; consequently, expense ratios are fairly high due to the cost of title research.

Most states place monoline restrictions on title insurers. Monoline restrictions prohibit title insurers from issuing any line of insurance other than title insurance. Rates and rate setting processes vary by state. Some states regulate only the risk premium, while other states regulate an all-inclusive premium, which generally includes all costs of issuing the policy, search expenses and the risk premium.

Functions of title insurance agents include conducting title searches, performing underwriting functions, preparing and issuing title insurance commitments and policies, maintaining policy records, and receiving premiums. In addition, many title agents perform real estate closings, and provide settlement and escrow services.

Many activities of state licensing divisions with regard to title insurance are the same as in other lines of insurance. In most states, agents are required to pass a licensing exam and fulfill ongoing (CE) requirements. In some states, the licensing division also will be responsible for receiving and filing agency appointments with insurers, bonds or letters of credit (LOCs), proof of errors and omissions (E&O) coverage, and forms disclosing controlled and affiliated business relationships. The NAIC has adopted the *Title Insurance Agent Model Act* (#230) to give guidance to state licensing directors.

Title insurance creates some unique regulatory issues, primarily due to the risk elimination nature of the insurance coverage, and the business relationships between title insurance agents and those who refer title insurance business. The entity referring the title insurance business often is viewed as the customer rather than the insured due to the nature of real estate transactions. Entities that regularly refer title insurance business—such as mortgage brokers, lenders, realtors and attorneys—are referred to as producers of title insurance business. Note that “producer of title insurance” as used in this context carries a very different meaning from “insurance producer.”

Controlled and affiliated business relationships refer to business relationships between title insurance agents and producers of title insurance business. Many states require that controlled and affiliated business relationships be disclosed both to the insured and to the insurance department in writing. Many states also prohibit title insurance agents from providing rebates, referral fees, inducements or financial incentives to producers of title insurance business. In addition to state laws, rebates and referrals related to most residential real estate transactions are prohibited under the federal Real Estate Settlement Procedures Act (RESPA).

Chapter 30

Viatical and Life Settlement Providers and Brokers

The *Viatical Settlements Model Act (#697)* defines a viatical settlement as a transaction in which the owner of a life insurance policy sells the right to receive the death payment due under the policy to a third party. Typically, the owner/insured receives a cash payment, and the buyer agrees to make any remaining premium payments on the policy.

In 1993, the NAIC adopted the *Viatical Settlements Model Regulation (#698)* and *Model #697* to provide a regulatory structure to protect consumers involved in viatical settlements. The *Model #697* was revised in 2003 and 2004 to address the issue of healthy consumers who might want to sell their insurance policy on the secondary market, better known as “life settlements.”

Licensing requirements vary as a result of the several versions of *Model #697*. Under the 1993 version of *Model #697*, a viatical settlement broker was required to have an underlying life producer license before being able to apply for and receive a viatical settlement broker license. This provision was not uniformly adopted.

The 2003 version of *Model #697* provided for licensing procedures of individuals who were not licensed life insurance producers by requiring CE to maintain the license. The 2003 version was modified in 2004 to allow for licensed life insurance producers to notify or register with the insurance regulator as prescribed by the insurance commissioner if they were engaging in the business of settlements, and exempted life insurance producers from the viatical settlement brokers’ examination and the CE requirements.

The 2003 and 2004 versions of *Model #697* also required the viatical settlement broker to maintain financial responsibility in the form of an errors and omissions policy, surety bond or cash deposit, or a combination of any of the three. It also placed fiduciary responsibility requirements on the broker. The 2003 and 2004 versions of *Model #697* required brokers to disclose the method by which compensation was calculated and the amount of compensation. It is essential the viatical broker meet the licensing requirements of the state where the transaction occurs.

The 2003 version of *Model #697* also provided for licensing procedures for viatical settlement providers.

Model #697 was revised in 2007 to address, among other things, transactions that have been called stranger-originated life insurance (STOLI) or investor-originated life insurance (IOLI). These transactions are related to a life insurance policy exhibiting any one of three characteristics prior to or within two years of policy issue:

1. Non-recourse premium financing.
2. Guarantee of settlement.
3. Settlement evaluation.

Settlement of such policies is prohibited for five years.

Other key revisions include:

1. New consumer disclosures related to viatical settlement compensation.
2. A new consumer disclosure requiring a statement that the viatical settlement broker represents exclusively the viator and owes a fiduciary duty to the viator, including a duty to act in the best interest of the viator.
3. Allowing life agents to sell without a viatical license, but special conditions apply.

Additional revisions include:

Under specified circumstances, a life insurance producer may operate as a viatical settlement broker. The life insurance producer is deemed to meet the viatical settlement broker licensing requirements. The revisions also permit a person licensed as an attorney, certified public accountant (CPA) or financial planner accredited by a national recognized accrediting agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider, to negotiate viatical settlement contracts on behalf of a viator without having to obtain a viatical settlement broker's license.

To receive and maintain a license, the 2007 revisions require a viatical settlement provider or broker to demonstrate evidence of financial responsibility through a surety bond or a deposit of cash, certificates of deposit or securities, or any combination thereof in the amount of \$250,000. The surety bond must be issued in the favor of the state and must specifically authorize recovery by the insurance commissioner on behalf of any person in the state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the provider or broker. The insurance commissioner may ask for evidence of financial responsibility at any time the insurance commissioner deems necessary. The revisions make clear that a provider or broker that is licensed in more than one state is not required to file multiple bonds in each state. Some problems have arisen with implementing the bonding requirements of the *Model #697*. Regulated entities argue that it is impossible to obtain a bond as described by *Model #697*.

The revisions also require an individual licensed as a viatical settlement broker to complete, on a biennial basis, 15 hours of training related to viatical settlements and viatical settlement transactions. A life insurance producer who is operating as a viatical settlement broker is not subject to this requirement.

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Section Three – Glossary

Part III - Section I – Appendix A**Frequently Asked Questions****Compensation Disclosure Amendment to the PLMA**

This document has been prepared by the NAIC's Executive Task Force on Broker Activities for informational purposes only. The following questions and answers are based on the language and development of the Compensation Disclosure Amendment to the NAIC's Producer Licensing Model Act. This document is not intended as legislative history or to replace a state insurance department's independent review and analysis of issues regarding the Compensation Disclosure Amendment. The contents of this document should not be interpreted as a formal opinion or policy statement of the NAIC or of any individual NAIC member or state insurance department

Question 1: How has the NAIC responded to the issue of inadequate disclosure of compensation by insurance producers?

Answer 1: The NAIC established the Executive Task Force on Broker Activities, composed of 14 states, to develop a coordinated approach to evaluate and address the issues raised in various regulatory and law enforcement investigations of producer compensation. The Task Force immediately formulated a three-pronged action plan: (1) to amend the existing Producer Licensing Model Act (PLMA) to require greater disclosure of producer compensation information; (2) to facilitate regulatory coordination through the development of uniform "templates" for the states to use in collecting information from insurers and/or producers; and (3) to establish an online fraud reporting mechanism to allow for the anonymous reporting of "tips" of unscrupulous business practices for investigation by state insurance departments.

Question 2: How did the Compensation Disclosure Amendment to the PLMA evolve?

Answer 2: In developing the Amendment, the Task Force sought input from state insurance regulators across the country regarding possible ways to achieve greater transparency of producer compensation. An initial draft of model legislation was developed and exposed for public comment in mid-November 2004. The Task Force held numerous meetings, including two public hearings at the NAIC's 2004 Winter National Meeting in early December. Subsequent to the public hearings, a revised draft was released for public comment. More than 100 oral and/or written comments from state insurance regulators and interested parties were considered in arriving at the final draft.

Question 3: Will there be further changes to the Amendment?

Answer 3: Yes. When the Amendment was adopted Dec. 29, 2004, the Task Force committed to giving further consideration of possible additional requirements, including but not limited to recognition of a fiduciary responsibility for producers, disclosure of all quotes received by a producer for a particular placement, and disclosures relating to producer-owned reinsurance arrangements.

Question 4: To whom does the Amendment apply?

Answer 4: The Amendment applies to all producers and their affiliates that receive any compensation from the customer for the placement of insurance or, irrespective of compensation from the customer, represent the customer with respect to that placement. In the PLMA, a producer is defined as "a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance." The PLMA goes on to define "person" to include either an individual or a business entity. For information about the definition of "affiliate," see No. 21 below.

Question 5: Are any producers expressly exempt from the Amendment?

Answer 5: Yes. Subsection C of the Amendment expressly exempts producers, such as managing general agents, sales managers or wholesale brokers, who act only as intermediaries between an insurer and other producers. This exemption was developed because these types of producers do not have direct contact with the person involved in the purchase of insurance. In addition, Subsection C expressly exempts reinsurance intermediaries.

Question 6: Does the Amendment apply to producers who represent one insurer exclusively?

Answer 6: Yes. Such producers, commonly known as “captive agents,” are not exempt from the Amendment. However, this type of producer will typically have to comply with the disclosure requirements of only Subsection A(2), because the producer does not normally receive compensation from the customer and is appointed by the insurer the producer represents.

Question 7: Does the Amendment apply to independent producers?

Answer 7: Yes. Such producers, commonly known as “independent agents,” are not exempt from the Amendment. The disclosure this type of producer must make depends on whether the producer is appointed by the insurer the producer represents for a particular placement or whether the producer receives compensation from the customer for the placement.

Question 8: Does the Amendment apply to registered or licensed NASD broker/dealers?

Answer 8: The application of the disclosure to registered or licensed NASD broker/dealers depends on the activities of the individual broker/dealer. The disclosure requirements would apply to a broker/dealer who is licensed as a producer and engaged in the placement of insurance, such as a variable life insurance product.

Question 9: Does the Amendment apply to producers selling annuities?

Answer 9: Yes. The disclosure requirements apply when a producer receives compensation from the customer for the placement of products considered to be insurance or represents the customer with respect to that placement.

Question 10: Does the Amendment apply to placements of insurance in the residual market?

Answer 10: Yes. It is recognized that residual markets encompass placements of various types of insurance through programs established to ensure that insurance is available to individuals and businesses having difficulty obtaining coverage in the voluntary market. The Amendment does not draw any distinctions between the residual market and voluntary market based on the type or line of insurance being placed. Given the statutory nature of residual market programs, the disclosure required by the Amendment is relatively straightforward.

Question 11: What does the drafting note about the licensing of business entities mean?

Answer 11: Most states permit business entities to be licensed as producers. The drafting note is intended to encourage these states to evaluate the applicability of the Amendment to licensed business entities. States that do not require producer business entities to be licensed should adjust the language of the amendment in a manner consistent with their statutory framework, if necessary, to ensure that individual licenses make the required disclosures when compensation is made to the licensee’s unlicensed corporate employer.

Question 12: At what point in the placement of insurance must disclosure be made?

Answer 12: Pursuant to Subsection A, disclosure under Paragraph (1) or (2) must be made prior to the purchase of insurance. For disclosure to be useful to the consumer, disclosure should be made before the customer has committed to purchasing the insurance. Logistical concerns about obtaining the customer’s documented acknowledgement are addressed in Subsection D(4). See Nos. 15 and 16.

Question 13: Must a producer provide disclosure when servicing an existing policy, such as adding a driver to existing coverage under an auto policy or changing policy limits?

Answer 13: No. These types of policy changes are viewed as modifications to existing placements, which do not typically involve the customer evaluating various options for the purchase of insurance.

Question 14: Must a producer provide disclosure when processing a policy renewal?

Answer 14: Yes. A renewal is considered to be the placement of insurance. As such, if the producer is involved in the renewal process, the disclosure should be given. However, if the insurer independently generates and processes a renewal without the producer’s participation or involvement, the renewal would not trigger disclosure by the producer.

Question 15: How should a producer document the customer's acknowledgement of the required disclosures?

Answer 15: The producer should be able to establish that: (1) the required information was conveyed to the customer on a specific date; and (2) the customer indicated his or her consent regarding the described compensation to be received by the producer or affiliate. The definition of documented acknowledgement in Subsection D(4) is intended to address the technological possibilities for obtaining the customer's written consent.

Question 16: What if: (1) a producer cannot figure out his or her compensation on a particular placement; or (2) the producer believes it is too difficult to explain how the producer's compensation is calculated?

Answer 16: The disclosure of compensation required by Subsection A should make the customer aware of factors and methodology used that affect the producer's compensation. While it is not necessary to provide mathematical formulas, the appropriate disclosure is nonetheless required. If a producer is unable to provide the amount of compensation on a particular placement, the producer may accomplish this by providing specific information about compensation from the past year and any anticipated changes or a range of possible outcomes while being sufficiently specific to provide valuable information to the customer.

Question 17: For group insurance where a producer receives compensation from the customer or represents the customer, to whom must a producer make the required disclosures prior to the receipt of compensation from the insurer or other third party for that placement of insurance?

Answer 17: The producer must make the disclosures to the entity named on the policy as the group policyholder. The disclosure should be made to the person actually applying for insurance or that person's authorized representative. A producer does not need to provide the disclosures to each individual certificate holder under a group insurance policy.

Question 18: Will a producer who is also an investor with an insurer and who receives stock be considered to have received "compensation from the insurer" and thus be subject to the disclosure requirements? Will an agency that has a separate, structured financial loan with a carrier for an agency acquisition or a new computer system also trigger compliance?

Answer 18: The intention of the disclosure is to ensure that the insurance consumer is aware of the various aspects of compensation involved in any particular insurance placement so that the consumer can make an informed decision as to whether he/she wishes to proceed with the transaction under the disclosed terms. Because of this, the disclosure should focus on "compensation from the insurer" that is related to the placement of an insurance policy. If the receipt of the stock or the structuring of the loan is connected in any manner to the placement of insurance, this should be disclosed.

Question 19: Will a producer who provides services unrelated to the placement of insurance be required to provide the disclosures to a customer who pays compensation to the producer for these services?

Answer 19: A producer may receive compensation from the customer for services unrelated to the placement of insurance without providing the disclosure as long as the producer does not receive compensation from or represent the customer with respect to the placement of insurance. For example, the receipt of compensation for the preparation of IRS Form 5500 is not related to the placement of insurance.

Question 20: Subsection D(3) refers to fees or expenses permitted by statute. What does this mean?

Answer 20: By separate law or regulation, some states permit payment for the recovery of expenses related to a specific service, such as the receipt of the cost to obtain a Motor Vehicle Report. Some states may enact the Amendment to include a specific reference to these specific laws or regulations. If the Amendment when adopted in a state includes such a statutory reference, the producer may also receive compensation from the insurer without providing the disclosure so long as the receipt of such fee does not result in any additional compensation to the producer, or the producer does not represent the customer with respect to the placement of insurance.

Question 21: What is the intent of the disclosures applying to an “affiliate” of the producer?

Answer 21: The intent of this provision is to ensure that the disclosures apply to those situations where a producer or insurer may direct a payment of compensation to another appropriately licensed affiliated entity. States that do not require producer business entities to be licensed should adjust the language of the Amendment in a manner consistent with their statutory framework, if necessary, to ensure that individual licenses make the required disclosures when compensation is made to the licensee’s unlicensed corporate employer.

Part III - Section I – Appendix B



**RECOMMENDATIONS FOR THE COMMERCIAL LINES MULTI-STATE EXEMPTION AND
COMMISSION SHARING LAWS
ADOPTED BY THE PRODUCER LICENSING WORKING GROUP: NOVEMBER 17, 2008
ADOPTED BY THE D COMMITTEE, NOVEMBER 20, 2008**

TO: NAIC Officers and the Market Regulation & Consumer Affairs (D)Committee

FROM: Anne Marie Narcini, Chair of the Producer Licensing Working (D)Group

RE: Commercial Lines Multi-State Exemption and Commission SharingLaws

As part of the 2008 charges for the Producer Licensing (D) Working Group (PLWG), the NAIC officers asked the working group to evaluate the key findings and issues regarding full adoption, and uniform interpretation of the commercial lines multi-state exemption and the commission sharing exemption across all states; provide further guidance on areas of disparate interpretations and applications and continue to encourage all states to adopt these exemptions

Process for Completion of Charge

During July and August, a team of regulators from Alaska, District of Columbia, Virginia, Maryland, Kentucky, Utah, Mississippi, Michigan, California and New Jersey met by conference call to discuss the aggregate findings, review prior surveys and prepare recommendations. Linda Brunette of Alaska led the Task Team. The draft was then posted for public comment on the NAIC website and the Working Group discussed the document during conference calls in November of 2008.

Commercial Lines Multi-State Exemption

The task team observed that most problems with the multi-state exemption appeared related to surplus lines rather than the admitted market. In 2007 the Surplus Lines Subgroup of PLWG reviewed this issue and reported that the majority of states require a nonresident property and casualty license in order for a surplus lines placement to be made. Of the states responding to a survey at that time, only seven (7) included surplus lines in the commercial multi-state exemption. Issues surrounding the inclusion of surplus lines in a commercial multi-state exemptions and the perceived need for a license due to payment of premium taxes may affect other Committees such as the Surplus Lines (C) Task Force. We therefore recommend that any consideration of expanding the exemption to include surplus lines be coordinated with the Task Force.

The Producer Licensing Assessment Aggregate Report states that at least forty five (45) states have adopted the commercial lines multi-state exemption. It is our recommendation that the adoption of this language be considered a Uniformity Standard. We recommend the following new standard:

38. Commercial Line Multi-State Exemption

The state must adopt Section 4B (6) of the Producer Licensing Model Act which states:

A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state;

This exemption applies at a minimum to admitted business.

Commission Sharing

Subsection 13D of the Producer Licensing Model Act sets forth the following:

An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate [insert appropriate reference to state law (i.e., citation to anti-rebating statute, if applicable)].

The Producer Licensing Assessment Aggregate Report stated that while the application of this exemption will be fact-specific, states should review this exemption and work toward a general statement of interpretation to help eliminate the current confusion in the marketplace.

We view the problem as two-fold: 1) Not all states have adopted Subsection 13D of the PLMA and 2) States that have adopted it may not all interpret the provision in a uniform manner.

In a survey conducted by the PLWG in 2006, forty-four (44) jurisdictions responded and twenty-eight (28) reported they adopted this provision of PLMA. We believe that the lack of uniform implementation of this provision results in confusion in the marketplace as well as inefficiencies and a burden on resources both for regulators and the industry. This confusion may be eliminated in part if it is clarified that the reference to the anti-rebating statute is not exclusive but may refer to other state laws that limit the scope of Subsection 13D. Therefore, we recommend that the requirement to adopt Section 13D of the PLMA be added as a Uniform Standard and that the Uniformity Subgroup of PLWG work with the states that have not adopted this provision to identify the barriers to adoption and encourage legislative change to incorporate the provision.

We recommend the following new standard:

39. Commission Sharing

The state must adopt Section 13D of the Producer Licensing Model Act which states:

An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate [insert appropriate reference to state law (i.e., citation to anti-rebating statute, if applicable)].

Reference to the anti-rebating statute is not exclusive but may refer to other state laws that limit the scope of Subsection 13D.

It has been reported anecdotally that some states that have already adopted this provision, make a distinction between so called “override commissions” and other forms of compensation, or allow individuals to receive commissions if they do not sell, solicit or negotiate, but prohibit agencies from doing the same, or limit the exemption to particular lines of insurance.

Subsection 13D of the Producer Licensing Model Act is clear. Any individual or agency can receive commissions, service fees or *any* valuable consideration without a license as long as doing so does not violate any other state law, such as anti-rebating, and the individual or entity does not sell, solicit or negotiate insurance. Individual circumstances may be fact specific simply because the person or agency must examine the particular conduct and whether the activity involves selling, solicitation or negotiation as defined in PLMA; however, if it is determined that the activity does not involve the sale, solicitation or negotiation of insurance, any jurisdiction that has adopted this subsection should not require a license.

The following are three examples of scenarios where a license would not be required to receive commission or other valuable consideration.

Example 1

A person authorized by the insurer to oversee or supervise producers with no involvement whatsoever in the sale, solicitation, or negotiation of insurance who receives only an override commission for business produced by the producer whom the person oversees or supervises, is not required to be licensed or hold an appointment with the insurer paying the commission.

Example 2

An insurer or producer may pay or assign a commission, service fee, brokerages or other valuable consideration to a business entity or an individual that does not sell, solicit, or negotiate insurance as long as the payment does not violate the state's insurance laws.

Example 3

If an individual does not use a business entity's name for any sales, solicitations, or negotiations for insurance business, the business entity would not be required to be licensed as long as the business entity does not sell, solicit or negotiate insurance. Solicitation would include any written or verbal communication as well as executed contracts issued in the business entity's name that authorize the producer to act as the insurer's agent or the client's broker.

It is our recommendation that states use this guidance and examples of when a license is not required to receive commissions or other valuable consideration in rendering determinations regarding a need for licensure.

Part III - Section I – Appendix C

Continuing Education Reciprocity

On July 1, 1998, the Midwest Zone launched a project to simplify continuing education (CE) course approval filings for regulators and CE providers. Members of the Midwest Zone signed a reciprocity agreement that provides, in essence, that one member state will accept the CE credit award given to a course by another member state. As of March 31, 2004, 46 states and the District of Columbia had signed an addendum to the Midwest Zone Declaration regarding CE course approval and had agreed to participate in what is now referred to as the NAIC CE Reciprocity (CER) process. The agreement does not require any state to accept CE filings that are not otherwise approvable. For example, if a state does not award CE credit for a topic such as sales and marketing, that state is not required to give credits to that portion of a course that includes the prohibited topic. If your state is interested in participating, the process is as follows:

- Review the information and forms on the NAIC Web site.
- Make any needed changes in policies or forms to comply with the agreement.
- The commissioner signs an addendum to the NAIC CE Reciprocity Agreement and forwards it to the Midwest Zone Chair. Please include a letter stating the date your state will be prepared to accept reciprocity filings.
- The Midwest Zone will act on requests to join the project at Zone meetings held at the NAIC quarterly national meetings.
- Inform your providers of the start date for reciprocity filings.

For the most current information, check the Producer Licensing (D) Task Force page on the NAIC Web site.

Part III - Section I – Appendix D



CONTINUING EDUCATION (CE) STANDARDIZED TERMS—DEFINITIONS

Adopted by the Producer Licensing (EX) Working Group Aug. 25, 2013

Adopted by the Producer Licensing (EX) Task Force Nov. 20 2013

- **Classroom (a.k.a. synchronous, contact)** – Course activities or information occurring in real time at a specific time, date and place, and delivered via Internet or in person, such as but not limited to seminar/workshop, webinar, virtual class or teleconference (see CER form). Student attendance is based on personally identifiable information (e.g., username, password, email, government-issued identification, and signature) and student participation or interaction with course activities. *Classroom courses do not require an examination.*
- **Completion Date** – The date on which the student completes the course including passing any required exam.
- **Course** – A self-study or classroom presentation of information on insurance and/or risk management topics, delivered in person, in print or electronically, which may be interactive or not, with successful completion measured either by attendance (classroom) or by examination/assessment (self-study).
- **Course Completion Roster** – A listing of course completions, provided in a format determined by the Department, which includes the student’s name, national producer and/or license number, provider number, course number, and course completion date.
- **Course Difficulty Level** – Course difficulty level is determined based on whether the course is designed for inexperienced or experienced practitioners, as well as the amount of information presented and at what pace the information is presented.
 - **Basic**: A course designed for entry-level practitioners or practitioners new to the subject matter.
 - **Intermediate**: A course designed for practitioners who have existing competence in the subject area and who seek to further develop and apply their skills.
 - **Advanced**: A course designed for practitioners who have a strong foundation and high level of competence in the subject matter.
- **Course Offering** – An approved synchronous event with a specific start and end time.
- **Interactive** – Course includes regularly occurring opportunities for student participation, engagement, and interaction with or in course activities and information. Examples include but are not limited to question and answer sessions, polling, games, sequencing, and matching exercises.
- **Instructor** – A subject matter expert presenting course activities or information in a contact/synchronous course (in person or via Internet). The provider must select an instructor that is competent to teach the course. Regulator review and approval is optional but is not required. *Instructors/instructor approvals are not required for non-contact/asynchronous courses.*

- **Online Course** – An asynchronous/non-contact program of study where activities and information are delivered in a recorded, streaming, or multimedia format that concludes with an examination/assessment. Course may alternatively require frequent interaction with courseware as a condition of progressing through the course material, with chapter/section quizzes providing continuous feedback on learning. Personally identifiable information (e.g., username, password, email) and interactivity. Credit for course is based on attendance and activity, not examination.
- **Proctor** – A disinterested third party, with minimum age of 18 years old who can be any person *except* for family members or individuals who have a financial interest in the student’s success on the exam. Co-worker proctors must not be above or below in the student’s line of supervision.
- **Proctor Affidavit/Certification** – When a student successfully completes a self-study final exam, the proctor must sign an affidavit/certification attesting that the student completed the exam without assistance from any person, course material, or reference material. In addition, proctors must provide their name, address, and phone number to the exam provider. Affidavits/certifications may be administered and signed electronically.
- **Self-study (a.k.a. asynchronous, non-contact)** – Course activities or information delivered outside of real time (recorded or otherwise similarly accessible) and available at any time, such as but not limited to correspondence, online training, video, audio, CD, or DVD (see CER form). Student attendance is verified based on identity (e.g., username, password, email, signature) and successful completion of knowledge assessments or an examination. *Self-study courses do not require interaction with instructors.*
- **Synchronous vs. Asynchronous** – A distinction between programs of study that are either “live” or “self-study.” Synchronous learning happens in real time and requires students and instructors to be online (or in class) at the same time. Asynchronous learning involves study materials, assignments and examinations/assessments that can be accessed by students at any time.
- **Teleconference (a.k.a. video conference or Web conference)** – A type of classroom study featuring the live exchange of information among several persons who are remote from one another but linked by telecommunications and featuring audio, video, and/or data-sharing and offering opportunities for learner/instructor/facilitator interaction. A synchronous program of study having a specific start time and end time that validates student attendance through personally-identifiable information (e.g. username, password, email) and interactivity. Credit for course is based on attendance and activity, not examination.
- **Virtual Class/Webinar** – A type of classroom study that is instructor-led, delivered using the Internet to remote attendees, with a specific start time and end time, in which students enroll before gaining access to the instructor, information, and course activities. Student attendance is monitored and validated based on personally identifiable information (e.g., username, password, email) and student participation in interactive exercises is required. Credit for course is based on attendance and activity, not examination.

Part III – Section I – Appendix E



12.10.16

PRELICENSING EDUCATION STANDARDIZED TERMS & DEFINITIONS*Adopted by the Producer Licensing (EX) Working Group and Producer Licensing (EX) Task Force 12.10.16*

- **Classroom (a.k.a. synchronous, contact)** – Course activities or information occurring in real time at a specific time, date and place, and delivered via Internet or in person, such as but not limited to seminar/workshop, webinar, virtual class or teleconference. Student attendance is based on personally identifiable information (e.g., username, password, email, government-issued identification, and signature) and student participation or interaction with course activities.
- **Completion Date** - The completion date is the date on which the student completes all of the required elements of the course including passing any required exam.
- **Content Outline** – A summary of all of the topics and subtopics that will be tested on a license exam. Content outlines should be developed for each major line of authority by the state in conjunction with the testing service according to testing industry best practices.
- **Course** – A self-study or classroom presentation of information on entry level insurance topics, delivered in person, in print or electronically, which may or may not be interactive.
- **Course Completion Roster** – A listing of course completions, provided in a format determined by the Department, which includes at a minimum the student’s name, provider number, course name, course number (if applicable), and course completion date.
- **Course Offering** – An approved synchronous event with a specific start and end time.
- **Interactive** – Course includes regularly occurring opportunities for student participation, engagement, and interaction with or in course activities and course information. Examples include, but are not limited to, question and answer sessions, polling, games, sequencing, and matching exercises.
- **Instructor** – A subject matter expert presenting course activities or information in a contact/synchronous course (in person or via Internet). The provider must select an instructor that is competent to teach the course. Regulator review and approval is optional but is not required.
- **Job Analysis** – The creation of a valid, reliable and legally defensible license exam depends on a job analysis survey that includes input from regulators and subject matter experts to identify the requirements and work performed by an entry-level insurance candidate. The testing service vendors are responsible for performing job analysis surveys at regular intervals.
- **License Exam** – A test used to determine eligibility for an insurance producer license and that measures the minimum competency required for a candidate to perform at an entry level. License exams should be created according to industry-recognized test development practices. A fair and valid state-based test should incorporate knowledge, skills, and abilities that measure state-specific and product expertise based on the line of authority sought. License exams should differentiate between candidates who are minimally qualified/competent to be an entry-level insurance producer and those who are not.
- **Minimally Qualified/Competent** – The baseline entry-level knowledge that a candidate must demonstrate in order to successfully pass a license exam and become an insurance producer.
- **Online Course** – An asynchronous/non-contact program of study where activities and information are delivered in a recorded, streaming, or multimedia format that concludes with an examination/assessment, if required.

- **Passing Score** – A passing score, sometimes called a “cut score,” is the minimum score one needs to achieve in order to pass the exam.
- **Pass Rate** –The percentage of candidates who pass the exam, usually measured as “First Time Pass Rate” or “Overall Pass Rate”. First time pass rate is defined as the percentage of candidates who pass the entire exam on their first attempt. Overall pass rate is the percentage of candidates who pass the entire exam, including repeat attempts and/or multiple attempts by the same candidate.
- **Proctor** – A disinterested third party, with a minimum age of 18 years, who can be any person *except* for family members or individuals who have a financial interest in the student’s success on the exam. Co-worker proctors must not be above or below in the student’s line of supervision.
- **Proctor Affidavit/Certification** – When a student successfully completes a self-study final exam, the proctor must sign an affidavit/certification attesting that the student completed the exam without assistance from any person, course material, or reference material. In addition, proctors must provide their name, address, and phone number to the exam provider. Affidavits/certifications may be administered and signed electronically.
- **Self-study (a.k.a. asynchronous, non-contact)** – Course activities or information delivered outside of real time (recorded or otherwise similarly accessible) and available at any time, such as but not limited to correspondence, online training, video, audio, CD, or DVD.
- **Synchronous vs. Asynchronous** – A distinction between programs of study that are either “live” or “self-study.” Synchronous learning happens in real time and requires students and instructors to be participating online (or in class) at the same time. Asynchronous learning involves study materials, assignments and examinations/assessments that can be accessed by students at any time.
- **Teleconference (a.k.a. video conference or Web conference)** – A type of classroom study featuring the live exchange of information among several persons who are remote from one another but linked by telecommunications and featuring audio, video, and/or data-sharing and offering opportunities for learner/instructor/facilitator interaction. A synchronous program of study having a specific start time and end time that validates student attendance through personally-identifiable information (e.g. username, password, email) and interactivity.
- **Virtual Class/Webinar** – A type of classroom study that is instructor-led, delivered using the Internet to remote attendees with a specific start time and end time, in which students enroll before gaining access to the instructor, information, and course activities. Student attendance is monitored and validated based on personally identifiable information (e.g., username, password, email) and student participation in interactive exercises is required.

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Part III - Section I – Appendix F



Continuing Education Recommended Guidelines for Online Courses

Adopted by the Producer Licensing (EX) Working Group on March 29, 2015

Adopted by the Producer Licensing (EX) Task Force on March 29, 2015

Goal: To deliver functional computer-based internet courses that offer quality insurance and/or risk management material in a password-protected online environment.

Key Components:

- Material that is current, relevant, accurate, and that includes valid reference materials, graphics and interactivity.
- Clearly defined objectives and course completion criteria
- Specific instructions to register, navigate and complete the course work
- Technical support/provider representative should be available during business hours and response provided within 24hours of initial contact.
- Instructors/subject matter experts must be available to answer student questions during provider business hours
- Process to authenticate student identity such as passwords and security prompts
- Method for measuring the student’s successful completion of course which includes the material, exam and any proctor requirements.
- Process for requesting and receiving CE course-completion certificate and reporting student results to the appropriate regulator
- Require each agent to enroll for the course before having access to course material.
- Prevent access to the course exam before review of the course materials.
- Prevent downloading of any course exam.
- Provide review questions at the end of each unit/chapter and prevent access to the final exam until each set of questions are answered at a 70% rate.
- Provide final exam questions that do not duplicate unit/chapter questions.
- Prevent alternately accessing course materials and course exams. This does not apply if the state allows for “open book” exams.
- Have monitor affidavit containing specific monitor duties and responsibilities printed for monitor’s use to direct the taking of the final exam. Monitor will complete the affidavit after the exam is completed. (This only for states that require a monitored exam).

Final Assessment (exam) Criteria:

- Minimum of 10 questions for 1 credit hour course with additional 5 questions for each subsequent credit hour and a score of 70% or greater
- At least enough questions to fashion a minimum of 2 versions with a least 50% of questions being new/different in each subsequent version
- Inability to print the exam or to view the exam prior to reviewing material
- Proctor, if required by the state, who verifies identity by photo identification and processes affidavit testifying the student received no outside assistance

Procedures to determine Appropriate Number of Credit Hours:

Word Count/Difficulty Level

- Divide total number of words by 180 (documented average reading time) = number of minutes to read material
- Divide number of minutes by 50 = credit hours
- Course difficulty level is identified by the CE provider on the CER form and should be based on the NAIC CE Standardized Terms-Definitions for basic, intermediate and advanced course difficulty levels.
- Multiply number of hours by 1.00 for a basic level course; 1.25 for an intermediate level; 1.50 for an advanced course for additional study time = total number of credit hours (fractional hours rounded up if .50 or above and rounded down if .49 or less)

Interactive Course Content

- Elements included in the online course, in addition to text, such as video, animation, interactive exercises, quizzes, case studies, games, and simulations.
- Interactive elements should be applicable to course material and facilitate student learning.
- Only mandatory interactive elements should be included in the calculation of CE credit hours.
- Calculation of CE hour credits should be based on the run time of the interactive elements.
- CE providers will indicate run time of the interactive elements in the course content and upon request provide access to the state for review of the course.

Professional Designation Course

- Course that is part of a nationally recognized professional designation
- Credit hours equivalent to hours assigned to the same classroom course material

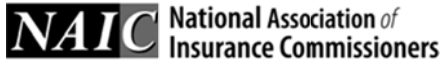
Final Assessment

- Time spent completing the final assessment should not be used in calculation of CE credit hours.

Adopted by the NAIC Membership 2015

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Part III - Section I – Appendix G



Date: 8/26/16

NAIC – Continuing Education Classroom Course Recommendations

Adopted by the Producer Licensing (EX) Working Group on May 16, 2016.

Adopted by the Producer Licensing (EX) Task Force on August 26, 2016.

1. The decision whether to use electronic devices for synchronous contact courses should be left to the discretion of the education provider.
2. States that require an education provider to submit notification of a course offering should require it to be provided no more than 10 calendar days in advance of the course offering date.
3. States that require an education provider to give the state notification of a course offering cancellation should require it to be provided no more than 5 calendar days in advance of the course offering date. This requirement does not apply to emergency cancellations due to adverse weather, instructor illness, or other unforeseen events.
4. An education provider should be considered in compliance if the state specified course completion roster reporting timeframes are met as a regular business practice. The state should consider reporting exceptions on a case by case basis and grant allowances to course completion roster reporting timeframes if the delay was due to factors outside of the education providers control or an unusual processing issue.
5. States should establish procedures to audit classroom courses either directly or through a third party vendor. The course should be monitored for appropriate course time, adherence to course content outline, student attention and attendance.
6. State that required an education provider to authenticate identify of attendees should allow them discretions in procedures such as check of government issued photo ID, company issued photo ID, conference ID badge, attestation of company/association representative, etc.

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Part III - Section I – Appendix H



UNIFORM CONTINUING EDUCATION RECIPROcity COURSE FILING FORM

Please clearly print or type information on this form. Thank you for helping us promptly process your application.

Provider Information

| | | | | | |
|----------------------------|---------------------|----------------------------------|-----------------------|------------------|-----------------------------|
| Provider Name | | FEIN # (if applicable) | | | |
| Contact Person | | E-mail Address of Contact Person | | | |
| Phone Number () - ext. | Fax Number () - | Home State | Home State Provider # | Reciprocal State | Reciprocal State Provider # |
| Mailing Address | | City | State | Zip | |

Course Information

| | | |
|---|--|--|
| Course Title | | |
| Date of Course Offering (if applicable) | | |
| Method of Instruction | | National Course |
| Self – Study (non-contact) <input type="checkbox"/> Correspondence <input type="checkbox"/> On-Line Training (Self-Study) <input type="checkbox"/> Video/Audio/CD/DVD Word Count _____ Difficulty (Circle) Basic Intermediate Advanced | Classroom (contact) <input type="checkbox"/> Seminar/Workshop <input type="checkbox"/> Webinar <input type="checkbox"/> Teleconference <input type="checkbox"/> Other _____ | National Insurance Designation? <input type="checkbox"/> Yes <input type="checkbox"/> No Designation Type: _____ Is this Course Open to the Public? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Examination Required? <input type="checkbox"/> Yes <input type="checkbox"/> No | | |

Credit Hours Requested and Course/Hours Decision

| Course Concentration | Hrs Requested by Provider | | Hrs Approved by Home State | | Hrs Approved by Reciprocal State | |
|---|---------------------------|-----------|----------------------------|-----------|----------------------------------|-----------|
| | Sales/Mktg | Insurance | Sales/Mktg | Insurance | Sales /Mktg | Insurance |
| A. Insurance Topics: | | | | | | |
| (Circle Appropriate Course Concentration) | | | | | | |
| Life / Health | | | | | | |
| Property / Casualty/Personal Lines | | | | | | |
| Ethics | | | | | | |
| General (Applies to all lines) | | | | | | |
| Insurance Laws | | | | | | |
| Other (LTC, NFIP, Viatical, Annuities,) | | | | | | |
| Total Hours | | | | | | |
| B. Adjuster Topics (Total Hours) | | | | | | |

Information Below is for Regulator Use Only

| | |
|---|--|
| Approval Date | |
| Course Number assigned | |
| Course approval expiration date | |
| Signature of Home State Regulator/Representative OR ATTACH Provider Home State Approval Form | |
| Signature of Reciprocal State Regulator/Representative OR ATTACH Reciprocal State Approval Form | |

See State Matrix for Instruction Sheet and State Specific Fee Schedule

INSTRUCTION SHEET

NOTE: This course may NOT be advertised or offered as approved in the state to which application has been made until approval has been received from the Insurance Department.

1. If you are a PROVIDER filing for approval from the Home State:

1.1 Complete all the fields in the “Provider Information” section except “Reciprocal State” and the adjacent “Provider #” fields.

1.2 Complete the Course Information Section.

1.3 In the “Credit Hours Requested and Course/Hours Decision” section, complete the “Hrs. Requested by Provider” columns, detailing in the respective columns the number of hours for sales – and marketing-related instruction and the number of hours for other insurance-related instruction. Please note the following:

1.3.1 When using this application, which is governed by the NAIC CE Reciprocity Agreement in conjunction with ‘states’ laws, only whole numbers of credit hours will be approved – partial hours will be eliminated.

1.3.2 States that approve sales/marketing topics will consider the hours in the “sales/Mktg” column and the hours in the “Insurance” column when deciding the number of hours to approve. States that do not permit sales/marketing topics as part of continuing education credit hours will only consider the hours shown in the “Insurance” column when making their credit-hour approval decisions.

1.3.3 Contact the individual state to determine whether there are any specific requirements for submitting insurance adjuster courses.

1.4 Submit the application form along with required course materials, a detailed course outline, instructor information, if required, and the required course application fee. Refer to website below for instructor information

www.naic.org/documents/urtt_cer_CE_Matrix.xls.

2. If you are a PROVIDER filing for approval from a Reciprocal State:

2.1 Make a sufficient number of photocopies of the Home State approval form to enable you to submit a copy of this application to each of the Reciprocal States where you are seeking credit.

2.2 On each application, write the Reciprocal State and the provider number assigned to you by that state in the “Reciprocal State” and adjacent “Provider #” fields.

2.3 Send the CER application, home state approval, if home state issues one, a detailed course outline, and the required fee to the reciprocal state. If this is a National Course *, the Providers will be allowed to submit an agenda which must include date, time, each topic and event location in lieu of a detailed course outline.

2.4 Subsequent national course offerings should only be reported for events that are conducted in the “home” state.

* **National Course** is defined as an approved program of instruction in insurance related topics, offered by an approved provider, and leads to a national professional designation or is a course offered to individuals who must update their designation once it is earned.

3. If you are a HOME STATE or the designated Representative of the Home State:

3.1 After reviewing the course materials, complete the “Hrs Approved by Home State” column.

3.2 Enter the date of approval, course # assigned, course approval expiration date. Sign the CER Form OR attach the home state approval form.

3.3 If the class is not approved, note it on the bottom of the CER Form.

4. If you are the RECIPROCAL STATE or designated representative of the Reciprocal State:

4.1 After reviewing “Hrs approved by Home State” complete the “Hrs Approved by Reciprocal State”.

4.2 Enter the date of approval, course number assigned, course approval expiration date. Sign the CER Form OR attach the reciprocal state approval form.

4.3 If the class is not approved, note it on the bottom of the CER Form.

Part III - Section I – Appendix I

NAIC - Course Guidelines for Classroom Webinar/Webcast Delivery

Adopted by the Producer Licensing (EX) Task Force Aug. 1, 2014

- These guidelines are intended to apply to courses conducted and viewed in real time (live) in all locations and are not intended to apply when courses have been recorded and are viewed at a later time or to other online courses.
- Each student will be required to log in to the webinar using a distinct user name, password and/or email. Students that view webinars in group settings, which is two or more individuals, should alternatively verify their participation in the form of sign-in and sign-out sheets submitted by a monitor with an attestation or verification code.
- The provider will verify the identity and license number, or National Producer Number (NPN), of all students.
- A provider representative, using computer-based attendance-monitoring technology, must monitor attendance throughout the course.
- The provider must have a process to determine when a participant is inactive or not fully participating, such as when the screen is minimized, or the participant does not answer the polling questions and/or verification codes.
- For webinars not given in a group setting, no less than two polling questions and/or attendance verification codes must be asked, with appropriate responses provided, at unannounced intervals during each one-hour webinar session to determine participant attentiveness.
- The provider will maintain an electronic roster to include records for each participant's log-in/log-out times. If required by the jurisdiction, chat history and polling responses should be captured as part of the electronic records.
- When a student is deemed inactive, or not fully participating in the course by the course monitor for failure to enter appropriate polling question responses or verification codes, continuing education (CE) credit is denied.
- All students and the instructor do not need to be in the same location.
- Students in all locations must be able to interact in real time with the instructor. Students should be able to submit questions and/or comments at any point during the webinar session.
- The course pace must be set by the instructor and must not allow for independent completion.
- Instruction time is considered the amount of time devoted to the actual course instruction and does not include breaks, lunch, dinner or introductions of speakers.
- One credit will be awarded for each 50 minutes of webinar/webcast instruction, and the minimum number of credits that will be awarded for a webinar/webcast course is one credit.
- The provider must have a procedure that informs each student in advance of course participation requirements and consequences for failing to actively participate in the course.
- A comprehensive final examination is not required.

Note: Once a webinar program is recorded or archived for future presentation, it will continue to be considered a webinar program only where a live subject-matter expert facilitates the recorded presentation in real time. Recorded presentations should be scheduled with a specific start and end time and satisfy the other applicable attendance guidelines.

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Part III - Section I – Appendix J

**NAIC EMERGENCY INDEPENDENT ADJUSTER
BEST PRACTICES AND GUIDELINES**

Adopted by the Producer Licensing (EX) Task Force Nov. 17, 2014
Adopted by the Producer Licensing (EX) Working Group Nov. 17, 2014

RECOMMENDED GUIDELINES AND BEST PRACTICES FOR REGULATORS

1. Adopt Section 5 of the *Independent Adjuster Licensing Guideline* (#1224) to ensure consistency with standards and requirements.
2. License/Registration Qualification: Require the individual to be licensed in his/her home state or a designated home state.
3. Create an electronic filing process for emergency/catastrophic adjusters. A state may consider utilizing the NIPR by updating state-specific business rules to allow for these types/classes of licenses or registrations or by contract with a third-party vendor.
4. Submit emergency/catastrophic adjuster information to the NAIC Producer Database (PDB). This may occur by reviewing and updating the state-specific business rules on file with the NIPR.
5. Ensure that the automated notification process is off-site, and preferably out of state, so that if the emergency occurs locally, adequate resources will be available to respond and issue approval to the emergency/catastrophic adjusters.
6. Develop NAIC uniform emergency/catastrophic adjuster applications/registrations consistent with the adopted guidelines. Until such time the application/registration is developed, the states should use the NAIC Uniform Application for Individual Adjuster or Apprentice License/Registration for individuals and business entities.
7. Work with state officials responsible for the oversight of emergency situations to coordinate its activities to determine if any other credentials (such as a photo ID and/or badge) are required.
8. Establish an “incident commander” for each disaster. Individuals wishing to access an emergency area must determine who the incident commander is in order to request and obtain permission to enter the scene. This person would determine who can access an area for purposes of adjusting, no matter what part of the country, including federal or tribal lands, and across state borders or countries (e.g., Canada). The incident commander would be responsible for the safety of all concerned and for the integrity of the scene and, as such, would be the ultimate authority for access to an emergency area.
9. Establish a one-time fee (if applicable) for a specified time period and not per disaster.
10. Require either the insurer for whom the emergency adjuster represents (or an individual or business entity independent adjuster licensed in the state where the catastrophe has been declared) be responsible for the work performed by the emergency adjuster.

OTHER ISSUES TO CONSIDER/CROSS JURISDICTIONAL ISSUES

- Process to obtain permission, certifications or approval on tribal lands and/or federal lands.

RECOMMENDATIONS

1. Create a national Emergency Adjuster Database (NIPR/NAIC to create a central repository for emergency/catastrophic adjuster registration). Use of the database would be optional for the states; however, data elements would NOT be customized per state.
2. Create a national ID card (license with photo/disaster ID number. Determine whether this is this feasible, given that most licenses are now available for printing online.
3. Create a prior-approval process so that, when an emergency is triggered, the emergency/catastrophic adjuster has been preapproved by the state(s), the approval is posted online and the adjuster is ready for deployment.
4. Create a separate emergency/catastrophic adjuster licensing number system, which would be used in the Emergency Adjuster Database.
5. Post a listing of the states that need emergency/catastrophic adjusters. Provide the type of disaster and what companies and/or federal agencies to contact in order to provide assistance with the disaster.
6. Allow an individual to post his/her permissions and/or certifications—such as Crop Adjuster Proficiency Program (CAPP) accreditation—for federal (national parks or forests) and/or tribal access permissions.
7. Determine whether the NAIC can post emergency/catastrophic adjuster requirements based on where the catastrophe is or whether this the companies' responsibility.

Part III - Section I – Appendix K



NAIC INDEPENDENT ADJUSTER RECIPROCITY BEST PRACTICES & GUIDELINES

Adopted by the Producer Licensing (EX) Working Group and Producer Licensing (EX) Task Force 11.4.11

One of the 2011 charges for the Producer Licensing Working Group (PLWG) is to continue with its work in achieving uniformity in licensing, with a focus on developing best practices and guidelines for adjusters.

In most jurisdictions where licensure is required, it is the “home state” regulator that assesses the qualification of its resident adjusters. Based on securing a license in one’s home state, many states will grant a comparable or similar nonresident license. While many states offer various types of adjuster licenses, there are numerous inconsistencies from state to state that have created a complex, cumbersome, non-uniform, non-reciprocal license environment. To facilitate the licensing of independent adjusters and for jurisdictions to have a comfort level with adjuster license requirements establishment of a reciprocal license process is necessary.

To transition into and create a more reciprocal and ultimately, uniform license environment for adjuster licensing, all jurisdictions are encouraged to utilize the various tools that have been developed and adopted in achieving these goals. Although not mandated or identified in any laws, in terms of the general reciprocity framework that is modeled after and consistent for producers, to achieve reciprocity for non-resident adjuster licensing, a jurisdiction must satisfy the following two (2) conditions:

(1) Permit an adjuster with a license for investigating, negotiating, or settling claims in its home State to receive a non-resident to the same extent that the adjuster is permitted to investigate, negotiate, or settle claims 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; (C) proof of licensure and good standing in home State; and (D) successful completion of an adjuster exam; (E) payment of any requisite fee and other requirements such as standards of conduct described in Section 15 of the Independent Adjuster Guidelines, and

(2) Acceptance of an adjuster’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.

In order to provide jurisdictions with a model for meeting these reciprocity requirements, in June 2008, the NAIC adopted the Independent Adjuster Guidelines. The Guidelines serve as the primary vehicle for States not only to achieve reciprocity, but also takes major steps toward reaching uniformity. With respect to reciprocity, the Guidelines provides for streamlined administrative licensing requirements, license qualifications, and reciprocal recognition of continuing education, among other things. The goal is to develop best practices and guidelines that provide consistency in license requirements to allow for reciprocal licensing for independent adjusters. This document addresses administrative licensing requirements to facilitate the application and renewal process for independent adjuster licensing.

Reciprocity Framework

The Producer Licensing Working Group (PLWG) recommends the following framework for measuring whether a State is reciprocal on specific non-resident independent adjuster licensing requirements.

1. Adopt key provisions in the Independent Adjuster Guidelines to ensure consistency with standards and requirements. Provisions include, but are not limited to
 - A. Definitions – home state, individual, business entity, independent adjuster, Uniform Individual Application and Uniform Business Entity Application. Add a new definition of “Designated Home State” to read, “Designated Home State is the state in which the adjuster does not maintain his, her or its principal place of residence or business, and the adjuster qualified for the license as if the person were a resident.

The Best Practices and Guidelines do not include definitions for public or company (staff) adjusters, however, states are encouraged to refer to the definition of public adjuster within the Public Adjuster Model Act.

Company (staff) adjuster is defined as a person who is a salaried employee of an insurer or an affiliate of the insurer, and who is engaged in adjusting insured losses solely for that company or other companies under common control or ownership.

- B. License Qualifications; age, and fitness and character (moral turpitude)
- C. Lines of Authority; If a state issues an adjuster license by lines of authority (LOA), lines offered should include property, casualty, workers compensation, or crop. States are encouraged to license nonresident adjusters for at least the line of authority held in the home state/designated home state, even if the line of authority held in the applicant's home state/designated home state may not precisely align with the lines issued by the nonresident state.
- D. Class of License; states must offer an individual license; business entity licenses are optional and applies only to states that have a business entity requirement
- E. Designation of Home State - A state whose laws permit a nonresident adjuster to designate that state as its home state, the home state will require the nonresident to qualify as if the person was a resident (exam requirements; fingerprinting, if required, and CE). Once the individual has met the qualifications, the designated home state will issue a nonresident license. The PDB and designated home state will list the record as nonresident, designated home state.
- F. Designation of Home State; Conversion to true Resident State - When an adjuster's resident state offers an adjuster license, within 90 days, the adjuster must file an application, proof of licensure and good standing from the designated nonresident state and fees to qualify for, and obtain the resident adjuster license. The new resident state should waive exam requirements. The prior designated home state adjuster license should be changed from a nonresident, designated home state license to a nonresident license.
- G. Designation of Home State; Fingerprinting – If a state requires fingerprinting of resident adjusters, a state that permits a nonresident adjuster to designate that state as its home state shall require fingerprinting of that nonresident adjuster.
- H. Designation of Home State; CE Requirements - A state that permits a nonresident adjuster to designate that state as its home state, the home state will require and track continuing education compliance for that adjuster.
- I. Renewal Process; jurisdictions are encouraged to develop a renewal cycle consistent with what has been established for producers (biennial basis on the licensee's month or birth of date of birth. Business entity licenses will continue on a date certain)
- J. Examination Requirements; states must offer a separate test for home state adjusters and shall test the knowledge for the lines of authority sought, the duties and responsibilities of an adjuster and the home state's insurance laws and regulations
- K. License Denial, Non-renewal, or Revocation; at a minimum, as defined in Section 12 of independent Adjuster Guidelines
- L. Continuing Education; the home state shall require twenty-four (24) hours of CE with three (3) of the twenty-four hours covering ethics.
- M. Reporting of Actions; the state shall participate in the NAIC Attachments Warehouse, notifications and reporting of actions; Personal Information Capture System (PICS) alerts or another appropriate mechanism to monitor actions against existing licensees and take necessary action, when warranted based on the information obtained through such actions.

1. Post adjuster license information on state web sites and the National Association of Insurance Commissioners (NAIC) Producer Database (PDB)
2. Participate in National Insurance Producer Registry (NIPR) Adjuster licensing (“Other”) product module that allows adjusters to electronically apply for initial and renewal of a license.
3. Participate in National Insurance Producer Registry (NIPR) Nonresident Adjuster Licensing product module that allows states to license and track adjusters that designate another state as the home state.
4. Participate in National Insurance Producer Registry Address Change Request (ACR) product module that allows a licensed adjuster to change their address.
5. A state that offers temporary licensure or registration for Emergency Adjusters shall do so in accordance with the Independent Adjuster Licensing Guidelines

Part III - Section I – Appendix L**INDEPENDENT ADJUSTER LICENSING GUIDELINE****Table of Contents**

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Section 1. Purpose and Scope

This Guideline governs the qualifications and procedures for licensing independent adjusters. It specifies the duties of and restrictions on independent adjusters.

Drafting Note: It is recommended that any statute or regulation inconsistent with this Guideline be repealed or amended.

Section 2. Definitions

- A. “Apprentice independent adjuster” means one who is qualified in all respects as an independent adjuster except as to experience, education and/or training.
- B. “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.
- C. “Catastrophe” means an event that results in large numbers of deaths or injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; or severely affects state, local and private sector capabilities to begin and sustain response activities. A catastrophe shall be declared by the Governor of the state, district, or territory in which the catastrophe occurred.

Drafting Note: Some states may need to expand the authority to include the insurance commissioner or other eligible governmental or regulatory body, if they are authorized to declare a catastrophe.

- D. “Fingerprints” for the purposes of this Guideline, means an impression of the lines on the finger taken for purpose of identification.

Drafting Note: States that require fingerprinting would incorporate this Section, states that do not require fingerprinting need to determine if this would apply.

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

independent adjuster shall designate as his, her or its home state any state in which the independent adjuster is licensed and in good standing.

- F. “Independent adjuster” means a person who:
- (1) Is an individual, a business entity, an independent contractor, or an employee of a contractor, who contracts for compensation with insurers or self-insurers;
 - (2) One whom the insurer’s or self-insurer’s tax treatment of the individual is consistent with that of an independent contractor rather than as an employee, as defined in the Internal Revenue Code, United States Code, Title 26, Subtitle C; and
 - (3) Investigates, negotiates or settles property, casualty or workers’ compensation claims for insurers or for self-insurers.
- G. “Individual” means a natural person.
- H. “Insurer” means (insert reference to appropriate section of state law).
- I. “Person” means an individual or business entity.
- J. “Uniform Individual Application” means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Individual Application for resident and nonresident individuals.
- K. “Uniform Business Entity Application” means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Business Entity Application for resident and nonresident business entities.

Drafting Note: Subsection K is optional and only applies to those states that have a business entity license requirement.

Drafting Note: If any term is similarly defined in a relevant section of the state’s insurance code, do not include the definition of the term in this Guideline or, in the alternative, reference the statute: “[term] is defined in [insert appropriate reference to state law or regulation].”

Section 3. License Required

A person shall not act or hold himself out as an independent adjuster in this state unless the person is licensed as an independent adjuster in accordance with this Guideline, or is exempt from licensure as an independent adjuster under this Guideline.

Section 4. Exceptions to License Requirement

The definition of independent adjuster shall not be deemed to include, and a license as an independent adjuster shall not be required of the following:

- A. Attorneys-at-law admitted to practice in this state, when acting in their professional capacity as an attorney;
- B. A person employed solely to obtain facts surrounding a claim or to furnish technical assistance to a licensed independent adjuster;
- C. An individual who is employed to investigate suspected fraudulent insurance claims but who does not adjust losses or determine claims payments;
- D. A person who solely performs executive, administrative, managerial or clerical duties or any combination thereof and who does not investigate, negotiate or settle claims with policyholders, claimants or their legal representative;
- E. A licensed health care provider or its employee who provides managed care services so long as the services do not include the determination of compensability;

- F. A managed care organization or any of its employees or an employee of any organization providing managed care services so long as the services do not include the determination of compensability;
- G. A person who settles only reinsurance or subrogation claims;
- H. An officer, director, manager or employee of an authorized insurer, surplus lines insurer, a risk retention group, or an attorney-in-fact of a reciprocal insurer;
- I. A U.S. Manager of the United States branch of an alien insurer;
- J. A person who investigates, negotiates or settles life, accident and health, annuity, or disability insurance claims;
- K. An individual employee, under a self-insured arrangement, who adjust claims on behalf of their employer;
- L. A licensed insurance producer, attorney-in-fact of a reciprocal insurer or managing general agent of the insurer to whom claim authority has been granted by the insurer;
- M. A person authorized to adjust workers' compensation or disability claims under the authority of a third party administrator (TPA) license pursuant to [insert applicable licensing statute].

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

Section 5. Temporary Licensure or Registration for Emergency Independent Adjusters

- A. In the event of a declared catastrophe, an insurer shall notify the insurance commissioner via an application for temporary emergency licensure, or registration if temporary emergency licensure is not statutorily required, of each individual, not already licensed in the state where the catastrophe has been declared, that will act as an emergency independent adjuster on behalf of the insurer. The insurance commissioner shall establish standards and procedures to allow for the temporary emergency licensure or registration of an emergency independent adjuster in this state.
- B. A person who is otherwise qualified to adjust claims, but not already licensed in this state where the catastrophe has been declared, may act as an emergency independent adjuster and adjust claims, if, within five days of deployment to adjust claims arising from the declared catastrophe, the insurer notifies the commissioner by providing the following information in a format prescribed by the insurance commissioner:
 - (1) Name of the individual;
 - (2) Social security number of individual;
 - (3) Name of insurer the independent adjuster will represent;
 - (4) Effective date of the contract between the insurer and independent adjuster;
 - (5) Catastrophe or loss control number;
 - (6) Catastrophe event name; and
 - (7) Other information the insurance commissioner deems necessary.

Drafting Note: The participating states, by rule, should clarify the state's meaning and application of "qualify" as used Section 5B.

- C. An emergency independent adjuster's license or registration shall remain in force for a period not to exceed 90 days, unless extended by the insurance commissioner.

Drafting Note: The fee for emergency independent adjuster application for licensure or registration shall be in an amount determined by the insurance commissioner and shall be due and payable at the time of application for licensure or registration.

Drafting Note: The insurance commissioner may provide additional provisions that would trigger licensure or registration of an emergency independent adjuster.

Section 6. Application for License

- A. An individual applying for a resident independent adjuster license shall make application to the insurance commissioner on the appropriate NAIC Uniform Individual Application in a format prescribed by the insurance commissioner and declare under penalty of suspension, revocation or refusal of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. Before approving the application, the insurance commissioner shall find that the individual:
- (1) Is at least eighteen (18) years of age;
 - (2) Is eligible to designate this state as his or her home state;
 - (3) Is trustworthy, reliable and of good reputation, evidence of which shall be determined by the insurance commissioner;
 - (4) Has not committed any act that is a ground for probation, suspension, revocation or refusal of an independent adjuster's license as set forth in Section 12;
 - (5) Has completed a prelicensing course of study for the line(s) of authority for which the person has applied, where required by the insurance commissioner; and
 - (6) Has successfully passed the examination for the line(s) of authority for which the person has applied;
 - (7) Has paid the fees set forth in [insert appropriate reference to state law or regulation].
- B. A business entity applying for a resident independent adjuster license shall make application to the insurance commissioner on the appropriate NAIC Uniform Business Entity Application in a format prescribed by the insurance commissioner and declare under penalty of suspension, revocation or refusal of the license that the statements made in the application are true, correct and complete to the best of the business entity's knowledge and belief. Before approving the application, the insurance commissioner shall find that the business entity:
- (1) Is eligible to designate this state as its home state;
 - (2) Has designated a licensed independent adjuster responsible for the business entities compliance with the insurance laws, rules and regulations of this state;
 - (4) Has not committed an act that is a ground for probation, suspension, revocation or refusal of an independent adjuster's license as set forth in Section 12; and
 - (5) Has paid the fees set forth in [insert appropriate reference to state law or regulation].

Drafting Note: This Section is optional and applies only to those states that have a business entity requirement.

Drafting Note: Employee of the authorized affiliate insurer may be considered under this exemption with the Commissioner's consent.

- C. In order to make a determination of license eligibility, the insurance commissioner is authorized to require fingerprints of applicants and to submit the fingerprints and the fee required to perform the criminal history record checks to the state identification bureau (or state department of justice public state agency) and the Federal Bureau of Investigation (FBI) for state and national criminal history record checks.

Drafting Note: The FBI requires that fingerprints be submitted to the state Department of Law Enforcement, Public Safety or Criminal Justice for a check of state records before the fingerprints are submitted to the FBI for a criminal history record check. The FBI recommends all fingerprint submissions be in an electronic format. Public Law 92-544 requires specific parameters to submit fingerprints and obtain criminal history record information. The FBI has approved the language in Section 6C to authorize a state identification bureau to submit fingerprints on behalf of its applicants in conjunction with licensing and employment.

- D. The insurance commissioner shall require a criminal history record check on each applicant in accordance with this Guideline. The insurance commissioner shall require each applicant to submit a full set of fingerprints (including a scanned file from a hard copy fingerprint) in order for the insurance commissioner to obtain and receive national criminal history records from the FBI Criminal Justice Information Services Division.
- E. The insurance commissioner may contract for the collection and transmission of fingerprints authorized under this Guideline. If the insurance commissioner does so, the insurance commissioner may order the fee for collecting and transmitting fingerprints to be payable directly to the contractor by the applicant. The insurance commissioner may agree to a reasonable fingerprinting fee to be charged by the contractor.
- F. The insurance commissioner shall treat and maintain an applicant's fingerprints and any criminal history record information obtained under this Guideline as confidential and shall apply security measures consistent with the Criminal Justice Information Services Division of the Federal Bureau of Investigation standards for the electronic storage of fingerprints and necessary identifying information and limit the use of records solely to the purposes authorized in this Guideline. The fingerprints and any criminal history record information shall not be subject to subpoena, other than one issued in a criminal action or investigation, and shall be confidential.
- G. The insurance commissioner is authorized to receive criminal history record information from another government agency in lieu of the state identification bureau (or state department of justice or other public state agency) that submitted the fingerprints to the FBI.

Drafting Note: If the state has adopted fingerprint requirements for other classes of licenses, it may not necessary to adopt this language. This provision does not permit the sharing of criminal history record information with the NAIC or other insurance commissioners as such sharing of information is prohibited by 28 CFR 20.33.

- H. The insurance commissioner may require any documents reasonably necessary to verify the information contained in the application.

Section 7. License

- A. Unless denied licensure pursuant to Section 12, persons who have met the requirements of Sections 6 and 8 shall be issued an independent adjuster license. An independent adjuster may qualify for a license in one or more of the following lines of authority:
 - (1) Property and Casualty; or
 - (2) Workers Compensation; or
 - (3) Crop.
- B. Any person holding a license pursuant to this provision shall not be required to hold any other independent adjuster, insurance or self-insurance administrator license in this state pursuant to [insert applicable TPA law cross reference] or any other provision, including, but not limited to, licenses by the [Workers Compensation Commissions, the Department of Labor or other applicable cross reference] provided that he, she or it does not Guideline as an independent adjuster with respect to life, health or annuity insurance, other than disability insurance.

Drafting Note: This Guideline is drafted to eliminate redundant licensure requirements with respect to the activities engaged in by the licensee. If licensed as an independent adjuster, third party administrator or similar business entity additional licenses should not be required provided that the type of claims adjusted do not include life, health, or annuity insurance claims, other than disability claims.

- C. An independent adjuster license shall remain in effect unless probated, suspended, revoked or refused as long as the request for renewal and fee set forth in [insert appropriate reference to state law or regulation] is paid and all other requirements for license renewal are met by the due date, otherwise the license expires.
- D. An independent adjuster whose license expires may, within twelve (12) months of the renewal date, be reissued an independent adjuster license upon receipt of the renewal request, as prescribed by the insurance commissioner. However, a penalty in the amount of double the unpaid renewal fee shall be required to reissue the expired license.
- E. An independent adjuster who is unable to comply with license renewal procedures and requirements due to military service, long-term medical disability or some other extenuating circumstance may request a waiver of same and a waiver of any examination requirement, fine or other sanction imposed for failure to comply with renewal procedures.

Drafting Note: Some states may not contain expiration date or reissue a license that has been discontinued for nonrenewal.

- F. An independent adjuster shall be subject to [cite state's Unfair Claims Settlement Act and state's Trade Practices and Fraud sections of the Insurance Code].
- G. The independent adjuster shall inform the insurance commissioner by any means acceptable of any change in resident or business address(es) for the home state or in legal name, within thirty (30) days of the change.
- H. The license shall contain the licensee's name, address, personal identification number, the date of issuance and expiration and any other information the insurance commissioner deems necessary.
- I. In order to assist in the performance of the insurance commissioner's duties, the insurance commissioner may contract with non-governmental entities, including the NAIC, its affiliates or subsidiaries, to perform any ministerial functions, including the collection of fees and data, related to licensing that the insurance commissioner may deem appropriate.

Section 8. Examination

- A. An individual applying for an independent adjuster license under this Guideline shall pass a written examination unless exempt pursuant to Section 9. The examination shall test the knowledge of the individual concerning, the lines of authority for which application is made, the duties and responsibilities of an independent adjuster and the insurance laws and regulations of this state. Examinations required by this Section shall be developed and conducted under rules and regulations prescribed by the insurance commissioner.
- B. The insurance commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in [insert appropriate reference to state law or regulation].
- C. Each individual applying for an examination shall remit a non-refundable fee as prescribed by the insurance commissioner as set forth in [insert appropriate reference to state law or regulation].
- D. An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

Drafting Note: A state may wish to prescribe by regulation limitations on the frequency of application for examination in addition to other precicensing requirements.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include independent adjusters.

Section 9. Exemptions from Examination

- A. An individual who applies for an independent adjuster license in this state who is or was licensed in another state for the same line(s) of authority based on an independent adjuster examination shall not be required to complete any precicensing education or examination. This exemption is only available if the person is currently licensed in another

state or if that state license has expired and the application is received by this state within ninety (90) days of expiration. The applicant must provide certification from the other state that the applicant's license is currently in good standing or was in good standing at the time of expiration or certification from the other state that its Producer Database records, maintained by the NAIC, its affiliates or subsidiaries, indicate that the applicant or their company is or was licensed in good standing. The certification must be of a license with the same line of authority for which the individual has applied;

- B. A person licensed as an independent adjuster in another state based on an independent adjuster examination who establishes legal residency in this state shall make application within ninety (90) days to become a resident independent adjuster licensee pursuant to Section 6, with the exception that no prelicensing education or examination shall be required of this person;
- C. An individual who applies for an apprentice independent adjuster license, pursuant to Section 11, and who adjust claims in that capacity, shall not be required to take and successfully complete the independent adjuster examination.

Drafting Note: If the state does not adopt Section 11, Apprentice Independent Adjuster License, then 9C should be removed as an exemption from examination.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this Section. Rather, the state may want to amend its relevant insurance producer statute to include independent adjusters.

Section 10. Nonresident License

- A. Unless refused licensure pursuant to Section 12, a nonresident person shall receive a nonresident independent adjuster license if:
 - (1) The person is currently licensed in good standing as an independent adjuster in his, her, or its resident or home state;
 - (2) The person has submitted the proper request for licensure, has paid the fees required by [insert appropriate reference to state law or regulation];
 - (3) The person has submitted or transmitted to the insurance commissioner the appropriate completed application for licensure; and
 - (4) The person's designated home state awards nonresident independent adjuster licenses to persons of this state on the same basis.
- B. The insurance commissioner may verify the independent adjuster's licensing status through any appropriate database, including the Producer Database maintained by the NAIC, its affiliates or subsidiaries, or may request certification of good standing as described in Section 9A of this Guideline.
- C. As a condition to the continuation of a nonresident independent adjuster license, the licensee shall maintain a resident independent adjuster license in his, her or its home state. The nonresident independent adjuster license issued under this Section shall terminate and be surrendered immediately to the insurance commissioner if the resident independent adjuster license terminates for any reason, unless the termination is due to the independent adjuster being issued a new resident independent adjuster license in his, her or its new home state. The new state resident independent adjuster license must have reciprocity with the licensing nonresident state(s) otherwise the nonresident independent adjuster license(s) will terminate. Notice of resident independent adjuster license termination must be given to any state(s) that issued a nonresident independent adjuster license. Notice must be given within thirty (30) days of the termination date; if terminated for change in resident home state then the notice must include both the previous and current address. Maintaining a resident independent adjuster license is required for the nonresident independent adjuster license(s) to remain valid.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this Section. Rather, the state may want to amend its relevant insurance producer statute to include independent adjusters.

Drafting Note: In accordance with Public Law No. 106-102 (the “Gramm-Leach-Bliley Act”) states should not require any additional attachments to the Uniform Application or impose any other conditions on applicants that exceed the information requested within the Uniform Application.

Section 11. Apprentice Independent Adjuster License [Optional]

- A. The apprentice independent adjuster license is an optional license to facilitate the experience, education and/or training necessary to ensure reasonable competency of the responsibilities and duties of an independent adjuster as defined in this Guideline.
- B. An individual applying for a resident apprentice independent adjuster license shall make application to the insurance commissioner on the appropriate NAIC Uniform Individual Application in a format prescribed by the insurance commissioner and declare under penalty of suspension, revocation or refusal of the license that the statements made in the application are true, correct and complete to the best of the individual’s knowledge and belief. Before approving the application, the insurance commissioner shall find that the individual:
- (1) Is at least eighteen (18) years of age;
 - (2) Is a resident of this state and has designated this state as his or her home state;
 - (3) Has a business or mailing address in this state for acceptance of service of process;
 - (4) Has not committed any act that is a ground for probation, suspension, revocation or denial of licensure as set forth in Section 12;
 - (5) Is trustworthy, reliable and of good reputation, evidence of which may be determined by the insurance commissioner;
 - (6) Has paid the fees set forth in [insert appropriate reference to state law or regulation].
- C. The apprentice independent adjuster license shall be subject to the following terms and conditions:
- (1) Accompanying the apprentice adjuster application shall be an attestation, from a licensed independent adjuster with the same line(s) of authority for which the apprentice has applied, certifying that the apprentice will be subject to training, direction and control by the licensed independent adjuster and further certifying that the licensed independent adjuster assumes responsibility for the actions of the apprentice in the apprentice’s capacity as an independent adjuster;
 - (2) The apprentice independent adjuster is only authorized to adjust claims in the state that has issued the apprentice independent adjuster license;
 - (3) The apprentice licensee is restricted to participation in the investigation, settlement and negotiation of claims subject to the review and final determination of the claim by the supervising licensed independent adjuster;
 - (4) Compensation of an apprentice independent adjuster shall be on a salaried or hourly basis only;
 - (5) The apprentice independent adjuster shall not be required to take and successfully complete the independent adjuster examination pursuant to Section 8, to adjust claims as an apprentice independent adjuster. However, at any time during the apprenticeship the apprentice independent adjuster may choose to take the examination required by Section 8. If the individual takes and successfully completes the independent adjuster exam the apprentice independent adjuster license shall automatically terminate and an independent adjuster license shall be issued to that individual in place thereof;
 - (6) The apprentice independent adjuster license is for a period not to exceed twelve (12) months and is nonrenewable; and

- (7) The licensee shall be subject to probation, suspension, revocation, or refusal pursuant to Section 12 of this Guideline.
- D. The licensed independent adjuster responsible for the apprentice independent adjuster, as stated in Section 11(C)(1), shall only supervise [insert appropriate reference to state law or regulation]

Section 12. License Denial, Non-Renewal, or Revocation

- A. The insurance commissioner may place on probation, suspend, revoke, or refuse to issue or renew an independent adjuster's license or may levy a civil penalty in accordance with [insert appropriate reference to state law] or any combination of the above actions for any one or more of the following causes:
- (1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;
 - (2) Violating any insurance laws, regulations, subpoena or order of the insurance commissioner or of another state's insurance commissioner;
 - (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
 - (4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;
 - (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
 - (6) Having been convicted of a felony;
 - (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
 - (8) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility, in the conduct of insurance business in this state or elsewhere;
 - (9) Having an insurance license, or its equivalent, probated, suspended, revoked or refused in any other state, province, district, or territory;
 - (10) Forging another's name to any document related to an insurance transaction;
 - (11) Cheating, including improperly using notes or any other reference material, to complete an examination for an insurance license;
 - (12) Failing to comply with an administrative or court order imposing a child support obligation; or
 - (13) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax which remains unpaid.

Drafting Note: Paragraph (13) is for those states that have a state income tax.

- B. In the event that the action by the insurance commissioner is to refuse application for licensure or renewal of an existing license, the insurance commissioner shall notify the applicant or licensee in writing, advising of the reason for the refusal. The applicant or licensee may make written demand upon the insurance commissioner within [insert appropriate time period from state's Administrative Procedure Act] for a hearing before the insurance commissioner to determine the reasonableness of the refusal. The hearing shall be held within [insert time period from state law] and shall be held pursuant to [insert appropriate reference to state law].
- C. The license of a business entity may be probated, suspended, revoked, or refused if the insurance commissioner finds, after a hearing, that its designated individual licensee's violation occurred while acting on behalf of or representing the business entity and that the violation was known or should have been known by one or more of the business entity's partners, officers or managers and that the violation was neither reported to the insurance commissioner nor was corrective action taken.

- D. In addition to or in lieu of any applicable probation, suspension, revocation or refusal, a person may, after a hearing, additionally be subject to a civil fine according to [insert appropriate reference to state law].
- E. The insurance commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this Guideline and Title [insert appropriate reference to state law] against any person who is under investigation for or charged with a violation of this Guideline or Title [insert appropriate reference to state law] even if the person's license or registration has been surrendered or has expired by operation of law.

Section 13. Continuing Education

- A. An individual, who holds an independent adjuster license and who is not exempt under Subsection B of this Section, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which three (3) hours must be in ethics, reported to the insurance commissioner on a biennial basis in conjunction with their license renewal cycle.
- B. This Section shall not apply to:
 - (1) Licensees not licensed for one (1) full year prior to the end of the applicable continuing education biennium; or
 - (2) Licensees holding nonresident independent adjuster licenses who have met the continuing education requirements of their designated home state.

Section 14. Record Retention

An independent adjuster shall maintain a copy of each contract between the independent adjuster and the insurer or self-insurer and comply with the record retention policy as agreed to in that contract.

Section 15. Standards of Conduct of Independent Adjusters [Optional]

- A. An independent adjuster shall be honest and fair in all communications with the insured, the insurer and the public;
- B. An independent adjuster shall give policyholders and claimants prompt, knowledgeable service and courteous, fair and objective treatment at all times;
- C. An independent adjuster shall not give legal advice, and shall not deal directly with any policyholder or claimant who is represented by legal counsel without the consent of the legal counsel involved;
- D. An independent adjuster shall comply with all local, state and federal privacy and information security laws, if applicable;
- E. An independent adjuster shall identify himself as an independent adjuster and, if applicable, identify his employer when dealing with any policyholder or claimant; and
- F. An independent adjuster shall not have any financial interest in any adjustment or acquire for himself or any person any interest or title in salvage, without first receiving written authority from the principal.

Section 16. Reporting of Actions

- A. The independent adjuster shall report to the insurance commissioner any administrative action taken against the independent adjuster in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent order and any other relevant legal documents.
- B. The independent adjuster shall report to the insurance commissioner any criminal action taken against the independent adjuster in this or any jurisdiction within thirty (30) days of the final disposition of the criminal matter. The report shall include a copy of the initial complaint filed, the final order issued by the court, and any other relevant legal documents.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this Section. Rather, the state may want to amend its relevant insurance producer statute to include independent adjusters.

Section 17. Regulations

The insurance commissioner may, in accordance with [insert appropriate reference to state law], promulgate reasonable regulations as are necessary or proper to carry out the purposes of this Guideline.

Section 18. Severability

If any provisions of this Guideline, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the Guideline, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

Section 19. Effective Date

This Guideline shall take effect [insert date].

Note: A minimum of six months to one year implementation time for proper notice of changes, fees and procures is recommended.

Chronological Summary of Action (all references are to the Proceedings of the NAIC)

2008 Proc. 3rd Quarter (adopted).

Part III - Section I – Appendix M

Limited Line Term Resolution

LIMITED LINE TERMLIFE RESOLUTION

June 14, 2005

Where As, the NAIC membership adopted the Producer Licensing Model Act in 2000, which established life insurance as a major line of authority and defines the life insurance line of authority as insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

Where As, the NAIC membership adopted the Uniform Licensing Standards in 2002, which confirmed the establishment of the six major lines of authority set forth in the Producer Licensing Act and established the following five core limited lines: (1) Car Rental, (2) Credit, (3) Crop, (4) Surety and (5) Travel;

Where As, the NAIC membership adopted the Regulatory Modernization Action Plan in 2003, which sets forth that NAIC members will build upon the regulatory framework established by the Uniform Licensing Standards adopted in 2002 and will continue the implementation of a uniform, electronic licensing system for individuals and business entities that sell, solicit or negotiate insurance while preserving the necessary consumer protections;

Where As, representatives of the insurance industry have presented individual NAIC members with a proposal for the establishment of a limited line license for producers to sell term life insurance;

Where As, this issue has been communicated by individual NAIC members to the NAIC's Producer Licensing Working Group of the Market Regulation & Consumer Affairs (D) Committee for consideration;

Where As, the Producer Licensing Working Group recognizes the producer licensing process, which includes prelicensing education, testing and continuing education requirements, ensures individuals selling, soliciting or negotiating insurance have the minimum level of competency and knowledge to engage in such activities;

Where As, consumer protection, consistency and uniformity of state insurance regulation are of the highest priority for state insurance regulators;

Now Therefore, the NAIC rejects any and all proposals which directly or indirectly establish a limited line license for producers to sell term life insurance.

Part III - Section I – Appendix N**Low Compliance Licensing Standards Recommendations**

DATE: July 10, 2008

TO: NAIC Officers and the Market Regulation & Consumer Affairs (D) Committee

FROM: Anne Marie Narcini, Chair of the Producer Licensing (D) Working Group

RE: Low Compliance Licensing Standards Recommendations

As part of the 2008 charges for the Producer Licensing Working Group (PLWG), the NAIC officers asked the working group to evaluate the key findings and issues regarding compliance with the Uniform licensing Standards and identify those standards that are not generally supported by the local industry organizations at the state legislative level, as well as the specific issues associated with non-support, and provide a recommendation on eliminating or amending these standards.

Process for Completion of Charge

Since the NAIC Spring National Meeting, the working group surveyed states regarding areas where local trade associations opposed legislative initiatives to implement uniform standards; reviewed the areas of low compliance as reported through the state assessments; and solicited comments from interested parties. The working group also held discussions during an interim meeting in Kansas City following E Regulation Conference. The working group also met at the NAIC Summer National Meeting. A small team of regulators from Alaska, Kentucky, Utah and New Jersey also met by conference call to discuss the findings and prepare recommendations.

General Recommendations

It is noteworthy that several regulators indicated that it is not so much local opposition to implementation of the standards as it is lack of support. With so many legislative priorities, regulators often find it difficult to pursue legislative change if there aren't organizations actively advocating reform. In some instances, it is not so much an inability to pass legislation as it is an inability to create enough interest for a bill to be posted. We have separated the areas of low compliance into those standards where there is opposition and those standards where there is lack of support – either by industry or sometimes even within insurance departments.

Throughout the discussions of this charge, it was apparent that both regulators and interested parties were not anxious to make significant changes to the standards. Many states have worked diligently to achieve uniformity and the consensus is that it would not be fair to trivialize their efforts by changing the rules midstream. In addition, states are concerned about losing credibility with their state legislators if they go back with new proposals based on new standards.

The working group recommends that any adjustments to the standards should be made by establishing additional means of achieving uniformity rather than recommending changes in standards that would move states from compliant to non-compliant.

The Working Group also recommends continued Commissioner level involvement to assist in obtaining the needed support in states having difficulty effecting legislative change and/or internal support for implementation of the standards.

Low Compliance Standards with Local Opposition

Uniformity Standard 14 - Background Checks: Background checks will follow the following three steps: 1) states will ask and review the standard background questions contained on the Uniform Applications; 2) states will run a check against the NAIC RIRS/PDB and 1033 Application and 3) moving forward on an electronic basis, states will fingerprint their resident producers and will process electronic fingerprints through NIPR during the initial, resident producer licensing process.

The majority of states have achieved uniformity in using the Uniform Application and running checks against the NAIC's Regulatory Information Retrieval Systems (RIRS) and 1033 Application. Step 3 of the background check process is the area where there is low compliance, as well as resistance in several states from local trade associations. During the working group's discussions at the interim and summer meetings, industry representatives for limited lines associations voiced opposition to fingerprinting for limited line producers, citing the ancillary nature of certain limited line products that are "add-ons" to non-insurance products. Other national trade associations supported the idea of fingerprinting but encouraged the states to consider ways to implement the process without delaying the licensing process. They also voiced concerns about significant delays in states that still require fingerprinting for nonresident applicants and mandate paper ink and roll methods.

The working group believes Step 3 of this standard should be revised. Fingerprinting is an important consumer protection tool and states should be encouraged to move forward with the process now. There is no central repository at this point and waiting until this issue is resolved only delays implementation of a complete background check process. The primary reason for a repository is to implement a once and done approach to the fingerprint process so that a producer changing resident states would not have to be reprinted. The working group believes the purpose of fingerprinting will still be realized without a repository for the prints.

The working group also believes that the means of printing, whether paper or electronic, is not as important as conducting the background check, ideally at both a state and federal level. The working group does, however, recognize the barriers to full implementation of fingerprinting when a state's police or its equivalent does not have the technology in place to accept electronic fingerprints or to transmit requests to the FBI. While the goal of state and national background checks via an electronic fingerprinting process should still be kept in mind, the working group recommends adding a sub-category for states to commence state background reviews. In adding this sub-category, states that do not have the technology for state and federal background checks would at least commence state background reviews now.

Recommendation:

- The working group suggests the following revision to Standard 14 (Fingerprinting):

Background Checks: Background checks will follow the following three steps:

- 1) States will ask and review the standard background questions contained on the Uniform Applications;
- 2) States will run a check against the NAIC RIRS/PDB and 1033 Application and
- 3a) States will fingerprint their new resident producers and conduct state and federal criminal background checks on new resident producer applicants. Although electronic fingerprinting is strongly encouraged, a state will be compliant with this requirement if the fingerprints are obtained through paper or electronic means.
- 3b) If a state lacks the authority or resources to accept and receive data from the FBI, it shall conduct a statewide criminal history background check through the appropriate governmental agency for new resident producer applicants until such time as it can become compliant with Standard 14(3) a.

- The working group strongly encourages the NAIC membership to support the goal of a nationwide resident fingerprint initiative and to work with national trade associations to educate the local trade associations so fingerprinting will gain support rather than opposition. In addition, we recommend that NAIC membership encourage the states that require nonresident applicants to submit fingerprint to work towards elimination of this requirement for nonresident applicants who were previously fingerprinted by their resident state. There are at least 10 states that now fingerprint resident applicants and run criminal history checks at the state and national level. It appears duplicative and time consuming when residents of these states must again be fingerprinted when they apply as nonresidents in other fingerprinting states.

Uniformity Standards 23-25 and Standard 30 - CE Requirements: Twenty four hours of CE for all major lines of authority with three of the twenty-four hours covering ethics. Fifty minutes shall equal one hour of CE. Biennial CE compliance period would coincide with the producer's license continuation date. No waiver/exemption except as provided in subsection 7D of the PLMA.

The majority of states that are non-compliant with the CE term are noncompliant because they have not implemented birth month continuation. Most states are non-compliant with the number of CE hours because they do not require 3 hours of ethics. It would appear that whatever legislative change is necessary to move to birth month continuation could also include the ethics requirement. There is little local opposition to this change.

In reference to the standard for twenty four hours of CE for all major lines of authority with three of the twenty-four hours covering ethics, states that are not compliant have laws requiring either more or less hours of CE. Several states have reported significant local opposition to changes whether it is raising or lowering the required hours, including but not limited to Ohio, California and Louisiana.

The working group has found that the area of greatest resistance and local opposition within CE compliance is eliminating waivers and exemptions. Thirty-one states were deemed noncompliant because they allow exemptions based on certain professional designations or based on age and experience. Many states indicated the resistance to legislative change in this area is strong because certain lawmakers are eligible for these exemptions. In discussions with interested parties, the working group found that opinions were mixed. Some trade associations were indifferent to such exemptions while others felt that all licensed producers should be required to fulfill CE.

Recommendation:

- The working group believes the only way to eliminate waivers based on age or years in the business is to propose legislation on prospective basis with the current exemptions and waivers having a sunset date. In so doing, those producers currently licensed and exempt would remain exempt. The working group recommends a state which has successfully effectuated such a change be deemed compliant with the no waiver/exemption standard.
- The working group also recommends open dialogue with regulators in noncompliant states to exchange suggested methods to provide credit for continuing education courses that licensees pursue to maintain their professional designations, rather than across the board waivers.

Low Compliance Standards Lacking Local Support

Uniformity Standard 4 – Prelicensing Education: States that require prelicensing education shall require 20 hours of prelicensing education per major line of authority. States may waive prelicensing education requirements for the variable line of authority. States that do not require prelicensing education shall not be required to implement prelicensing education.

Since the state assessments, one state has adopted this standard, leaving 21 jurisdictions noncompliant. The working group considered recommending a revision to the standard to allow states to select prelicensing education up to, rather than exactly equal to 20 hours per major line of authority; however, a review of the noncompliant states indicates this change would not bring most states into compliance. The vast majority of the states that are still noncompliant have requirements exceeding the uniform standard. Lowering requirements to reach a standard is sometimes difficult for states since it gives the appearance of lowering the bar. At the same time, it should be noted that some states have successfully lowered minimum prelicensing education standards to become compliant.

Recommendation:

- The working group believes that no change should be made to this standard, but that there should be increased outreach to the noncompliant states to provide education about methods to achieve uniformity without lowering standards. Several states that changed their requirements to achieve the standard did so by establishing the standard as a floor rather than the ceiling and encouraging providers to offer additional prelicensing education on an as needed basis to assure that applicants were sufficiently prepared both for the licensing examination and for entering the world of insurance sales.

Uniformity Standard 7 - Waiver/ Exemption from prelicensing education: Individuals with the following designations are exempt from prelicensing education: CEBS, ChFC, CIC, CFP, CLU, FLMI, and LUTCF for Life Line of Authority. RHU, CEBS, REBC, HIA for Health Line of Authority. AAI, ARM, CIC, CPCU for Property and Casualty Lines of Authority. A college insurance degree exempts from prelicensing education for all lines.

Uniformity Standard 9 - Waiver/Exemption from examination: No waiver or exemption except for those noted in Section 9 of the PLMA

Since the assessment, two states have enacted legislative changes to become compliant with this standard while 18 states remain noncompliant. Since the uniformity standards allow a state to opt for no prelicensing education for all applicants, it would appear that the presence or absence of exemptions by a state is not a barrier to licensing. The working group suggests that the more important standard is that all applicants for major lines pass an examination in their home states to assure sufficient knowledge to engage in the business of insurance. Several states still exempt applicants with certain professional designations from examination. Without a uniform approach of testing all applicants for major lines of authority, all states may not agree to reciprocity. Examination is considered a necessary consumer protection.

Recommendation:

- Although there does not appear to be active opposition to Standard 7, the working group recommends that the prelicensing education exemption list be a form of guidance to state departments, rather than a uniformity standard, and allow commissioner discretion for the types of designations and degrees that would exempt an applicant from prelicensing education. The working group recommends no change to Standard 9 but does recommend further clarification to this standard.

Uniformity Standard 8 - Lines of Authority: Six major lines as defined in the Producer Licensing Model Act (PLMA)

Uniformity Standard 16 - Lines of Authority Issued: Six major lines as defined by the PLMA and core limited lines as defined by the Uniform Producer Licensing Initiatives Subgroup. Other limited lines as determined by each state. States are encouraged to eliminate as many limited lines of authority as possible

Uniformity Standard 33 - Definitions of Core Limited Lines: Follow the definitions established by the Limited Lines Licensing Subgroup

Because these standards overlap, the working group considered them together. The working group and interested parties all agree these three standards are critical to achieving uniformity and eliminating delays and barriers to licensure. If lines of authority are not substantially similar, nonresident applicants will face challenges and delays as they try to obtain licenses in other states. With ever increasing electronic licensing processing, successful mapping depends upon uniformity in lines of authority issued.

A review of state assessments indicates there are a wide variety of reasons for noncompliance. Several states either do not offer personal lines as a line of authority or treat it as a limited line. Several states consider surety a major line of authority rather than include it within the casualty line of authority or treating it as a limited line. Other states have an extensive number of limited lines, consider lines of business that are clearly part of major lines as limited lines, or offer lines that are similar in name to one or more of the six major lines or the core limited lines but have definitions that vary significantly from the uniform definitions.

Recommendation:

- Although we do not believe changes should be made to these standards, we do recommend the group continue to discuss significant issues regarding limited lines (e.g. fingerprint requirements, the necessity of licensing all individuals in an office; and ways that states can achieve expeditious licensing of limited lines in a nonresident state that does not offer the limited line held by the producer in his home state) and provide clarification of these standards as part of our upcoming charge to provide additional interpretive guidance to states on certain uniformity standards. Specifically, we believe the standards should more clearly identify which limited lines beyond the core limited lines are acceptable because they are incidental in nature rather than a significant line of business covered under a major line of authority; the extent to which states must use the core limited lines definitions to be compliant, and when a state may require testing for a limited line. The working group believes state outreach and education is the key to increasing uniformity in this area. States may wish to consider sunset provisions as they eliminate duplicative limited lines.

Uniformity Standard 18 - Continuation Process: Individual licenses will continue on a biennial basis on the licensee's month of birth or date of birth. Business entity licenses will continue on a date certain.

Thirty three states were deemed noncompliant with the continuation process, primarily because the license continuation date does not coincide with the producer's birth date or birth month. The vast majority of states require legislative changes to implement this standard. Industry has repeatedly indicated birth month/date renewals save time and money since monitoring varied continuation dates uses considerable resources. This is an area where there is not as much local opposition as there is lack of strong support. Some insurance departments also indicate they lack the resources to implement the necessary system changes.

Recommendation:

- The working group believes that consistency in a continuation process is critical to achieving uniformity. The working group recommends no change to this standard, but encourages national trade associations to work with local trade associations to fully support legislative change to implement the biennial birth date/month continuation process. Regulators that have already implemented birth date/month renewals can assist noncompliant states by sharing processes that achieve a smooth transition. NIPR can also provide expertise and support in this area since they have implemented the birth month renewals for several states that use their products.
- The working group also recommends this standard be further clarified for those states without a renewal or continuation process. There is disagreement among regulators on whether this standard mandates a renewal process and use of the NAIC Uniform Renewal Application.

Implementation of Recommendations

The working group believes that reactivating the Uniformity Subgroup as a focus group to work with individual states would be beneficial in moving forward with these recommendations and in continuing our progress towards uniformity. The Uniformity Focus Group would consist of one or two seasoned regulators from each zone who would follow up with each state individually to update their progress in implementing all uniformity standards; provide assistance with suggested process changes to simplify the implementation of the standards and provide up to date information on the progress and challenges that states are facing in implementing the uniform standards. Several of the recommendations made in this report require outreach and education with the states and we believe the focus group can perform such tasks.

Part III - Section I – Appendix O



**PROGRESS REPORT TO MEMBERSHIP ON
PRODUCER LICENSING
STATE ASSESSMENTS MARCH 16, 2009**

*Overview of NAIC/Industry Producer Licensing Coalition Outreach and
Summary of 2008 Action Items*

I. INTRODUCTION

This report provides an update on all aspects of the NAIC's producer licensing strategy, including the work of the NARAB (EX) Working Group, the Producer Licensing (D) Working Group and the National Insurance Producer Registry to address the key findings and recommendations arising from the 2008 Producer Licensing Assessment, a comprehensive, membership-wide on-site assessment of each state's laws and processes. It also provides an overview of the Producer Licensing Coalition and its recent regulator/industry team outreach efforts, general outcomes of this effort and recommended next steps for continued progress and momentum. The report demonstrates the tremendous progress made by the members, both individually and collectively, since the NAIC first undertook the producer licensing strategic initiative in May 2007 to further achieve compliance with NAIC reciprocity and uniformity standards and improving the licensing process for resident and nonresident producers across the nation.

The Producer Licensing Coalition, which is a joint group of Commissioners, producer licensing regulators, and industry representatives, recently completed outreach to forty- two several state insurance departments for purposes of identifying the support needed to achieve remaining producer licensing reforms. The outreach effort was a logical next step in the NAIC's producer licensing reform strategy. Industry trade representatives were given the opportunity to actively engage Commissioners and their staff on issues of concern to their members. This interactive dialogue highlighted areas requiring support from the industry and legislature for successful implementation, and provided the opportunity for the respective Departments to gauge the level of industry support, indifference or opposition to certain reform efforts. This report summarizes these efforts and provides recommendations for areas of focus in 2009.

II. SUMMARY OF 2008 ACTION ITEMS

A. Overview of Producer Licensing Assessment

In Fall 2007, the NAIC, at the request of the membership, with the support of the Coalition, and with the assistance of a dedicated team of producer licensing regulators, completed a membership-wide, comprehensive producer licensing assessment. In three short months, 12 state insurance regulators, along with ten NAIC staff, divided into teams of three and conducted on-site visits to 50 states, the District of Columbia and Puerto Rico to review certain components of a state's producer licensing laws, practices and processes. This effort also involved significant preparation by the state's licensing staff as well as active participation by the Commissioners and their senior department officials.

In February 2008, the NAIC published the Producer Licensing Assessment Aggregate Report of Findings (Aggregate Report) which outlined the key findings, conclusions and recommendations for next steps. The Aggregate Report provided a national picture of the state of producer licensing and identified those areas of success as well as roadblocks in achieving full reciprocity and uniformity compliance.

It also recommended areas for targeted improvement. The Aggregate Report provided the groundwork for several significant projects and initiatives assigned by the NAIC Executive (EX) Committee and managed by the Market Regulation and Consumer Affairs (D) Committee.

B. Implementation of Aggregate Report Recommendations

1. NARAB Working Group

One of the significant initiatives stemming from the producer licensing assessment was to reconstitute the NARAB (EX) Working Group, to evaluate whether certain non-reciprocal states were eligible for reciprocity certification based on changes to their laws and regulations governing non-resident licensing. In 2008, the NARAB (EX) Working Group certified as reciprocal the District of Columbia, Montana, Indiana, Missouri, New Mexico and Tennessee based on the reciprocity standard outlined in the 2002 Report of the NARAB Working Group: Certification of States for Producer Licensing Reciprocity (2002 NARAB Report).¹ Forty-seven jurisdictions are now recognized by the NAIC as having met the reciprocity mandates of the Gramm-Leach-Bliley Act (GLBA). A map of the states currently certified as reciprocal is attached as **Appendix I**.

The NARAB Working Group formed last year was also charged to evaluate whether certain state requirements imposed upon non-residents and not necessarily addressed in the 2002 NARAB Report impact the reciprocity requirements of federal law or fall under the GLBA savings clause. Recognizing that both the producer licensing industry and producer licensing regulation have significantly evolved and modernized since 2002, the NAIC members willingly and voluntarily undertook this effort to carefully scrutinize possible additional reciprocity issues that exist today. In June 2008, the Working Group adopted a set of recommendations identifying five issues as potential violations of GLBA:

- Requiring an underlying life license prior to the issuance of a non-resident variable life license;
- Requiring the designated responsible producer to be licensed or appointed prior to the issuance of a non-resident business entity license;
- Requiring a non-resident business entity to submit articles of incorporation;
- Requiring individuals seeking a fraternal non-resident license to have an accident/health license and have a fraternal certificate from a company; and
- Requiring non-resident producers to renew licensure annually, while resident producers renew biennially.

The Working Group is currently considering preliminary recommendations on several additional possible GLBA issues, including among others, (1) requiring foreign corporations to register to do business and provide proof of foreign corporation registration and (2) requiring non-resident applicants to obtain a non-resident general or major lines license prior to the issuance of a surplus lines license.

A key finding in the Aggregate Report was disparate business entity licensing laws, regulations and practices and the need for standardization. The NARAB Working Group was charged with developing recommendations for simplifying and standardizing the business entity licensing process. The new Producer Licensing (EX) Task Force is currently gathering information on each of the practices identified for standardization and expects to provide a full set of recommendations in 2009.

¹ Because the original working group dissolved in 2004, the District of Columbia and Montana had not been formally certified as reciprocal by an NAIC committee though both received recommendations for reciprocity certification from the NAIC Legal Division.

2. *Producer Licensing Working Group*

In 2008, the Producer Licensing (D) Working Group was charged with further evaluating many of the Aggregate Report's findings and recommendations, including identifying which Uniform Licensing Standards should be considered professional licensing standards and which Uniform Licensing Standards were not generally supported by local industry organizations at the state legislative level. The professional standards adopted by the NAIC Executive (EX) Committee and Plenary in September 2008 were based on the Uniform Licensing Standards and covered four basic areas:

1. Legal authority to enter into contracts;
2. Education and initial testing for minimum competency;
3. Background checks for moral character; and
4. Ongoing commitment to professional conduct.

These standards go far beyond a code of conduct and are fundamental requirements found in many other professions, such as securities brokers, real estate agents and attorneys.

The Working Group also provided a candid assessment of barriers to implementation of uniform standards finding it is not always local opposition to implementation of the standards, but general lack of support due to other legislative priorities or inability to create sufficient industry/legislative interest.

The Producer Licensing Working Group spent considerable time in 2008 modifying the interpretive guidance associated with the Uniform Licensing Standards. The Aggregate Report found some inconsistent interpretations of what constituted compliance and noncompliance for certain Uniform Licensing Standards, especially those with low compliance. The Working Group provided very useful recommendations on minor adjustments to certain standards and guidance for purposes of establishing additional means of achieving uniformity, such as acknowledging compliance for states that conduct a background check based on either a paper or electronic fingerprinting process. The revisions to the standards provided detailed benchmarks for states to evaluate compliance and curtail inconsistencies in interpreting and applying standards. The Working Group completed several other important assignments including creating new uniform standards and interpretive guidance regarding the commercial lines multi-state exemption and commission sharing exemption, both contained in the Producer Licensing Model Act ("PLMA").

The Working Group also developed and adopted a comprehensive licensing manual, the NAIC State Producer Licensing Handbook, to provide guidance to state insurance departments and regulated entities on how to administer a producer licensing program. It is based on the PLMA, the Uniform Licensing Standards and all guidelines adopted through the NAIC Executive (EX) Committee and Plenary. The Handbook will assist regulators in continued movement towards uniformity in procedures among the states and offer "best practices."

C. **National Insurance Producer Registry**

In 2008, the National Insurance Producer Registry (NIPR) completed the all-state electronic solution for Address Changes (ACR) and implemented the final state achieving 100% participation. This accomplishment stands out because ACR was introduced in July 2007, and by the end of 2008, NIPR had processed over 910,432 address changes. NAIC/NIPR also introduced the breakthrough product Attachment Warehouse. The Warehouse electronically receives, stores, and shares with the states licensing-related documents submitted by applicants in response to "yes" answers to background questions on the Uniform License Application. Producers and authorized submitters no longer have to fax or mail a copy of the required documentation to every state in which they are applying for or renewing a resident or non-resident license. States receive an electronic notice alerting them to check the Warehouse for the required documentation. Future plans include expanding use of the Warehouse to support regulatory requirements related to the notification and reporting of regulatory actions. The Attachment Warehouse was well-received, garnering nearly 1,900 electronic submissions in the first four months of release.

Much progress was made in meeting NIPR's long-term goal of being the one-stop shopping solution for producers and companies. The focus this year was to expand the on-line licensing options to include selected limited and other lines. NIPR also concentrated on offering electronic processing for business entities. Overall, considerable progress was achieved, with many more products being added for several states. As of January 31, 2009, the following states are now in production with NIPR products:

- Non-Resident Licensing for Individuals – 49 states;
- Non-Resident Licensing for Business Entities – 34 states;
- Non-Resident Renewals for Individuals – 39 states;

- Non-Resident Renewals for Business Entities – 18 states;
- Resident Licensing for Individuals – 19 states;
- Resident Licensing for Business Entities – 16 states;
- Resident Licensing Renewals for Individuals – 17 states;
- Resident Licensing Renewals for Business Entities – 13 states;
- Appointment Renewals – 7 states;
- Electronic Funds Transfer for State Fees – 47 states;
- Address Change Requests – all states; and
- Attachments Warehouse – all states.

D. Producer Licensing Coalition

In June 2007, the NAIC/Industry Producer Licensing Coalition was formed as a partnership of regulators and national trade organizations, to focus and facilitate producer licensing uniformity initiatives. In 2009, the Coalition is comprised of 11 Commissioners and 13 national trade associations, including American Council of Life Insurers; American Insurance Association; America's Health Insurance Plans; Council of Insurance Agents & Brokers; CPCU Society; Independent Insurance Agents & Brokers of America; LIMRA; Million Dollar Roundtable; National Association of Insurance and Financial Advisors; National Association of Health Underwriters; Professional Insurance Agents; Society of Financial Service Professionals; and Property Casualty Insurers Association of America.

The Coalition has focused on targeted initiatives to further streamline the licensing process such as:

- Encouraging all state insurance departments to eliminate the proof of Secretary of State registration as a prerequisite requirement to licensing,²
- Exploring ways to reduce the administrative burden of the appointment process; and
- Discussing barriers to full adoption of major and core limited lines.

The Coalition also provided a forum for the exchange of views on proposed federal legislation, H.R. 5611, to create a National Association of Registered Agents and Brokers. Another important topic of discussion from the Coalition regulator members' perspective was the opportunity to encourage industry trade organizations to embrace and promote professional licensing standards at the national, state and local level, including supporting legislative and regulatory changes.

The Coalition has served as a conduit of useful information, opinions and ideas between regulators and industry representatives. Often times, this exchange has turned into an action item for the industry or regulators, whether to solicit feedback or support from their respective members or to develop a proposed solution to an identified issue. Therefore, it was not surprising that both the regulators and industry members of the Coalition readily joined forces to conduct this aggressive outreach effort. Every participant of this outreach effort—Coalition Commissioners, producer licensing regulators and representatives of industry organizations—has given willingly of their time to help states move even closer to full reciprocity and uniformity.

² According to Producer Licensing Coalition information, of the 25 states initially having the SOS corporate registration requirement as a prerequisite requirement to licensing, 15 states have eliminated the prerequisite requirement. Of the remaining ten states, six states have committed to reviewing the requirement and implementing a statutory, regulatory or practice change, if appropriate, and only four states have not yet introduced a change.

III. OVERVIEW OF PRODUCER OUTREACH EFFORT

A. Impetus for Outreach

Under the leadership of NAIC President Roger Sevigny, the NAIC's producer licensing strategy has raised the awareness of the importance and challenges for achieving meaningful producer licensing reform. This topic is a regular discussion point among and between Commissioners and their producer licensing staffs at all levels of the NAIC committee structure. Because results of the producer licensing assessment confirmed that many of the remaining legislative and regulatory changes require active industry support, the Coalition has served a valuable purpose in gathering feedback on the dynamics of producer licensing issues, such as the level of support for minimum professional licensing standards including background check requirements.

As Chair of the Producer Licensing Coalition in 2008, Commissioner Sevigny suggested the Coalition concentrate on the needs of particular states and offer assistance and guidance based on state-specific dynamics and areas of noncompliance. For instance, a state insurance department struggling with eliminating excessive limited lines of authority will require the support of specific sectors of its local industry in order to propose legislation.

The peer-to-peer outreach of the producer licensing assessment provided NAIC members with an inventory of remaining compliance issues. In many cases, the Commissioner and Department were strongly in favor of making the identified changes, but were either unsuccessful in efforts to pass legislation or did not include proposals in legislative packages because of active opposition or simple indifference from one or more sectors of their producer licensing industry.

The Coalition outreach effort was intended to take this grassroots initiative to the next level. In keeping with the general recognition that, at all levels of government, constituency support is often a key ingredient to successful legislative change, it made sense to engage industry representatives in how and whether they can support certain state-specific producer licensing legislation. The Coalition leveraged the valuable information gained through the producer licensing assessments in order to have a better understanding of each state's needs in terms of (1) full PLMA adoption, (2) reciprocity, (3) uniformity compliance, and (4) streamlining business entity licensing, appointments and electronic processing. This background information proved extremely helpful not only as the outreach team developed recommendations to bring to each state, but to facilitate a positive and productive dialogue with Commissioners and their staff.

B. Outreach Team Approach

The Coalition outreach initiative was conducted in a similar manner to the producer licensing assessments in that outreach teams were formed and assigned to respective states. Each outreach team consisted of a Coalition Commissioner, two producer licensing regulators,³ and two industry representatives. The following Commissioners participated on outreach teams: Pennsylvania Commissioner Joel Ario; Idaho Director Bill Deal; Alaska Director Linda Hall; Oklahoma Commissioner Kim Holland; Ohio Director Mary Jo Hudson; and Iowa Commissioner Susan Voss. The following producer licensing regulators participated on outreach teams: John Braun (UT); Linda Brunette (AK); Jack Chaskey (NY); Keith Kuzmich (CA); Rosanne Mead (IA); Anne Marie Narcini (NJ); Barbara Richardson (NH); Bobby Perkins (MS); Treva Wright-Donnell (KY); and Laurie Wolf (NIPR, formerly ND). The following industry representatives participated on outreach teams: Nicole Allen (CIAB); William Anderson (NAIFA); Wes Bissett (IIABA); David Eppstein and Patricia Borowski (PIA); John Fielding (Steptoe & Johnson); Larry Kibbe (Regulatory Affairs Consultant); David Leifer (ACLI); Deirdre Manna (PCI); Martin Mitchell and Gary Allen (AHIP); Pamela Young (AIA). It should also be noted for states assigned to PIA, a representative of the local state PIA organization usually participated on the calls.

Each industry representative was given the opportunity to request a particular state assignment. A concerted effort was made to ensure at least one producer trade organization (i.e., IIABA, PIA, CIAB, NAIFA) was assigned to each state. Industry representatives were also encouraged to coordinate and communicate concerns about a particular state to the industry representatives assigned to the state.

C. Criteria for Outreach

The outreach effort commenced in early November 2008 with the goal of completing the outreach in advance of the 2009 Commissioners Conference. Forty-two states were targeted for outreach based on criteria applied to each state's producer licensing assessment. States were chosen for outreach if their Producer Licensing State Report identified noncompliance with more than three Uniform Licensing Standards or the state had not yet been certified as reciprocal. States out of compliance on fewer than three standards were added to the list for outreach if they were not compliant with the fingerprinting standard,⁴ as a key purpose of the outreach effort was to find ways to provide support to those states needing or considering fingerprint legislation.

D. Focus of Outreach Efforts

The outreach effort generally focused on those areas necessary for reciprocity and uniformity in producer licensing. From a regulatory perspective, Commissioners and producer licensing regulators reviewed whether states were imposing uniform licensing requirements and provisions for residents, which assures each state that non-resident producers are subject to similar licensing requirements in their respective home states. From the producer perspective, industry representatives were looking for general uniformity in licensing requirements and procedures so as to reduce the administrative costs of compliance. Specifically, the outreach effort focused on the following areas: (1) state adoption of key PLMA provisions; (2) non-resident licensing requirements potentially inconsistent with GLBA reciprocity requirements; (3) compliance with certain Uniform Licensing Standards; and (4) other key licensing areas.

The outreach teams reviewed whether a state had fully and uniformly adopted the following provisions of the PLMA:

- Section 2 – Definitions, specifically the definitions for home state, insurance producer, negotiate, sell, solicit, Uniform Application and Uniform Business Entity Application;
- Section 4B(6) – Commercial multistate risk exemption;
- Section 7A – Definitions for the six major lines of authority;
- Section 13D – Commission sharing exemption; and
- Section 16 – Reciprocity.

For each state, the outreach teams examined whether the state had been certified as reciprocal and whether the state imposed additional requirements on the non-resident outside of Section 8 of the PLMA, such as bond requirements for certain lines of authority, i.e. surplus lines bond. It was also noted whether a state had retaliatory licensing and/or appointment fees.

With regard to the Uniform Licensing Standards, the outreach teams considered states' compliance with the following standards:

- Standard No. 8 – Lines of Authority;
- Standard No. 14b – Background Checks, Fingerprinting;
- Standard No. 15 – NAIC Uniform Application;
- Standard No. 16 – Lines of Authority Issued; and
- Standard No. 18 – Continuation Process.

³ The producer licensing regulators who volunteered a significant amount of their time and expertise to conduct the producer licensing assessments volunteered again for this outreach effort and were generally assigned to the states where they conducted on-site assessments.

⁴ Uniform Licensing Standard No. 14b – Background Checks.

The outreach teams also considered any other Uniform Licensing Standards where the state was significantly out of compliance.

State processes and procedures in the following six areas were also evaluated:

- Business entity licensing (e.g. branches, affiliations, name approval);
- Individual and business entity appointment process;
- Secretary of State proof of registration requirements, if any;
- Electronic processing issues;
- Requiring an underlying life line of authority as a prerequisite for a variable line of authority; and
- Requiring a letter of clearance in lieu of relying upon information in the State Producer Licensing Database.

Information to facilitate these focus areas was compiled from several different sources including the state's producer licensing statutes, web site, NIPR electronic business rules, and Producer Licensing Assessment Report. Industry was also asked to provide information and raise concerns for the outreach team's consideration.

E. Structure of Outreach Efforts

Each outreach team was provided a template with state-specific information in each of the areas mentioned above. In general, each outreach team had an initial one-hour conference call to discuss the background information and to identify the priority issues to be discussed with the respective state. During each call, the industry team participants were asked to identify changes and issues of importance to their members. Part of the discussion included gathering information about past efforts towards achieving reciprocity and uniformity and the level of historical and current support among local industry for addressing these issues.

Based on the initial outreach team discussion, an agenda and set of briefing points were provided to the outreach team and the state's Commissioner and staff. In general, each outreach team held a one-hour conference call with the state and often times, had a very interactive, engaging dialogue with the state Commissioner and his or her staff. For each issue identified, the state's Commissioner was generally asked if this was an issue for their local industry and what type of support they needed to effectuate the necessary change. Industry participants were also asked to describe the level of local support from their respective members to address these issues. The Coalition Commissioner generally also provided an opportunity for industry members to voice any other concerns or issues not previously raised.

Finally, a summary of the discussion between the outreach team and the outreach state was prepared and provided to the participants on the outreach call. These state-specific summaries have been compiled and were included in the respective Commissioner's materials for the 2009 Commissioner's Conference.

The specific details of state compliance status and activity cited in this report are subject to change as states introduce legislation or implement administrative process changes to achieve compliance.

IV. GENERAL OUTCOME OF OUTREACH EFFORTS

A. Impact of Industry Involvement

The outreach program afforded industry members a unique forum to speak directly with Commissioners and key staff about the most pressing producer licensing issues. Industry had multiple opportunities to highlight their perspectives on the most important issues for each state to address. The process also resulted in increased industry awareness and understanding of reciprocity, uniformity and other key issues at the national and local levels.

As part of this effort, national trade associations were encouraged to reach out to their state association chapters and to either include them in the calls with the state insurance commissioners or represent specific local concerns. The Professional Insurance Agents (PIA) consistently provided this coordination for the outreach calls. The National Association of Insurance and Financial Advisors (NAIFA) also contacted their local state associations in preparation for the outreach calls. This effort to include the state association chapters was a valuable part of the outreach as it gave

Commissioners, where PIA and NAIFA were members of the outreach team, an opportunity to hear directly from producers operating in the marketplace. In addition, this effort provided all parties greater insights into what priorities are important at the state level and how these priorities are the same or vary from the priorities of the national producer licensing trade associations.

Industry trade associations were helpful in prioritizing the implementation of licensing standards. As part of this prioritization, industry trade associations were willing to work with the states to simplify or eliminate certain licensing requirements, but did not routinely offer solutions or proactively commit to target additional resources for the implementation issues agreed by both regulators and industry to be priorities. For example, the issue of fingerprinting producer applicants was raised on many state calls with a number of states expressing the need for legislative changes coupled with opposition from state producer associations.

While the implementation of a fingerprint requirement for resident producer applicants would be a major step toward achieving full licensing reciprocity, which is a priority for industry, the trade associations generally did not offer support for any proposed legislation in the states wanting to pursue full implementation of a fingerprint requirement. Some readily acknowledged their members oppose passage of this requirement in the respective states. The NAIC membership has offered a compromise position, which has met with some degree of support from producer licensing trade associations, by suggesting that states implement fingerprinting on a prospective basis thus eliminating the need for currently licensed producers to undergo a fingerprint requirement.

In addition, the outreach teams found that some issues identified as problematic at the national level, such as business entity licensing, were not identified as problematic at the local level. This stemmed from varying perspectives of producers who hold licenses in one or two states as opposed to the national trade associations, which view the licensing framework from a broader, national perspective. For example, producers active at the local level frequently opposed eliminating or re-defining lines of authority due to the administrative adjustments involved, but national trade associations often voiced concern about inefficiencies resulting from inconsistencies among lines of authority available from state to state.

B. Common Issues among Outreach Teams

The issues most commonly raised by the state outreach teams were:

1. Authorization to fingerprint resident applicants for criminal background checks;
2. Adoption of the major lines of authority separately and as defined in PLMA along with consolidation of limited lines of authority;
3. Education requirements for both pre-licensing and license continuation; and
4. Simplification of the business entity licensing process.

In general, the outreach calls with the states confirmed that states have worked to make many administrative and regulatory changes within their control, but continue to struggle with making certain legislative changes.

1. Fingerprinting

The fingerprinting issue was addressed to some degree by at least 27 different state outreach teams. The ultimate uniformity goal is for all states to have the authority and capability to fingerprint resident applicants and conduct state and federal criminal background checks. Full implementation would presumably eliminate the fingerprint requirement non-reciprocal states currently impose upon non-resident applicants. As observed in the Aggregate Report and most outreach summaries, the primary barrier to this legislative change is lack of support from the state and local industry organizations. Stated reasons for opposition to the legislation seem to focus on generalized privacy concerns, perceived lack of need and uncertainty about applicability to existing producers. Many Coalition Commissioners suggested preparing an informational packet about the NAIC's Authorization for Criminal Background Check Model and how the electronic fingerprinting process generally works in states.

2. Major and Limited Lines of Authority

The adoption of the major lines of authority, separately and as defined by PLMA, was addressed to some degree by at least 14 different state outreach teams. The ultimate uniformity goal is for all states to license resident and non-resident producers based on equivalent lines of authority. For instance, a life license in one state should entitle a producer to sell, solicit and negotiate to the same extent as a producer holding a life license in another state. Many states would require legislative changes to harmonize their current lines of authority with the PLMA lines of authority. Some Commissioners already made

these changes following the producer licensing assessment, or were including them in their 2009 legislative package. Other Commissioners stated these changes were not a priority for the Department or their local agent community. This issue is one where states and their local industry must both assign it a high level of priority in order to achieve success, but also one that should be kept in the forefront of the discussion among Commissioners to emphasize the need for full implementation and the resultant benefit to reciprocity.

Consolidating available limited lines of authority into the core limited lines as defined by the Uniform Licensing Standards was addressed to some degree by at least 23 different state outreach teams. Acknowledging recent clarification to the uniformity standards, the ultimate uniformity goal is for all states to eliminate disparate and specialized limited lines of authority in favor of the core limited lines of authority and map additional lines into applicable major lines of authority. In order to comply with non-resident reciprocity requirements, states are compelled to provide some type of non-resident limited license to applicants holding non-core limited lines, even though these lines do not synchronize with the limited lines offered to its resident producers. In many outreach calls, the Commissioners indicated their willingness to eliminate additional limited lines but they faced challenges from sectors of their local industry strongly in favor of particular specialized lines such as industrial fire and dental. Like the major lines of authority issue, further progress is dependent upon the support of the industry to effectuate these changes. Further discussion by the NAIC membership on ways to streamline limited lines should also be pursued.

3. *Pre-licensing and Continuing Education Requirements*

Minimum hours of education for pre-licensing and/or continuing education were addressed to some degree by 21 different outreach teams. Consistent with the findings of the on-site assessment process, there is a high level of understanding of the Uniform Licensing Standards in this area. The ultimate uniformity goals are 20 hours per line of authority for states requiring pre-licensing education, zero hours for states not requiring pre-licensing education and 24 hours of continuing education for all major lines of authority, to include 3 hours of ethics training. The outreach calls validated the assessment findings regarding the reasons for noncompliance. Commissioners value the need for consistency in these areas but universally contend with resistance to change among local industry. Lack of local support primarily takes the form of opposition to lowering the minimum hours required. Likewise, industry participants at the national level characterized the importance of state-to-state consistency in these areas as dependent on the local level of interest.

4. *Business Entity Licensing*

The business entity licensing process was addressed to some degree by 25 different outreach teams. The ultimate goal for the business entity licensing issues is simplification and standardization, a matter which the NARAB (EX) Working Group is currently evaluating for purposes of developing a recommendation. During the outreach efforts, industry advocated that particular states eliminate administratively burdensome requirements upon business entities, especially non-resident business entities. Some of these requirements included licensing branch locations, listing or tracking of affiliated producers, and prior approval of legal or assumed names. The outreach teams also encouraged states to fully utilize NIPR's resident and non-resident business entity licensing functionality including the recommendation to eliminate requirements that cause all business entity applications filed through NIPR to pend or defer to the insurance department.

C. *Common Issues among Industry Trade Associations*

The most common issues raised by industry, in addition to the issues identified above, included:

1. Full and uniform adoption of all provisions of the PLMA;
2. Full licensing reciprocity among all states; and
3. Elimination of the Secretary of State registration requirement for non-resident applicants.

1. *Full and Uniform Adoption of PLMA*

Full and uniform adoption of the Producer Licensing Model Act was addressed to some degree by 24 different outreach teams. The ultimate goal of complete PLMA adoption for both states and industry is for all states to have the same or similar laws with regard to key licensing definitions, qualifications, exemptions and requirements. With regard to specific PLMA provisions, industry members were strong proponents for states to adopt PLMA Section 4B(6) permitting the commercial multistate risk exemption and PLMA Section 13D permitting a commission-sharing exemption. Industry members also strongly advocated for states to amend appointment laws and associated practices to be completely consistent with the appointment process specified in PLMA Section 16. It was with regard to these types of changes that industry members most often indicated their willingness to actively support

legislative change in the particular state.

2. *Potential Reciprocity Issues*

Potential reciprocity concerns were addressed to some degree by 31 different outreach teams. The ultimate goal of full reciprocity is for all states to license non-residents on a reciprocal basis and not impose additional requirements outside those permitted under GLBA. Outreach teams made a concerted effort to work with the remaining non-reciprocal states to find support for eliminating additional requirements such as bond and pre-licensing requirements on non-resident surplus lines producers. Outreach teams also noted potential GLBA reciprocity issues in light of the recommendations and work of the current NARAB (EX) Working Group. These issues included at least 22 states requiring a non-resident to obtain an underlying life license as a prerequisite to obtaining a variable license and states requiring non-resident business entities to submit articles of incorporation or additional certifications. Industry generally offered to provide needed support to eliminate these additional requirements.

3. *Confirmation of Secretary of State Registration*

Whether states require Secretary of State proof of foreign corporation registration as a prerequisite to licensure was addressed to some degree by 9 different outreach teams. As stated earlier, the NAIC has made a concerted and successful effort to encourage all members to eliminate this as a prerequisite to licensing. In many outreach calls, this issue was raised in terms of confirming or commending that this requirement had been eliminated by the Commissioner and the department. Industry offered whatever support necessary to help achieve elimination of this Secretary of State check altogether. Further, industry also indicated they would be lobbying state legislatures to enact a provision exempting foreign business entities from registering with the Secretary of State when seeking a non-resident insurance license.

D. *Recommendations for Next Steps*

The outreach process illustrated that states have already implemented changes based upon the feedback received from their on-site producer licensing assessment in early 2008. Many states provided assurances during the outreach calls to continue working toward implementation of the Uniform Licensing Standards. In summary, states have implemented most of the Uniform Licensing Standards that could be implemented through administrative changes or promulgation of regulations. At the same time, states continue to seek support from the national trade associations to implement remaining changes.

Producer licensing remains a critical strategic initiative of the NAIC membership in 2009 and the focus of the newly-created Producer Licensing (EX) Task Force. This outreach effort has produced additional constructive information that can be used by the Task Force, its working groups, interested parties and the Producer Licensing Coalition members in determining how best to effectuate meaningful changes and recommendations. Suggested areas for focused discussion and action in 2009 include:

Producer Licensing Task Force

1. Monitor progress on late 2008 recommendations to NIPR, which included:
 - Working closely with NAIC Market Regulation Division and Producer Licensing Working Group to identify areas in states' electronic business rules that do not appear to comply with reciprocity or uniformity standards;
 - Development of uniform set of electronic processing standards (business rules) to facilitate "true uniformity" versus "virtual uniformity";
 - Central location for submission of company contract information (i.e., appointments/contracts database);
 - Coordination and/or tracking of multi-state insurance examination;
 - Central location for submission of national criminal background check status information; and
 - Central location to submit continuing education and pre-licensing course information.
 - Work closely with NIPR to encourage full utilization by all states and producers of NIPR products and services including individual and business entity resident and non-resident licensing, Address Change Requests, Attachments Warehouse, and Administrative Reporting (when available).

2. Finalize the evaluation of the key findings and issues regarding disparate business entity licensing laws, regulations and practices identified in the state producer licensing assessments by comparing the administrative burdens with the consumer protections arising from the licensing of business entities. Provide policymaking recommendations for simplifying and standardizing the business entity licensing process, considering all options ranging from elimination of the licensing of business entities to elimination of components of the process such as licensing by line of authority or by each branch location.
3. Develop a strategy to implement fingerprinting in all states, establish the suggested deadline for implementation and identify what additional resources from state insurance regulators, industry and consumer groups will be committed to this effort.

NARAB Working Group

1. Finalize the evaluation of the reciprocity standard developed by the NAIC's 2002 NARAB (EX) Working Group and make final recommendations for revisions or additions to the standard to address the issues identified in the Aggregate Report, including the various state requirements that are imposed upon non-residents but may not have been specifically addressed in the 2002 reciprocity standard. Provide a recommended plan for accomplishing the certification process for states regarding any revisions or additions to the 2002 reciprocity standard.
2. Conduct additional outreach with the five remaining jurisdictions (CA, FL, NY, PR, WA) that have not met the licensing reciprocity mandates of GLBA to identify specific barriers for these jurisdictions implementing licensing reciprocity; obtain specific detail from the industry representatives of the Producer Licensing Coalition regarding what solutions and resources they are willing to provide to address these specific barriers; and obtain specific detail regarding what solutions and resources the jurisdictions that have not satisfied the reciprocity mandates of GLBA will provide to address the specific barriers.

Producer Licensing Working Group

1. Develop uniform guidelines for background check reviews.
2. Provide ongoing maintenance and review of reciprocity guidelines for continuing education providers, including state review and approval of courses, with particular attention to continuing education provided over the Internet.
3. Provide input and feedback to NAIC/NIPR staff regarding the development of electronic licensing applications, such as a centralized filing point for notification of administrative/criminal actions and Personalized Information Capture System (PICS) alerts for state regulators.
4. Serve as informal focus group with NAIC staff for the development and delivery of a State Licensing Handbook training for state insurance departments.

NAIC/Industry Producer Licensing Coalition

1. Continue to serve as the forum for NAIC membership and industry to exchange views, opinions and ideas on producer licensing priorities, such as professional standards of producers, state licensing laws, state administrative procedures and federal legislation.
2. Follow up on 2008 and 2009 state assessment reports to communicate reform priorities to the Commissioners for consideration of 2009 reform legislation.
3. Continue to pursue national producer trades' endorsement of professional licensing standards, in follow up to November 2008 letter from Commissioner Sevigny.
4. Continue discussions on ways to further improve processes the industry believes are administratively burdensome to producers, including the appointment process, the examination/testing process and ways to encourage state and local industry organizations to actively support full adoption of the major lines of authority and elimination of non-core limited lines of authority.

5. Identify the Uniform Licensing Standards that are not priorities for industry and do not impede the implementation of licensing reciprocity, such as pre-licensing education or waivers/exemptions from continuing education, to ensure the appropriate priority of these standards when expending resources on licensing reforms.

V. OVERALL RESULTS OF PRODUCER LICENSING ASSESSMENT AND OUTREACH EFFORTS

The producer licensing assessment and recent outreach efforts have yielded the most accurate and complete picture to date of the status of uniformity and reciprocity compliance among the states. Through the assessment, six additional states were formally certified as meeting the NAIC's reciprocity standard. Each state also received a candid, peer-to-peer assessment of their compliance with the uniformity standards and other key areas of producer licensing reform and modernization. The assessment provided a roadmap for states to implement legislative, regulatory and administrative process changes. Throughout this process, many states indicated their intent to leverage the assessment findings to push for legislation to become compliant with NAIC standards.

Prior to the producer licensing assessment, states self-reported whether their laws, regulations and processes complied with NAIC uniformity standards. The assessment was a comprehensive independent effort to provide peer review and a review by the NAIC Legal Division as to whether state's laws and regulations constitute compliance with NAIC standards. A uniformity chart was included in each state's Producer Licensing Assessment Report to illustrate the state's compliance both before and after the on-site assessment. It was not uncommon for states to change status from noncompliant to compliant, or vice versa, when they walked through the standards with the review team.

In September 2008, the NAIC updated the states' uniformity charts based on information provided by each state confirming a change in process or state law. For instance, the producer licensing assessment found several states were not fully utilizing the NAIC's uniform applications for resident and non-resident license applicants. Many states made changes soon after the assessment, which often moved them into compliance for this standard. This Fall 2008 update showed positive movement in 18 of the 38 Uniform Licensing Standards meaning that at least one, and in many cases more than one state, reported achieving compliance with one or more additional standards since their assessment. Out of the 45 states reporting updates, a total of 18 states reported a collective 41 positive compliance changes.

In conjunction with the outreach effort, states' compliance status has again been updated, moving the "check mark" from noncompliant to compliant. **Appendix II** provides a current aggregated uniformity compliance chart. While the outreach effort noted and commended several states for introducing currently pending legislation to bring them into compliance, a change in state compliance status will be reflected once legislation is enacted.

The current aggregated uniformity compliance chart reflects a net total of 98 instances where states moved from noncompliant to compliant in the past year. Specific changes are outlined in **Appendix II** and include:

- Five additional states comply with the uniformity standard of 24 hours of continuing education for all major lines, including three hours of ethics training;
- Eight additional states perform background checks on resident applicants against NAIC RIRS and SAD information;
- Three additional states have authority to require fingerprinting;
- Eight additional states utilize the NAIC Uniform Applications;
- Seven additional states issue the major lines of authority independently and consistently with the PLMA definitions;
- Six additional states comply with the uniformity standard limiting the available exemptions from continuing education; and
- Six additional states comply with the uniformity standard specifying the appropriate number and definitions of limited lines of authority.

The chart also documents eight other uniformity standards where one or two additional states became compliant. In total, the chart illustrates an overall compliance rate of 84% with the NAIC Uniform Licensing Standards.

VI. **CONCLUSION**

The tremendous amount of improvement in compliance with Uniform Licensing Standards demonstrates the effectiveness of the dedicated proactive efforts of NAIC members and industry, both Producer Licensing Coalition members and local-level producer representatives, toward meaningful, targeted producer licensing reform. The on-site assessment process was characterized as providing a roadmap for legislative and regulatory changes necessary to achieve complete reciprocity and uniformity. Using this roadmap, the outreach project was a vehicle for leveraging regulator and industry expertise to identify priority issues. The outreach effort built upon the factual basis provided by the assessments and assisted states in crystallizing their specific needs, whether, for example, to enlist industry support for legislative proposals or to revise business rules to accurately reflect Department practice.

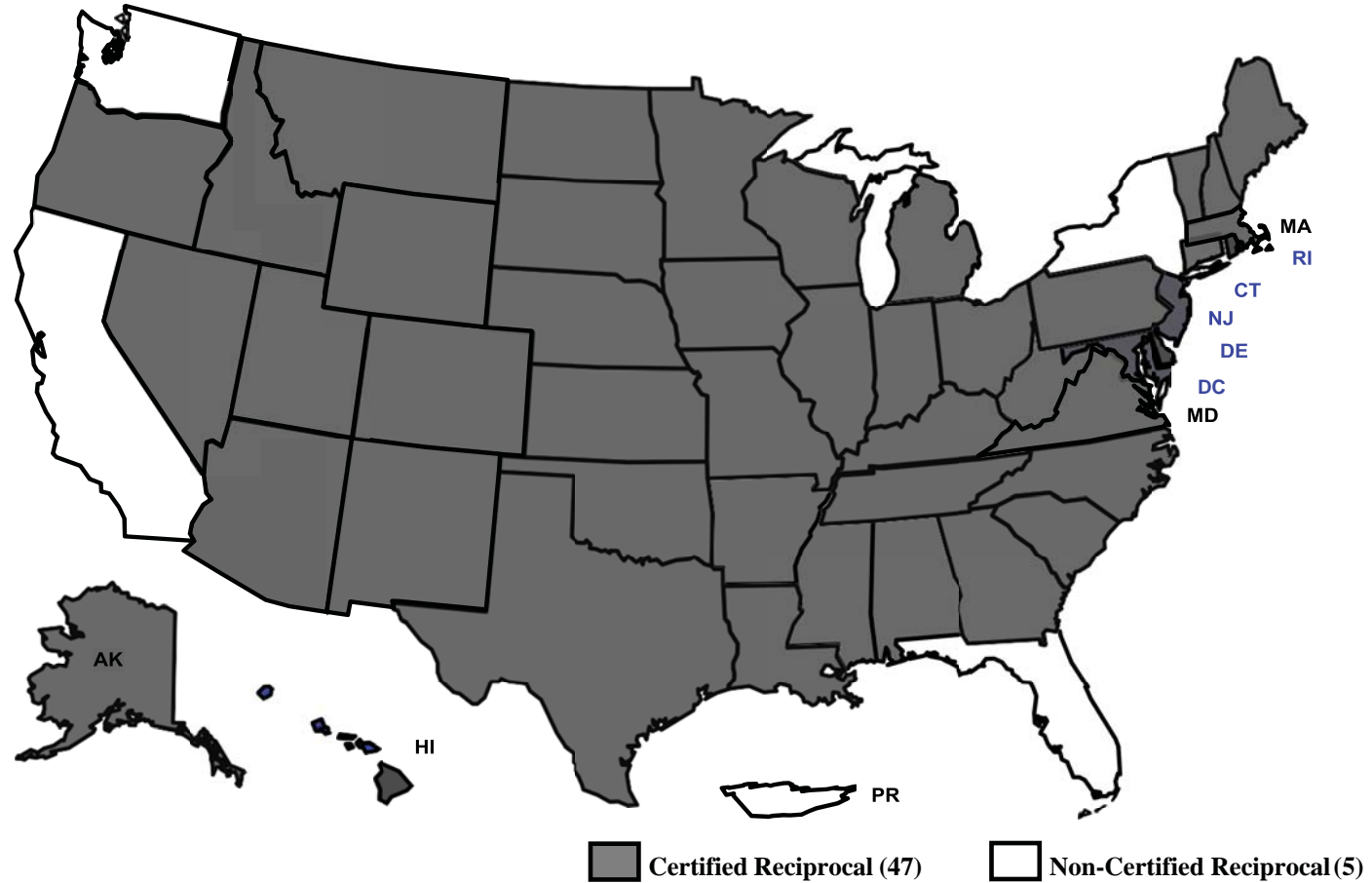
Industry involvement was the key feature of the outreach process that propelled it beyond the assessment program. Industry participation enabled concrete gains in identifying and garnering support for further steps toward uniformity and streamlined licensing processes. The outreach process also highlighted areas where states receive inconsistent messages from national industry groups and local industry representatives. The Coalition acknowledges and deeply appreciates the extensive efforts and collaborative spirit demonstrated by the industry participants. It is also important to recognize the continued contributions of the Coalition Commissioners and producer licensing regulators who dedicated their valuable time to assist their fellow states and share their tremendous expertise.

As a result of the outreach process, states have an even better gauge on where they stand in relation to producer licensing goals, the specific steps needed to accomplish the goals and the industry and fellow regulator support available to help realize the goals. Consistent with the aggregate assessment report issued one year ago, this report is intended to assist the NAIC leadership and membership in further defining the roadmap for reform in 2009 and in evaluating options for the future of state-based producer licensing regulation.

APPENDIX I

CERTIFICATION OF STATES FOR PRODUCER LICENSING RECIPROcity

- Forty-seven jurisdictions are now recognized by the NAIC as having met the reciprocity mandates of the Gramm-Leach-Bliley Act (GLBA).



APPENDIX II

| Uniformity Standards Compliance Chart <i>*Updated March 16, 2009*</i> | | Compliant February 2008 | Compliant March 2009 | Not Compliant February 2008 | Not Compliant March 2009 | Law | Regulation/Rule | Dept. Process | Pending Legislation |
|---|---------------------------------------|----------------------------|-------------------------|--------------------------------|-----------------------------|-----|-----------------|---------------|---------------------|
| Licensing Qualification Standards | | | | | | | | | |
| 1 | Age - 18 | 51 | 51 | 1 | 1 | 1 | | | |
| 2 | Citizenship | 48 | 51 | 4 | 2 | | | 2 | |
| 3 | Education | 51 | 51 | 1 | 1 | 1 | | | |
| Pre-Licensing Education Training Standard | | | | | | | | | |
| 4 | Hours Required | 29 | 33 | 23 | 19 | 19 | 5 | | 2 |
| 5 | Training Method | 44 | 45 | 8 | 7 | 5 | 2 | | |
| 6 | Verification of Completion | 52 | 52 | 0 | 0 | | | | |
| 7 | Waiver/Exemption | 30 | 37 | 22 | 15 | 15 | 4 | | 3 |
| Producer Licensing Test Standard | | | | | | | | | |
| 8 | Major Lines of Authority (6) | 31 | 36 | 21 | 16 | 13 | 2 | 1 | 1 |
| 9 | Waiver/Exemption | 33 | 35 | 19 | 17 | 16 | 1 | | |
| 10 | Exam Content/Subject Area Standards | 52 | 52 | 0 | 0 | | | | |
| 11 | Testing Administration Requirements | 52 | 52 | 0 | 0 | | | | |
| 12 | Failure of Exam/Retesting | 52 | 52 | 0 | 0 | | | | |
| Integrity/Personal Qualifications/ Background | | | | | | | | | |
| 13 | Integrity/Personal Standards | 48 | 49 | 4 | 3 | 1 | | | |
| 14a | Background Checks RIRS SAD | 38 | 46 | 14 | 6 | 2 | | | |
| 14b | Background Checks Fingerprinting | 14 | 17 | 39 | 36 | 30 | 1 | 1 | 2 |
| Application for Licensure/License Structure | | | | | | | | | |
| 15 | Uniform Application | 25 | 33 | 27 | 19 | 7 | | 10 | 1 |
| 16 | Lines of Authority Issued | 28 | 35 | 24 | 17 | 9 | | 8 | |
| 17 | License Term | 41 | 43 | 11 | 9 | 7 | 1 | 1 | |
| 18 | Continuation Process | 20 | 23 | 32 | 29 | 16 | 4 | 3 | 3 |
| 19 | Enforcement | 48 | 49 | 4 | 3 | 1 | | | |
| 20 | Fee | 51 | 51 | 1 | 1 | 1 | | | |
| Appointment Process Standard | | | | | | | | | |
| 21 | Process | 45 | 46 | 7 | 6 | 3 | | | |
| 22 | Appointment Renewal Cycle | 51 | 51 | 1 | 1 | 2 | | | |
| Continuing Education Requirements Standard | | | | | | | | | |
| 23 | Credit Required | 23 | 29 | 29 | 23 | 22 | 2 | | 3 |
| 24 | Term of Compliance | 34 | 38 | 18 | 14 | 14 | 1 | | |
| 25 | Lines of Authority | 44 | 46 | 8 | 6 | 6 | 2 | | |
| 26 | Subject Area Requirements | 28 | 32 | 24 | 20 | 17 | 4 | | 3 |
| 27 | Repeating of CE Courses | 43 | 47 | 9 | 5 | 4 | 3 | 1 | |
| 28 | CE Study Method | 50 | 51 | 2 | 1 | 1 | | | |
| 29 | Verification of Completion | 49 | 50 | 3 | 2 | | | | |
| 30 | Waiver/Exemption | 20 | 26 | 32 | 26 | 21 | | | 3 |
| 31 | Course Approval Standards and Process | 46 | 48 | 6 | 4 | 1 | 1 | 1 | |
| 32 | Advertising CE Programs | 43 | 45 | 9 | 7 | 2 | 1 | 1 | |
| Limited Lines Uniformity Standard | | | | | | | | | |
| 33 | Definitions of Core Limited Licenses | 20 | 26 | 32 | 26 | 18 | 3 | | 3 |
| 34 | Testing Requirement | 50 | 50 | 2 | 2 | 1 | | | |
| 35 | CE Requirement | 38 | 40 | 14 | 12 | 7 | 1 | | 1 |
| Other Issues for Review Standard | | | | | | | | | |
| 36 | E&O / Bonds | 50 | 51 | 2 | 1 | 2 | | | |
| 37 | Surplus Line Standards | 49 | 50 | 3 | 2 | 3 | | | |

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Part III - Section I – Appendix P



**PROGRESS REPORT TO MEMBERSHIP
ON PRODUCER LICENSING
STATE ASSESSMENTS
March 27, 2010**

Overview of NAIC/Industry Producer Licensing Coalition Outreach Efforts

I. INTRODUCTION

This report provides an update on all aspects of the NAIC's producer licensing strategy, including the work of the Producer Licensing (EX) Task Force, NARAB (EX) Working Group, the Producer Licensing (D) Working Group and the National Insurance Producer Registry to address the key findings and recommendations arising from the 2008 Producer Licensing Assessment, a comprehensive, membership-wide on-site assessment of each state's laws and processes. It also provides an overview of the NAIC/Industry Producer Licensing Coalition and its 2008 and 2009 regulator/industry team outreach efforts, general outcomes of this effort and recommended next steps for continued progress and momentum. The report demonstrates the tremendous progress made by the members, both individually and collectively, since the NAIC first undertook the producer licensing strategic initiative in May 2007 to further achieve compliance with NAIC reciprocity and uniformity standards and improving the licensing process for resident and non-resident producers across the nation.

The Producer Licensing Coalition, which is a joint group of Commissioners, producer licensing regulators, and industry representatives, has completed a second annual round of outreach to several state insurance departments for purposes of identifying the support needed to achieve remaining producer licensing reforms. Industry trade representatives had the opportunity to actively engage Commissioners and their staff on issues of concern to their members. This interactive dialogue continues to highlight areas requiring support from the industry and legislature for successful implementation, and provides the opportunity for the respective Departments to gauge the level of industry support, indifference or opposition to certain reform efforts. This report summarizes these efforts and provides recommendations for areas of focus in 2010.

II. SUMMARY OF 2009 ACTION ITEMS

A. Overview of Producer Licensing Assessment

In Fall 2007, the NAIC, at the request of the membership, with the support of the Coalition, and with the assistance of a dedicated team of producer licensing regulators, completed a membership-wide, comprehensive producer licensing assessment. In three short months, 12 state insurance regulators, along with ten NAIC staff, divided into teams of three and conducted on-site visits to 50 states, the District of Columbia and Puerto Rico to review certain components of a state's producer licensing laws, practices and processes. This effort also involved significant preparation by the state's licensing staff as well as active participation by the Commissioners and their senior department officials.

In February 2008, the NAIC published the Producer Licensing Assessment Aggregate Report of Findings (Aggregate Report) which outlined the key findings, conclusions and recommendations for next steps. The Aggregate Report provided a national picture of the state of producer licensing and identified those areas of success as well as roadblocks in achieving full reciprocity and uniformity compliance. It also recommended areas for targeted improvement. The Aggregate Report provided the groundwork for several significant projects and initiatives assigned by the NAIC Executive (EX) Committee.

B. Implementation of Aggregate Report Recommendations

1. Producer Licensing Task Force

To provide additional focus and prioritization to producer licensing efforts, the NAIC appointed a new Producer Licensing (EX) Task Force in 2009. The Task Force members served as the core group of leaders championing the NAIC's producer licensing reform initiatives, including the oversight of various groups responsible for producer licensing reforms in 2009

(e.g., NAIC/Industry Producer Licensing Coalition, NARAB (EX) Working Group and Producer Licensing Working Group). The specific priorities and accomplishments for each these groups are outlined below.

In addition to coordinating the activities of the various working groups, the Task Force focused its attention on the simplification of business entity licensing. The issues for the simplification of business entity licensing have been prioritized and discussions continue on how best to simplify the business entity licensing process while retaining the necessary consumer protections. The Task Force has ruled out the option of eliminating the business entity license; however, the following range of options is still being considered: (1) eliminate the licensing of business entities by line of authority; (2) eliminate the requirement that the Designated Responsible Producer hold the same lines of authority as the business entity; (3) eliminate the requirement for a business entity to track and list each producer affiliated with it; (4) eliminate the licensing or registration of each branch location of a business entity; and (5) eliminate the filing of organizational documents; and (6) eliminating the prior approval of assumed names.

In conjunction with the electronic implementation of the NAIC/NIPR Attachments Warehouse, the Task Force adopted a model bulletin to facilitate the use of the NAIC/NIPR Attachments Warehouse. The Attachments Warehouse is described in more detail in the National Insurance Producer Registry section of this Report.

2. *NARAB Working Group*

One of the significant initiatives stemming from the producer licensing assessment in 2008 was to reconstitute the NARAB (EX) Working Group to evaluate whether certain non-reciprocal states were eligible for reciprocity certification based on changes to their laws and regulations governing non-resident licensing. Through this effort, the number of reciprocal jurisdictions was increased to from 40 to 47. The Working Group also considered whether certain state requirements imposed upon non-residents and not necessarily addressed in the NAIC's 2002 reciprocity certification report have an impact on the reciprocity requirements of the Gramm-Leach-Bliley Act. Recognizing that both the producer licensing industry and producer licensing regulation have significantly evolved and modernized since 2002, the NAIC members willingly and voluntarily undertook this effort to carefully scrutinize possible additional reciprocity issues that exist today.

The effort to update the NAIC's reciprocity standard culminated in the development of the Report of the NARAB Working Group on Continuing Compliance with the Reciprocity Requirements of the Gramm-Leach-Bliley Act. This report summarized the Working Group's determination of how certain issues affect reciprocity and appropriately updates and strengthens the NAIC's reciprocity standard. The NARAB Working Group and Producer Licensing Task Force adopted the Report during the 2009 Summer National Meeting, and the Executive Committee and Plenary subsequently adopted the Report during the 2009 Fall National Meeting. The Report incorporated key sections of the 2002 report in making findings on 13 specific state licensing practices considered permissible under GLBA's tenets on non-resident producer licensing reciprocity and on 10 practices found to be inconsistent with reciprocity. The Report made no determination about an individual state's continuing status as a reciprocal jurisdiction. The Working Group understood that some of its findings may require states to undertake legislative, administrative or procedural changes in order to maintain status as a reciprocal jurisdiction under the updated standard.

The NARAB Working Group developed a formal process for evaluating whether states will be considered reciprocal under the updated standard. That process, similar to the approach taken for the 2002 reciprocity certification, incorporates the following steps: (1) states complete a Reciprocity Checklist in order to self-evaluate and self-certify whether they are reciprocal under the updated standard; (2) the checklists are posted to the NAIC Web site to allow for a 30-day interested party comment period; and (3) the NARAB Working Group will work with the NAIC Legal Division in reviewing the checklists to determine whether a state may be re-certified as reciprocal. The Working Group distributed the checklists to all states in October 2009. The Working Group requested states to submit completed checklists as soon as possible, but noted that states may not wish to do so prior to making any necessary statutory, administrative or procedural changes. Therefore, the Working Group's timeline for completing the checklist review proposed a deadline of July 1, 2010, while allowing for an extension to July 1, 2011 for those states whose legislatures will not meet in 2010. The July 1, 2010 deadline is consistent with the Working Group's goal of preparing a report on the re-certification of states for consideration at the 2010 Summer National Meeting.

As of March 15, 2010, 22 states returned completed Reciprocity Checklists. Consistent with the Working Group's formal evaluation process, those checklists have been posted to the NAIC Web site on a dedicated page accessible from the NARAB Working Group page. The NAIC Legal Division has notified interested regulators and interested parties as completed checklists are added, and all stakeholders are provided 30 days for the submission of written comments. Several comment letters have been posted, and states have been notified directly of any interested party comments. The Working Group will

continue working with states to ensure timely and expeditious completion of checklists and resolution of any potential reciprocity issues.

3. *Producer Licensing Working Group*

In 2009, the Producer Licensing (EX) Working Group focused on the simplification of limited line licensing, particularly: (1) the establishment of a limited line that encompasses several insurance products where the business of insurance is ancillary to the business of the person offering the product; (2) the licensing requirements of individuals selling limited line insurance products; and (3) the fingerprinting of individuals selling limited line insurance products.

The main focus of continued debate is whether to include the specific lines of authority, including some of the core limited lines such as travel and crop insurance, within the definition of the ancillary line of authority. Some states believe the core limited lines should be excluded because many states recognize these core limited lines as separate lines of authority. Other states believe the core limited lines of travel and car rental should be included in the definition to ensure any licensing requirements for the ancillary line of authority also apply to these core limited lines. The Working Group has not resolved what the licensing requirements should be for the ancillary line of authority nor what, if any, fingerprint requirements should apply to individuals selling limited line insurance products. The working group will continue its study of these issues in 2010.

In addition to limited line licensing issues, the Producer Licensing Working Group adopted Uniform Criminal History and Regulatory Actions Background Review Guidelines. When all jurisdictions are compliant with the NAIC's Uniform Licensing Standards, including fingerprinting requirements, the ultimate goal is for each jurisdiction to defer to the resident state for licensing determinations wherever possible. For all jurisdictions to have a comfort level with these licensing determinations, a uniform process of review is necessary. The Working Group believes if all jurisdictions implement these guidelines, in most situations, non-resident states will be able to defer to the resident state's licensing decision. The uniform standards in this area call for all jurisdictions to conduct a uniform background check including: (1) asking the questions on the NAIC Uniform Application; (2) reviewing RIRS and SAD data; and (3) fingerprinting resident applicants for both a state and federal criminal history background check.

4. *National Insurance Producer Registry*

In 2009, the National Insurance Producer Registry (NIPR) continued its long-term goal of being the one-stop shopping solution for producers and companies by expanding its products and services. In Fall 2009, NIPR released its latest licensing tool with the implementation of Phase II of the Attachment Warehouse, expanded functionality for the Reporting of Actions (ROA). The Warehouse electronically receives, stores, and shares licensing-related documents with the states. Once documents are uploaded to the Warehouse, states receive an electronic notice alerting them to check the Warehouse for the required documents. Released in Fall 2008, Phase I of the Warehouse allowed applicants to submit supporting documents in response to "yes" answers to background questions on the NAIC Uniform Application. Phase I was well-received by the states and industry, as evidenced by more than 7,300 supporting licensing documents being submitted to the Warehouse in the first 18 months. Phase II of the Warehouse allows a producer to electronically file required reports of administrative, criminal or civil actions to states within 30 days. The ROA function of the Warehouse makes it much easier to file the documents electronically in a centralized location and report to multiple states at one time, instead of faxing or mailing documents to the various states. To date, there have been 139 ROA submissions.

Another significant accomplishment for NIPR is the number of electronic Address Change Requests (ACR) processed. Since the initial release of the ACR product in July 2007, NIPR has processed over 1,767,134 address changes.

Lastly, another area of focus this year was NIPR's expansion of on-line licensing options with an emphasis on implementation of business entity licensing and resident licensing/renewals. Considerable progress was achieved, with many more products being added for several states. As of March 22, 2010, states-in-production totals for NIPR products are:

- Non-Resident Licensing for Individuals – 49 states;
- Non-Resident Licensing for Business Entities – 42 states;
- Non-Resident Renewals for Individuals – 46 states;
- Non-Resident Renewals for Business Entities – 35 states;
- Resident Licensing for Individuals – 24 states;
- Resident Licensing for Business Entities – 24 states;
- Resident Licensing Renewals for Individuals – 24 states;
- Resident Licensing Renewals for Business Entities – 25 states;
- Appointment Renewals – 9 states;

- Electronic Funds Transfer for State Fees – 49 states;
- Address Change Requests – all states; and
- Attachments Warehouse:
 - Phase I - Background Supporting Documentation – all states
 - Phase II - Reporting of Actions – 49 states

5. *Producer Licensing Coalition*

In June 2007, the NAIC/Industry Producer Licensing Coalition was formed as a partnership of regulators and national trade organizations, to focus and facilitate producer licensing uniformity initiatives. In 2009, the Coalition was comprised of 11 Commissioners and 13 national trade associations, including American Council of Life Insurers; American Insurance Association; America's Health Insurance Plans; Council of Insurance Agents & Brokers; CPCU Society; Independent Insurance Agents & Brokers of America; LIMRA; Million Dollar Roundtable; National Alliance; National Association of Insurance and Financial Advisors; National Association of Health Underwriters; National Association of Mutual Insurance Companies; Professional Insurance Agents; Society of Financial Service Professionals; and Property Casualty Insurers Association of America.

The Coalition has served as an exchange of useful information, opinions and ideas between regulators and industry representatives. Often times, this exchange has turned into an action item for the industry or regulators, whether to solicit feedback or support from their respective members or to develop a proposed solution to an identified issue. The Coalition has led the state assessment process since late 2007, and every participant of the Coalition's outreach effort – Coalition Commissioners, producer licensing regulators and representatives of industry organizations – have volunteered many hours and dedicated their expertise to promote the NAIC's goals and licensing standards and assist states in achieving full reciprocity and uniformity.

III. OVERVIEW OF PRODUCER OUTREACH EFFORT

A. Impetus for Outreach

Under the leadership of 2009 NAIC President Roger Sevigny, the NAIC's producer licensing strategy has raised the awareness of challenges in achieving meaningful producer licensing reform. The results of the producer licensing assessment confirmed many of the remaining legislative and regulatory changes require active industry support, and the Coalition has served a valuable purpose in engaging industry trade representatives in the reform process.

The peer-to-peer outreach of the producer licensing assessment provided NAIC members with an inventory of remaining compliance issues. In many cases, the Commissioner and Department were strongly in favor of making the identified changes, but were either unsuccessful in efforts to pass legislation or did not include proposals in legislative packages because of active opposition or simple indifference from their producer licensing industry. Recognizing that constituency support is often the key ingredient to successful legislative change, industry representatives have been engaged in the outreach process and discussions of areas where industry can support certain state-specific producer licensing legislation. The Coalition leveraged the valuable information gained through the producer licensing assessments in order to have a better understanding of each state's needs in terms of (1) full PLMA adoption, (2) reciprocity (3) uniformity compliance, and (4) streamlining business entity licensing, appointments and electronic processing. This background information proved extremely helpful not only as the outreach team developed recommendations to each state, but to facilitate a positive and productive dialogue with Commissioners and their staff in terms of achieving the NAIC's uniformity and reciprocity standards.

B. Outreach Team Approach

The Coalition outreach initiative was conducted in a similar manner to the producer licensing assessments in that outreach teams were formed and assigned to respective states. Each outreach team consisted of a Coalition Commissioner, two producer licensing regulators,¹ and two industry representatives. The following Commissioners participated on outreach teams: Pennsylvania Commissioner Joel Ario; Idaho Director Bill Deal; Alaska Director Linda Hall; Oklahoma Commissioner Kim Holland; Ohio Director Mary Jo Hudson; Tennessee Commissioner Leslie Newman; New Hampshire Commissioner Roger Sevigny; and Iowa Commissioner Susan Voss. The following producer licensing regulators participated

¹ The producer licensing regulators who volunteered a significant amount of their time and expertise to conduct the producer licensing assessments volunteered again for this outreach effort and were generally assigned to the states where they conducted on-site assessments.

on outreach teams: Linda Brunette (AK); Jack Chaskey (NY); Keith Kuzmich (CA); Anne Marie Narcini (NJ); Tom O'Meara (IA); Barbara Richardson (NH); Bobby Perkins (MS); Karen Vourvopoulos (OH); Treva Wright-Donnell (KY); and Laurie Wolf (NIPR, formerly ND). The following industry representatives were assigned to on outreach teams: Nicole Allen (CIAB); William Anderson (NAIFA); Wes Bissett (IIABA); David Eppstein (PIA); John Fielding (Steptoe & Johnson); Larry Kibbe (Regulatory Affairs Consultant); David Leifer (ACLI); Rey Becker (PCI); Marty Mitchell (AHIP); and Pamela Young (AIA).

Each industry representative was given the opportunity to request a particular state assignment. A concerted effort was made to ensure at least one producer trade organization (i.e., IIABA, PIA, CIAB, NAIFA) was assigned to each state. Industry representatives were also encouraged to coordinate and communicate concerns about a particular state to the industry representatives assigned to the state.

C. Criteria for Outreach

The outreach effort commenced in December 2009 with the goal of completing the outreach in advance of the 2010 Commissioners Conference. Thirty-six states were targeted for outreach based on whether each state has a full legislative session in 2010 and based on the criteria by which states were targeted for the previous round of outreach. States were targeted for the previous round of outreach if their Producer Licensing State Report identified noncompliance with more than three Uniform Licensing Standards or the state had not yet been certified as reciprocal. States out of compliance on fewer than three standards were added to the list for outreach if they were not compliant with the fingerprinting standard,² as a key purpose of the outreach effort was to find ways to provide support to those states needing or considering fingerprint legislation.

D. Outreach Process

The outreach effort continued to focus on those areas necessary for reciprocity and uniformity in producer licensing, as well as streamlining of business entity licensing and electronic processing. The outreach teams were tasked with obtaining updates to the information gathered during the previous year's outreach effort. Specifically, the outreach effort focused on the following areas: (1) state adoption of key PLMA provisions;³ (2) non-resident licensing requirements potentially inconsistent with GLBA reciprocity requirements; (3) compliance with certain Uniform Licensing Standards;⁴ and (4) policy and procedure in the following six areas:

- Business entity licensing (e.g. branches, affiliations, name approval);
- Individual and business entity appointment process;
- Secretary of State proof of registration requirements, if any;
- Electronic processing issues;
- Requiring an underlying life line of authority as a prerequisite for a variable line of authority; and
- Requiring a letter of clearance in lieu of relying upon information in the NAIC's State Producer Licensing Database.

In order to gather updates to the information collected during the previous outreach effort, an agenda and written summary of each state's previous outreach report was provided to the outreach team and the state's Commissioner and staff. Each outreach team held a conference call to facilitate direct engagement among Commissioners, regulators, and industry representatives. During each call, the following agenda items were covered:

- Updates on the priority issues identified in the previous year's outreach report;
- Highlight any 2009 legislative activity not already discussed and legislative agenda for 2010;
- Alert Commissioner and producer licensing staff to deadlines associated with the ongoing assessment of continuing compliance with the reciprocity requirements of the Gramm-Leach-Bliley Act;
- Review new Uniform Licensing Standards, specifically surplus lines examinations, commercial multi-state risk exemption and commission sharing exception from PLMA; and
- Any additional points raised by the Commissioner or industry participants.

² Uniform Licensing Standard No. 14C – Background Checks.

³ The PLMA provisions reviewed for each state were Section 2 (definitions), Section 4B(6) (commercial multi-state risk exemption), Section 7A (major lines of authority), Section 13D (commission sharing exemption), and Section 16 (reciprocity).

⁴ The Uniform Licensing Standards reviewed for each state were No. 8 (lines of authority examinations), No. 14C (fingerprinting, background checks), No. 15 (NAIC Uniform Application), No. 16 (lines of authority issued), No. 18 (continuation process), No. 37 (surplus lines examination), No. 38 (PLMA commercial multi-state risk exemption), No. 39 (PLMA commission sharing provision).

The discussion included gathering information about past efforts towards achieving reciprocity and uniformity and the level of historical and current support among local industry for addressing these issues. For each issue identified, the state's Commissioner was generally asked if the issue has received attention from their local industry and what type of support they needed to effectuate the necessary change. Industry participants were also asked to describe the level of local support from their respective members to address these issues. The Coalition Commissioner generally also provided an opportunity for industry members to voice any other concerns or issues not previously raised.

Lastly, a summary of the discussion between the outreach team and the state was prepared and provided to the Commissioner and participating staff on the outreach call. These state-specific summaries have been compiled and will be available for industry representatives immediately following the 2010 Spring National Meeting.

The specific details of state compliance status and activity cited in this report are subject to change as states introduce legislation or implement administrative process changes to achieve compliance.

IV. GENERAL OUTCOME OF OUTREACH EFFORTS

A. Impact of Industry Involvement

The outreach program afforded industry members a unique forum to speak directly with Commissioners and key staff about the most pressing producer licensing issues. Industry had multiple opportunities to highlight their perspectives on the most important issues for each state to address. The process continues to result in increased industry awareness and understanding of reciprocity, uniformity and other key issues at the national and local levels.

To further enhance local industry awareness of national priorities, national trade associations were encouraged to reach out to their state association chapters and to either include them in the calls with the state insurance commissioners or represent specific local concerns. The Professional Insurance Agents (PIA) excelled at this assignment by bringing local representatives to most, if not all, calls assigned as well as additional calls for states with a strong PIA presence. The Independent Insurance Agents and Brokers of America and National Association of Insurance and Financial Advisors also heeded this request with good results. Including the local association chapters was a valuable part of the outreach as it gave Commissioners an opportunity to hear directly from producers operating in the marketplace. In addition, this effort provided all parties greater insights into what priorities are important at the state level and how these priorities are the same or vary from the priorities of the national producer licensing trade associations.

The outreach teams found that some issues identified as problematic at the national level, such as business entity licensing, were not identified as problematic at the local level. This stemmed from varying perspectives of producers who hold licenses in one or two states as opposed to the national trade associations, which view the licensing framework from a broader, national perspective. For example, producers active at the local level frequently opposed eliminating or re-defining lines of authority due to the administrative adjustments involved, but national trade associations often voiced concern about inefficiencies resulting from inconsistencies among lines of authority available from state to state.

While the implementation of a fingerprint requirement for resident producer applicants would be a major step toward achieving full licensing reciprocity, which is a priority for industry, the trade associations generally did not identify fingerprinting as a top priority. At times industry participants offered mild support but could not accommodate fingerprinting in the current year's agenda or stated further education was necessary before pursuing full implementation of a fingerprint requirement. Some readily acknowledged their members oppose passage of this requirement in the respective states. Key questions raised by local industry include the impact on producers already licensed, potential costs and the logistics of recording the fingerprints.

Specific issues of concern to industry participants were consistent with those raised in the previous year's outreach efforts.

1. Streamlined business entity licensing. This is a common issue among the outreach teams and is discussed at length in the next section of this Report.
2. Full and uniform adoption of all provisions of PLMA. This issue was addressed to some degree by every outreach team, because states were advised of new Uniform Licensing Standards requiring two of the most important and least enacted provisions: the commercial multi-state risk exemption in § 4B(6) and the commission sharing provision in § 13D. Industry participants also strongly advocated for states to amend appointment laws and associated practices to be completely consistent with the appointment process specified in PLMA Section 16. It was with regard to these types of changes that industry members most often indicated their willingness to actively support legislative change in the particular state.

3. Full licensing reciprocity among all states. Potential reciprocity concerns were addressed to some degree by all outreach teams, because states were alerted about the ongoing assessment of continuing compliance with the reciprocity requirements of the Gramm-Leach-Bliley Act being conducted by the NARAB Working Group. Outreach teams made a concerted effort to work with the remaining non-reciprocal states to find support for eliminating additional requirements such as bond and pre-licensing requirements on non-resident surplus lines producers. Industry generally offered to provide needed support to eliminate these additional requirements.
4. Elimination of the Secretary of State registration requirement for non-resident applicants. Whether states require Secretary of State proof of foreign corporation registration as a prerequisite to licensure was addressed to some degree by 9 different outreach teams. As stated earlier, the NAIC has made a concerted and successful effort to encourage all members to eliminate this as a prerequisite to licensing. In many outreach calls, this issue was raised in terms of confirming or commending that this requirement had been eliminated by the Commissioner and the department. Industry offered whatever support necessary to help achieve elimination of this Secretary of State check altogether. During this round of outreach, it was unclear whether industry has made progress in the goal articulated last year to lobby state legislatures to enact a provision exempting foreign business entities from registering with the Secretary of State when seeking a non-resident insurance license.

B. Common Issues among Outreach Teams

The issues most commonly raised by the state outreach teams were:

1. Authorization to fingerprint resident applicants for criminal background checks; and
2. Simplification of the business entity licensing process.

In general, the outreach calls with the states confirmed that states have worked to make many administrative and regulatory changes within their control, but continue to struggle with making certain legislative changes.

1. Fingerprinting

The ultimate uniformity goal is for all states to have the authority and capability to fingerprint resident applicants and conduct state and federal criminal background checks. Full implementation would presumably eliminate the fingerprint requirement non-reciprocal states currently impose upon non-resident applicants. As observed in the Aggregate Report and most state outreach reports, the primary barrier to this legislative change is lack of support from the state and local industry organizations. Stated reasons for opposition to the legislation continue to focus on generalized privacy concerns, perceived lack of need and uncertainty about applicability to existing producers.

Given the difficulties individual states face with implementing a fingerprint requirement, a federal solution may be more appropriate. The National Association of Registered Agents and Brokers Act (H.R. 2554), known as NARAB II, would not affect uniformity issues with resident licensing, but it could solve the major consumer protection issue of fingerprinting in every state, for those producers who elect to join the national association the bill would establish. The NAIC has supported this legislation as appropriately targeted and limited federal legislation that helps the states achieve the objective of increased uniformity in non-resident producer licensing. The current iteration of NARAB II legislation maintains state regulator control over the NARAB Board of Directors and, thus, over the non-resident licensing process without compromising important consumer protections and state revenues.

2. Business Entity Licensing

The simplification and standardization of the business entity licensing process and the creation of uniform licensing standards for business entities continues to be priority issue. During the outreach efforts, industry advocated that particular states eliminate administratively burdensome requirements upon business entities, especially non-resident business entities. Some of these requirements included licensing branch locations, listing or tracking of affiliated producers, and prior approval of legal or assumed names. The outreach teams also encouraged states to fully utilize NIPR's resident and non-resident business entity licensing functionality, including the recommendation to eliminate requirements that cause all business entity applications filed through NIPR to pend or defer to the insurance department.

C. Recommendations for Next Steps

The outreach process illustrated that states continue to implement changes based upon the feedback received from their on-site producer licensing assessment in early 2008 and follow-up in early 2009. In fact, Coalition research shows that 55% of producer licensing legislation introduced in 2009 – 17 of 31 bills introduced in 24 states – was successfully enacted. Consistent with the prior year, states have implemented most of the Uniform Licensing Standards that could be implemented through administrative changes or promulgation of regulations. States are aware of and taking steps to address potential

reciprocity issues that have been highlighted by the NARAB Working Group. At the same time, states continue to seek support from the national trade associations to implement remaining changes.

Producer licensing remains a key strategic initiative of the NAIC membership in 2010 and the focus of the Producer Licensing (EX) Task Force created in early 2009. This outreach effort has produced additional constructive information that can be used by the Task Force, its working groups, interested parties and the Producer Licensing Coalition members in determining how best to effectuate meaningful changes and recommendations. Suggested areas for focused discussion and action in 2010 include:

Producer Licensing Task Force

1. Monitor progress on recommendations to NIPR, which include the following: (1) work closely with the NAIC Market Regulation Division and the Producer Licensing Working Group to identify areas in the states' electronic business rules that do not appear to comply with reciprocity or uniformity standards; (2) develop a uniform set of electronic processing standards (business rules) to facilitate "true" uniformity vs. "virtual" uniformity; (3) create a central location for the submission of company contract information (i.e., appointments/contracts database); (4) coordinate and/or track multi-state insurance examinations; (5) create a central location for the submission of national criminal background-check status information; and (6) create a central location for the submission of continuing-education and pre-licensing course information.
2. In conjunction with the Producer Licensing Coalition, work closely with the NIPR to encourage full utilization by all states and producers of NIPR products and services, including individual and business entity resident and non-resident licensing, address change requests, Attachments Warehouse and reporting of administrative actions.
3. Finalize the evaluation of the key findings and issues regarding disparate business entity licensing laws, regulations and practices identified in the state producer licensing assessments by comparing the administrative burdens with the consumer protections arising from the licensing of business entities, and provide policymaking recommendations for simplifying and standardizing the business entity licensing process, considering all options ranging from elimination of the licensing of business entities to elimination of components of the process, such as licensing by line of authority or by each branch location.
4. Finalize a strategy plan to implement fingerprinting in all states, the suggested deadline for implementation and identify what additional resources from state insurance regulators, the industry and consumer groups could be committed to this effort.
5. Facilitate roundtable discussions at each national meeting with the state producer licensing directors for the exchange of views, opinions and ideas on producer-licensing activities in the states and at the NAIC.

NARAB Working Group

1. Complete the state reciprocity recertification based on the Working Group's 2009 reciprocity report and adopt a final report for recertification of the states' compliance with the reciprocity mandates of the Gramm-Leach-Bliley Act.

Producer Licensing Working Group

1. Review the process for examination development and develop uniform standards for the delivery of examinations, updating of examinations and passage rate for examinations.
2. Finalize the review of limited-line licensing issues, with particular focus on the following: (1) the establishment of a limited line that encompasses several insurance products where the business of insurance is ancillary to the business of the person offering the product; (2) the licensing requirements of individuals selling limited-line insurance products; and (3) the fingerprinting of individuals selling limited-line insurance products.
3. Continue to provide oversight and ongoing updates, as needed, to the State Licensing Handbook.
4. In response to inquiries about the states' adoption and interpretation of the Producer Licensing Model Act (#205) and uniform licensing standards (ULS), provide updates to the frequently asked questions document regarding the model act and guidance on practices to implement all of the ULS.

5. Provide ongoing maintenance and review of reciprocity guidelines and uniform application forms for continuing-education providers and state review and approval of courses.
6. Provide input and feedback to NAIC/NIPR staff regarding the development of electronic-licensing applications, such as a centralized filing point for notification of administrative/criminal actions and Personalized Information Capture System (PICS) alerts for state insurance regulators.
7. Serve as an informal focus group with NAIC staff for the development and delivery of a *State Licensing Handbook* training class for state insurance departments.

NAIC/Industry Producer Licensing Coalition

1. Continue to serve as the forum for the NAIC membership and industry to exchange views, opinions and ideas on producer-licensing priorities, such as professional standards of producers, state licensing laws, state administrative procedures and federal legislation.
2. Continue discussions on ways to further improve processes the industry believes are administratively burdensome to producers, including the appointment process, the examination/testing process and ways to encourage state and local industry organizations to actively support full adoption of the major lines of authority and elimination of non-core limited lines of authority.
3. Continue to track state legislative initiatives to implement uniform and reciprocal licensing standards and coordinate regulator and industry support for such initiatives.

V. OVERALL RESULTS OF PRODUCER LICENSING ASSESSMENT AND OUTREACH EFFORTS

The producer licensing assessment and recent outreach efforts have yielded the most accurate and complete picture to date of the status of uniformity and reciprocity compliance among the states. Prior to the producer licensing assessment, states self-reported whether their laws, regulations and processes complied with NAIC uniformity standards. The assessment was a comprehensive independent effort to provide peer review and a review by the NAIC Legal Division as to whether state's laws and regulations constitute compliance with NAIC standards. A uniformity chart was included in each state's Producer Licensing Assessment Report to illustrate the state's compliance both before and after the on-site assessment. It was not uncommon for states to change status from noncompliant to compliant, or vice versa, when they walked through the standards with the review team.

In September 2008, the NAIC updated the states' uniformity charts based on information provided by each state confirming a change in process or state law. With the slight modifications and clarifications made to the Uniform Licensing Standards, the Uniform Licensing Standards increased from 38 to 43. For example, the background check standard was further segmented with three subpoints to provide greater clarity regarding state compliance. In addition, there was greater clarity given to the standards for state adoption of the major lines of authority and the core limited lines of authority. The current update shows positive movement in 22 of the 43 Uniform Licensing Standards meaning that at least one, and in many cases more than one state, reported achieving compliance with one or more additional standards since their assessment.

Appendix II provides a current aggregated uniformity compliance chart. While the outreach effort noted and commended several states for introducing currently pending legislation to bring them into compliance, a change in state compliance status will be reflected once legislation is enacted.

The current aggregated uniformity compliance chart reflects a net total of 129 instances where states moved from noncompliant to compliant in the past year. This does not include instances of state compliance with the five new uniform licensing standards. Specific changes are outlined in **Appendix II** and include:

- Five additional states comply with the uniformity standard of 24 hours of continuing education for all major lines, including three hours of ethics training;
- Seven additional states perform background checks on resident applicants against NAIC RIRS and SAD information;
- Nine states have passed legislation and will implement a fingerprint requirement in 2010;
- Thirteen additional states utilize the NAIC Uniform Applications;
- Seven additional states issue the major lines of authority independently and consistently with the PLMA definitions;

- Nine additional states comply with the uniformity standard limiting the available exemptions from continuing education; and
- Six additional states comply with the uniformity standard specifying the appropriate number and definitions of limited lines of authority.

The chart also documents eight other uniformity standards where one or two additional states became compliant. In total, the chart illustrates an increase of overall compliance with the NAIC Uniform Licensing Standards from 80% in 2009 to 86% in 2010.

VI. CONCLUSION

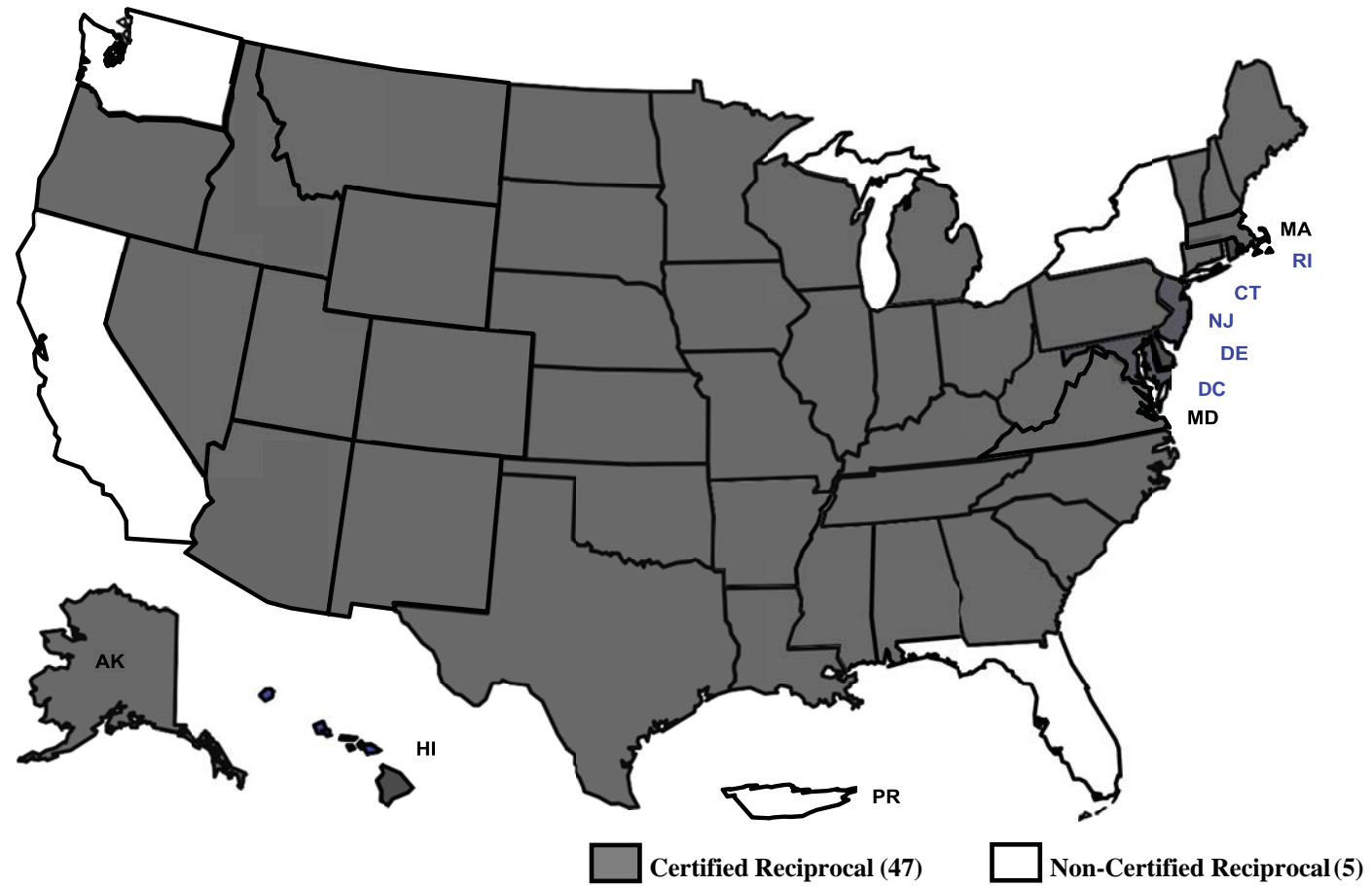
The tremendous amount of improvement in compliance with Uniform Licensing Standards demonstrates the effectiveness of the dedicated proactive efforts of NAIC members and industry, both Producer Licensing Coalition members and local-level producer representatives, toward meaningful, targeted producer licensing reform. The on-site assessment process was characterized as providing a roadmap for legislative and regulatory changes necessary to achieve complete reciprocity and uniformity. Using this roadmap, the outreach project was a vehicle for leveraging regulator and industry expertise to identify priority issues. The outreach effort built upon the factual basis provided by the assessments and assisted states in crystallizing their specific needs, whether, for example, to enlist industry support for legislative proposals or to revise business rules to accurately reflect Department practice.

As a result of the outreach process, states have an even better gauge on where they stand in relation to producer licensing goals, the specific steps needed to accomplish the goals and the industry and fellow regulator support available to help realize the goals. Consistent with the aggregate assessment report issued one year ago, this report is intended to assist the NAIC leadership and membership in further defining the roadmap for reform in 2010 and in evaluating options for the future of state-based producer licensing regulation.

APPENDIX I

CERTIFICATION OF STATES FOR PRODUCER LICENSING RECIPROcity

- Forty-seven jurisdictions are now recognized by the NAIC as having met the reciprocity mandates of the Gramm-Leach-Bliley Act (GLBA).



| UNIFORM LICENSING STANDARDS -Compliance Chart- *Updated March 23, 2010* | | Compliant March 2009 | Compliant March 2010 | Not Compliant March 2009 | Not Compliant March 2010 | LAW | Regulation Rule | Dept. Process | Pending Change |
|--|---|-------------------------|-------------------------|-----------------------------|-----------------------------|-----|-----------------|---------------|----------------|
| Licensing Qualification Standards | | | | | | | | | |
| 1 | Age - 18 | 51 | 51 | 1 | 1 | | | 1 | |
| 2 | Citizenship | 51 | 52 | 2 | 0 | | | | 1 |
| 3 | Education | 51 | 51 | 1 | 1 | | | | |
| Pre-Licensing Education Training Standards for Resident Applicants | | | | | | | | | |
| 4 | Hours Required | 30 | 40 | 22 | 12 | 10 | 3 | 1 | 1 |
| 5 | Training Method | 44 | 47 | 8 | 5 | 2 | 2 | | |
| 6 | Verification of Completion | 52 | 52 | 0 | 0 | | | | |
| 7 | Waiver/Exemption | 33 | 45 | 19 | 7 | | 9 | 1 | 3 |
| Producer Licensing Test Standards For Resident Applicants | | | | | | | | | |
| 8 | Lines of Authority | 33 | 41 | 19 | 11 | 9 | | 1 | 3 |
| 9 | Waiver/Exemption | 35 | 42 | 17 | 10 | 3 | | | 2 |
| 10 | Exam Content/Subject Area Standards | 52 | 52 | 0 | 0 | | | | |
| 11 | Testing Administration Requirements | 52 | 52 | 0 | 0 | | | | |
| 12 | Failure of Exam/Retesting | 52 | 52 | 0 | 0 | | | | |
| Integrity/Personal Qualifications/ Background Checks Standards | | | | | | | | | |
| 13 | Integrity/Personal Standards | 48 | 48 | 4 | 4 | 3 | | | |
| 14A | Background Checks - Uniform Application <i>*(New Standard)</i> | NA | 40 | NA | 9 | | | | 1 |
| 14B | Background Checks - RIRS / SPLR and SAD | 44 | 51 | 2 | 1 | | | | |
| 14C(1) | Background Checks - Fingerprinting State/Federal | 16 | 16 | 36 | 36 | 27 | | | 9 |
| 14C(2) | Background Checks - Statewide Criminal History <i>*(New Standard)</i> | NA | 24 | NA | 28 | 22 | | | 6 |
| Application for Licensure/License Structure Standards | | | | | | | | | |
| 15 | Uniform Application | 31 | 44 | 21 | 8 | 3 | 1 | | 1 |
| 16A | Six Major Lines of Authority | 34 | 41 | 16 | 11 | 4 | | | |
| 16B | Core Limited Lines | 34 | 35 | 16 | 17 | 3 | | | |
| 17 | License Term | 42 | 44 | 7 | 8 | 5 | 1 | 2 | 1 |
| 18 | Continuation Process | 23 | 29 | 16 | 23 | 17 | 4 | 6 | 3 |
| 19 | Enforcement | 48 | 51 | 1 | 1 | 1 | | | |
| 20 | Fee | 51 | 51 | 1 | 1 | | 1 | | |
| Appointment Process Standards | | | | | | | | | |
| 21 | Process | 45 | 48 | 7 | 4 | 3 | 1 | | |
| 22 | Appointment Renewal Cycle | 51 | 51 | 1 | 1 | 1 | 1 | | |
| Continuing Education Requirements Standards For Resident Producers | | | | | | | | | |
| 23 | Credit Required | 27 | 32 | 25 | 20 | 15 | 4 | 1 | 1 |
| 24 | Term of Compliance | 37 | 39 | 15 | 13 | 10 | 2 | 1 | 2 |
| 25 | Lines of Authority | 44 | 47 | 8 | 5 | 4 | 2 | | |
| 26 | Subject Area Requirements | 30 | 36 | 22 | 16 | 10 | 6 | | |
| 27 | Repeating of CE Courses | 45 | 49 | 7 | 3 | 1 | 1 | | 1 |
| 28 | CE Study Method | 51 | 52 | 1 | 0 | 1 | | | |
| 29 | Verification of Completion | 50 | 50 | 2 | 2 | | | 2 | |
| 30 | Waiver/Exemption | 24 | 33 | 28 | 19 | 16 | 2 | 1 | |
| 31 | Course Approval Standards and Process | 46 | 49 | 6 | 3 | 2 | | 1 | |
| 32 | Advertising CE Programs | 45 | 49 | 7 | 3 | 1 | | 1 | |
| Limited Lines Uniformity Standards | | | | | | | | | |
| 33 | Definitions of Core Limited Licenses | 25 | 31 | 27 | 21 | 17 | 3 | | 5 |
| 34 | Testing Requirement Resident Applicants | 50 | 50 | 2 | 7 | 1 | | | |
| 35 | CE Requirement Resident Producers | 40 | 41 | 12 | 11 | 9 | 1 | 1 | 2 |
| Surplus Lines Standards | | | | | | | | | |
| 36 | Surplus Line Standards | 49 | 50 | 3 | 2 | | | | 1 |
| 37 | Surplus Line Exam <i>*(New Standard)</i> | NA | 52 | NA | 0 | | | | |
| Commercial Lines Multi-State Exemption Standard | | | | | | | | | |
| 38 | Commercial Line Multiple Exemption <i>*(New Standard)</i> | NA | 44 | NA | 6 | | | | |
| Commission Sharing Standard | | | | | | | | | |
| 39 | Commission Sharing <i>*(New Standard)</i> | NA | 38 | NA | 9 | | | | |

Part III - Section I – Appendix Q

NAIC MODEL BULLETIN
September 10, 2006

DATE: (INSERT DATE)

TO: ALL INSURERS AND INSURANCE PRODUCERS WITH A PROPERTY LINE OF AUTHORITY

FROM: (INSERT NAME AND TITLE)

RE: FLOOD INSURANCE TRAINING REQUIREMENTS FOR INSURANCE PRODUCERS WITH A PROPERTY LINE OF AUTHORITY SELLING THROUGH THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP)

Section 207 of the Flood Insurance Reform Act of 2004 requires all producers selling flood insurance policies under the NFIP to be properly trained and educated about the NFIP to ensure producers may best serve their clients.

The Act¹ directs the Director of the Federal Emergency Management Agency, in cooperation with the insurance industry, State insurance regulators, and other interested parties to establish minimum training and education requirements for all insurance agents who sell flood insurance policies. FEMA and state-approved continuing education providers are developing courses related to the NFIP. An insurance producer who sells flood insurance may satisfy the minimum training and education requirements by completing a course related to the NFIP, which may be approved for three hours of continuing education credit by the (insert state insurance department name). The failure to comply with this continuing education requirement may jeopardize the producer's authority to write insurance through the NFIP.

All (insert state name) licensed resident insurance producers who sell federal flood insurance policies must comply with the minimum training requirements of section 207 of the flood insurance reform act of 2004, and basic flood education as outlined at 70 Fed. Reg., 52117 (Sept. 1, 2005) (to be codified at ** C.F.R. pt.*****)², or such later requirements as are published by FEMA.

Licensed insurers shall demonstrate to the commissioner, upon request, that their licensed and appointed producers who sell federal flood insurance policies have complied with the minimum federal flood insurance training requirements.

 (INSERT COMMISSIONER NAME)

(INSERT STATE NAME)

(INSERT DATE OF ISSUANCE)

¹ SUPPLEMENTARY INFORMATION: On June 30, 2004, the President signed the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (Flood Insurance Reform Act of 2004), Pub. L. 108-264. Section 207 of the Flood Insurance Reform Act of 2004 states:

The Director of the Federal Emergency Management Agency shall, in cooperation with the insurance industry, State insurance regulators, and other interested parties: (1) Establish minimum training and education requirements for all insurance agents who sell flood insurance policies, and (2) Not later than 6 months after the date of enactment of this Act, publish these requirements in the Federal Register, and inform insurance companies and agents of the requirements.

² This notice describes FEMA's implementation of section 207 of the Flood Insurance Reform Act of 2004. As required by the Act, FEMA has coordinated with the State insurance regulators, the insurance industry, and other interested parties. Input received from these organizations emphasizes the value of working through the State insurance departments to avoid establishing conflicting or burdensome training requirements upon insurance agents. While implementing the minimum training requirements required by section 207, FEMA has been mindful of the Senate Report language, (S. REP. NO. 108-262, at 4 & 9 (2004)), which cautions: In some cases, states may already have requirements to ensure that agents are well versed in the flood insurance program. Where possible, FEMA should work to make sure that agents are not burdened with inconsistent state and federal training and education requirements. In addition, where possible, FEMA should work to implement the training requirements through the states, which already have continuing education processes in place.

Part III - Section I – Appendix R**Model Bulletin on Long-term Care Continuing Education/Training****MODEL BULLETIN**

DATE: [Insert Date]

TO: All Licensed Insurers Writing Long-Term Care Insurance
All Resident Insurance Producers Authorized to Sell, Solicit or Negotiate Long-Term Care Insurance
All Approved Continuing Education Providers
State LTC Partnership Program

FROM: [Insert Name & Title]

RE: Producer Training – Policies Issued Under Qualified State Long-Term Care Insurance Partnership
("Qualified Partnership")

The Deficit Reduction Act of 2005, Pub. L. 109-171 ("the DRA") allows for the expansion of Qualified Partnerships. The DRA and the State Medicaid Director's Letter (SMDL #06-019) dated July 27, 2006, issued by Centers for Medicare & Medicaid Services, require the [Insert Name of Insurance Department or Insurance Commissioner] to provide assurance that any producer who sells, solicits or negotiates "a policy under a Partnership receives training and demonstrates an understanding of Partnership policies and their relationship to public and private coverage to long-term care."

Accordingly, an individual may not sell, solicit or negotiate long-term care insurance unless the individual is authorized as an insurance producer for accident and health or sickness [include other lines of authority as applicable] and has completed a one-time training course by or before July 1, 2008 [or substitute an alternate date at least one year after the legislation becomes effective] and ongoing training every 24 months thereafter.

Insurers providing LTC insurance shall obtain verification that the producer receives such training, maintain records subject to the state's record retention requirements and make that verification available to the [Insert Name of Insurance Commissioner] upon request. The one time training course shall be no less than 8 hours and the ongoing training shall be no less than 4 hours. Training shall cover the following topics: long-term care insurance, long-term care services, Qualified Partnerships, and the relationship between Qualified Partnerships and other public and private coverage of long-term care.

The satisfaction of these training requirements in any state shall be deemed to satisfy the training requirements in [Insert Name of State]. These training requirements may be approved as continuing education courses under [insert reference to applicable state law or regulation].

(INSERT COMMISSIONER NAME)
(INSERT COMMISSIONER TITLE)
(INSERT STATE NAME)

Part III - Section I – Appendix S**NAIC PRODUCER LICENSING MODEL ACT****Table of Contents**

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Section 1. Purpose and Scope

This Act governs the qualifications and procedures for the licensing of insurance producers. It simplifies and organizes some statutory language to improve efficiency, permits the use of new technology and reduces costs associated with issuing and renewing insurance licenses.

This Act does not apply to excess and surplus lines agents and brokers licensed pursuant to Section [refer to state excess and surplus lines statutes] except as provided in Section 8 and Section 16B of this Act.

Drafting Note: It is recommended that any statute or regulation inconsistent with this Act be repealed or amended.

Drafting Note: This Act also requires a report to the insurance commissioner of the termination of a producer by an insurer, whether with or without cause.

Section 2. Definitions

- A. “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.
- B. “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.
- C. “Insurance” means any of the lines of authority in [insert reference to appropriate section of state law].
- D. “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.
- E. “Insurer” means [insert reference to appropriate section of state law].

- F. “License” means a document issued by this state’s insurance commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance carrier.
- G. “Limited line credit insurance” includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection (gap) insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the insurance commissioner determines should be designated a form of limited line credit insurance.
- H. “Limited line credit insurance producer” means a person who sells, solicits or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group or individual policy.
- I. “Limited lines insurance” means those lines of insurance defined in [insert reference to state specific limited line statute] or any other line of insurance that the insurance commissioner deems necessary to recognize for the purposes of complying with Section 8E.
- J. “Limited lines producer” means a person authorized by the insurance commissioner to sell, solicit or negotiate limited lines insurance.
- K. “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.
- L. “Person” means an individual or a business entity.
- M. “Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.
- N. “Solicit” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.
- O. “Terminate” means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer’s authority to transact insurance.
- P. “Uniform Business Entity Application” means the current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.
- Q. “Uniform Application” means the current version of the NAIC Uniform Application for resident and nonresident producer licensing.

Section 3. License Required

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.

Section 4. Exceptions to Licensing

- A. Nothing in this Act shall be construed to require an insurer to obtain an insurance producer license. In this section, the term “insurer” does not include an insurer’s officers, directors, employees, subsidiaries or affiliates.
- B. A license as an insurance producer shall not be required of the following:
- (1) An officer, director or employee of an insurer or of an 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 this state and:

- (a) The officer, director or employee's activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance; or
 - (b) The officer, director or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance; or
 - (c) The officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;
- (2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans; issuing certificates under plans or otherwise assisting in administering plans; or performs administrative services related to mass marketed property and casualty insurance; where no commission is paid to the person for the service;
 - (3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;
 - (4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;
 - (5) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state;
 - (6) A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or
 - (7) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission.

Drafting Note: Persons who provide general insurance advice in connection with providing other professional services such as legal services, trust services, tax and accounting services, financial planning and investment advisory services are not deemed to be soliciting the sale of insurance under this Act. Sections 3 and 4 of this Act are intended to address all persons meeting the definition of "insurance producer" as defined in Title III, Section 336, of Public Law No. 106-102 (the "Gramm-Leach-Bliley Act").

Section 5. Application for Examination

- A. A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to Section 9. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the insurance commissioner.
- B. The insurance commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in [insert appropriate reference to state law or regulation].

- C. Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the insurance commissioner as set forth in [insert appropriate reference to state law or regulation].
- D. An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

Drafting Note: A state may wish to prescribe by regulation limitations on the frequency of application for examination in addition to other prelicensing requirements.

Section 6. Application for License

- A. A person applying for a resident insurance producer license shall make application to the insurance commissioner on the Uniform Application and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. Before approving the application, the insurance commissioner shall find that the individual:
 - (1) Is at least eighteen (18) years of age;
 - (2) Has not committed any act that is a ground for denial, suspension or revocation set forth in Section 12;
 - (3) Where required by the insurance commissioner, has completed a prelicensing course of study for the lines of authority for which the person has applied;

Drafting Note: Paragraph (3) would apply only to those states that have prelicensing education requirements.

- (4) Has paid the fees set forth in [insert appropriate reference to state law or regulation]; and
- (5) Has successfully passed the examinations for the lines of authority for which the person has applied.
- B. A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the Uniform Business Entity Application. Before approving the application, the insurance commissioner shall find that:
 - (1) The business entity has paid the fees set forth in [insert appropriate reference to state law or regulation]; and
 - (2) The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules and regulations of this state.

Drafting Note: Subsection B is optional and would apply only to those states that have a business entity license requirement.

- C. The insurance commissioner may require any documents reasonably necessary to verify the information contained in an application.
- D. Each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting or negotiating limited line credit insurance a program of instruction that may be approved by the insurance commissioner.

Section 7. License

- A. Unless denied licensure pursuant to Section 12, persons who have met the requirements of Sections 5 and 6 shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:
 - (1) Life—insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.
 - (2) Accident and health or sickness—insurance coverage for sickness, bodily injury or accidental death and may include benefits for disability income.

- (3) Property—insurance coverage for the direct or consequential loss or damage to property of every kind.
 - (4) Casualty—insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property.
 - (5) Variable life and variable annuity products—insurance coverage provided under variable life insurance contracts and variable annuities.
 - (6) Personal lines—property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.
 - (7) Credit—limited line credit insurance.
 - (8) Any other line of insurance permitted under state laws or regulations.
- B. An insurance producer license shall remain in effect unless revoked or suspended as long as the fee set forth in [insert appropriate reference to state law or regulation] is paid and education requirements for resident individual producers are met by the due date.
- C. An individual insurance producer who allows his or her license to lapse may, within twelve (12) months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.
- D. A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance (e.g., a long-term medical disability) may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

Drafting Note: References to license “renewal” should be deleted in those states that do not require license renewal.

- E. The license shall contain the licensee’s name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date and any other information the insurance commissioner deems necessary.
- F. Licensees shall inform the insurance commissioner by any means acceptable to the insurance commissioner of a change of address within thirty (30) days of the change. Failure to timely inform the insurance commissioner of a change in legal name or address shall result in a penalty pursuant to [insert appropriate reference to state law].
- G. In order to assist in the performance of the insurance commissioner’s duties, the insurance commissioner may contract with non-governmental entities, including the National Association of Insurance Commissioner (NAIC) or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the insurance commissioner and the non-governmental entity may deem appropriate.

Section 8. Nonresident Licensing

- A. Unless denied licensure pursuant to Section 12, a nonresident person shall receive a nonresident producer license if:
- (1) The person is currently licensed as a resident and in good standing in his or her home state;
 - (2) The person has submitted the proper request for licensure and has paid the fees required by [insert appropriate reference to state law or regulation];
 - (3) The person has submitted or transmitted to the insurance commissioner the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed Uniform Application; and
 - (4) The person’s home state awards nonresident producer licenses to residents of this state on the same basis.

Drafting Note: In accordance with Public Law No. 106-102 (the “Gramm-Leach-Bliley Act”) states should not require any additional attachments to the Uniform Application or impose any other conditions on applicants that exceed the information requested within the Uniform Application.

- B. The insurance commissioner may verify the producer’s licensing status through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.
- C. A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty (30) days of the change of legal residence. No fee or license application is required.
- D. Notwithstanding 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 pursuant to Subsection A of this section. Except as to Subsection A, nothing in this section otherwise amends or supercedes any provision of [refer to state excess and surplus lines statutes].
- E. Notwithstanding any other provision of this Act, a person licensed as a limited line credit insurance or other type of limited lines producer in his or her home state shall receive a nonresident limited lines producer license, pursuant to Subsection A of this section, granting the same scope of authority as granted under the license issued by the producer’s home state. For the purposes of Section 8E, limited line insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to Section 7A(1) through (6).

Section 9. Exemption from Examination

- A. An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety (90) days of the cancellation of the applicant’s previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state’s Producer Database records, maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.
- B. A person licensed as an insurance producer in another state who moves to this state shall make application within ninety (90) days of establishing legal residence to become a resident licensee pursuant to Section 6. No prelicensing education or examination shall be required of that person to obtain any line of authority previously held in the prior state except where the insurance commissioner determines otherwise by regulation.

Section 10. Assumed Names

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

Section 11. Temporary Licensing

- A. The insurance commissioner may issue a temporary insurance producer license for a period not to exceed one hundred eighty (180) days without requiring an examination if the insurance commissioner deems that the temporary license is necessary for the servicing of an insurance business in the following cases:
 - (1) To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the producer or for the recovery or return of the producer to the business or to provide for the training and licensing of new personnel to operate the producer’s business;
 - (2) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license;
 - (3) To the designee of a licensed insurance producer entering active service in the armed forces of the United States of America; or

- (4) In any other circumstance where the insurance commissioner deems that the public interest will best be served by the issuance of this license.
- B. The insurance commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The insurance commissioner may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The insurance commissioner may by order revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner or the personal representative disposes of the business.

Section 12. License Denial, Nonrenewal or Revocation

- A. The insurance commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with [insert appropriate reference to state law] or any combination of actions, for any one or more of the following causes:
- (1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;
 - (2) Violating any insurance laws, or violating any regulation, subpoena or order of the insurance commissioner or of another state's insurance commissioner;
 - (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
 - (4) Improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business;
 - (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
 - (6) Having been convicted of a felony;
 - (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
 - (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
 - (9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;
 - (10) Forging another's name to an application for insurance or to any document related to an insurance transaction;
 - (11) Improperly using notes or any other reference material to complete an examination for an insurance license;
 - (12) Knowingly accepting insurance business from an individual who is not licensed;
 - (13) Failing to comply with an administrative or court order imposing a child support obligation; or
 - (14) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

Drafting Note: Paragraph (14) is for those states that have a state income tax.

- B. In the event that the action by the insurance commissioner is to nonrenew or to deny an application for a license, the insurance commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the insurance commissioner within [insert appropriate time period from state's administrative procedure act] for a hearing before the insurance commissioner to determine the reasonableness of the insurance

commissioner's action. The hearing shall be held within [insert time period from state law] and shall be held pursuant to [insert appropriate reference to state law].

- C. The license of a business entity may be suspended, revoked or refused if the insurance commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation and the violation was neither reported to the insurance commissioner nor corrective action taken.
- D. In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine according to [insert appropriate reference to state law].
- E. The insurance commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this Act and Title [insert appropriate reference to state law] against any person who is under investigation for or charged with a violation of this Act or Title [insert appropriate reference to state law] even if the person's license or registration has been surrendered or has lapsed by operation of law.

Section 13. Commissions

- A. An insurance company or insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this Act and is not so licensed.
- B. A person shall not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this Act and is not so licensed.
- C. Renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this state if the person was required to be licensed under this Act at the time of the sale, solicitation or negotiation and was so licensed at that time.
- D. An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate [insert appropriate reference to state law, i.e. citation to anti-rebating statute, if applicable].

Section 14. Appointments [Optional]

- A. An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.
- B. 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 fifteen (15) days from the date the agency contract is executed or the first insurance application is submitted. An insurer may also elect to appoint a producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request.

Drafting Note: The group appointment provision of Subsection B is only applicable in jurisdictions that have implemented an electronic appointment process.

- C. [Optional] Upon receipt of the notice of appointment, the insurance commissioner shall verify within a reasonable time not to exceed thirty (30) days that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the insurance commissioner shall notify the insurer within five (5) days of its determination.
- D. An insurer shall pay an appointment fee, in the amount and method of payment set forth in [insert appropriate reference to state law or regulation], for each insurance producer appointed by the insurer.

- E. [Optional] An insurer shall remit, in a manner prescribed by the insurance commissioner, a renewal appointment fee in the amount set forth in [insert appropriate reference to state law or regulation].

Drafting Note: This act designates as optional the section on appointments of producers by insurers. That designation recognizes that some states do not require the formal appointment of a producer before business can be conducted with an insurer or multiple insurers.

Section 15. Notification to Insurance Commissioner of Termination

- A. **Termination for Cause.** An insurer or authorized representative of the insurer that terminates the appointment, employment, contract or other insurance business relationship with a producer shall notify the insurance commissioner within thirty (30) days following the effective date of the termination, using a format prescribed by the insurance commissioner, if the reason for termination is one of the reasons set forth in Section 12 or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in Section 12. Upon the written request of the insurance commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination or activity of the producer.
- B. **Termination Without Cause.** An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason not set forth in Section 12, shall notify the insurance commissioner within thirty (30) days following the effective date of the termination, using a format prescribed by the insurance commissioner. Upon written request of the insurance commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination.

Drafting Note: Those states that do not require formal appointments may delete any reference to appointments in Subsections A and B above.

- C. **Ongoing Notification Requirement.** The insurer or the authorized representative of the insurer shall promptly notify the insurance commissioner in a format acceptable to the insurance commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the insurance commissioner in accordance with Subsection A had the insurer then known of its existence.
- D. **Copy of Notification to be Provided to Producer.**
- (1) Within fifteen (15) days after making the notification required by Subsections A, B and C, the insurer shall mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for any of the reasons listed in Section 12, the insurer shall provide a copy of the notification to the producer at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.
 - (2) Within thirty (30) days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the insurance commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the insurance commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under Subsection F.
- E. **Immunities**
- (1) In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the insurance commissioner, or an organization of which the insurance commissioner is a member and that compiles the information and makes it available to other insurance commissioners or regulatory or law enforcement agencies shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the insurance commissioner, from an insurer or producer; or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination for cause under Subsection A was reported to the insurance commissioner, provided

that the propriety of any termination for cause under Subsection A is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.

- (2) In any action brought against a person that may have immunity under Paragraph (1) for making any statement required by this section or providing any information relating to any statement that may be requested by the insurance commissioner, the party bringing the action shall plead specifically in any allegation that Paragraph (1) does not apply because the person making the statement or providing the information did so with actual malice.
- 3) Paragraph (1) or (2) shall not abrogate or modify any existing statutory or common law privileges or immunities.

F. Confidentiality

- (1) Any documents, materials or other information in the control or possession of the department of insurance that is furnished by an insurer, producer or an employee or agent thereof acting on behalf of the insurer or producer, or obtained by the insurance commissioner in an investigation pursuant to this section shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the insurance commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the insurance commissioner's duties.
- (2) Neither the insurance commissioner nor any person who received documents, materials or other information while acting under the authority of the insurance commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Paragraph (1).
- (3) In order to assist in the performance of the insurance commissioner's duties under this Act, the insurance commissioner:
 - (a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Paragraph (1), with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;
 - (b) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and
 - (c) [OPTIONAL] May enter into agreements governing sharing and use of information consistent with this subsection.

Drafting Note: The language in Paragraph 3(a) assumes the recipient has the authority to protect the applicable confidentiality or privilege, but does not address the verification of that authority, which would presumably occur in the context of a broader information sharing agreement.

- (4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Paragraph (3).
- (5) Nothing in this Act shall prohibit the insurance commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to [insert appropriate reference to state law] to a database or other clearinghouse service maintained by the National Association of

Insurance Commissioners, its affiliates or subsidiaries of the National Association of Insurance Commissioners.

- G. Penalties for Failing to Report. An insurer, the authorized representative of the insurer, or producer that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with [insert appropriate reference to state law].

Section 16. Reciprocity

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

Drafting Note: States are encouraged to eliminate any licensing and appointment retaliatory fees. In accordance with Public Law No. 106-102 (the "Gramm-Leach-Bliley Act") states should not require nonresident fees that are so disparate from the resident fees that they impose a barrier to entry. Such fees would be prohibited under Public Law 106-102.

Section 17. Reporting of Actions

- A. A producer shall report to the insurance commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents.
- B. Within thirty (30) days of the initial pretrial hearing date, a producer shall report to the insurance commissioner any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

Section 18. Compensation Disclosure

- A. (1) Where any insurance producer or any affiliate of the producer receives any compensation from the customer for the placement of insurance or represents the customer with respect to that placement, neither that producer nor the affiliate shall accept or receive any compensation from an insurer or other third party for that placement of insurance unless the producer has, prior to the customer's purchase of insurance:
- (a) Obtained the customer's documented acknowledgment that such compensation will be received by the producer or affiliate; and
 - (b) Disclosed the amount of compensation from the insurer or other third party for that placement. If the amount of compensation is not known at the time of disclosure, the producer shall disclose the specific method for calculating the compensation and, if possible, a reasonable estimate of the amount.
- (2) Paragraph (1) shall not apply to an insurance producer who:
- (a) Does not receive compensation from the customer for the placement of insurance; and
 - (b) In connection with that placement of insurance represents an insurer that has appointed the producer; and
 - (c) Discloses to the customer prior to the purchase of insurance:
 - (i) That the insurance producer will receive compensation from an insurer in connection with that placement; or

- (ii) That, in connection with that placement of insurance, the insurance producer represents the insurer and that the producer may provide services to the customer for the insurer.

Drafting Note: In states where no appointment is required, the phrase “that has contractually authorized the producer to act as its legal agent” may be substituted for “that has appointed the producer.”

- B. A person shall not be considered a “customer” for purposes of this section if the person is merely:
- (1) A participant or beneficiary of an employee benefit plan; or
 - (2) Covered by a group or blanket insurance policy or group annuity contract sold, solicited or negotiated by the insurance producer or affiliate.
- C. This section shall not apply to:
- (1) A person licensed as an insurance producer who acts only as an intermediary between an insurer and the customer’s producer, for example a managing general agent, a sales manager, or wholesale broker; or
 - (2) A reinsurance intermediary.
- D. For purposes of this section:
- (1) “Affiliate” means a person that controls, is controlled by, or is under common control with the producer.
 - (2) “Compensation from an insurer or other third party” means payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes or any other form of valuable consideration, whether or not payable pursuant to a written agreement.
 - (3) “Compensation from the customer” shall not include any fee or similar expense as provided in [insert reference to statutory provisions or regulations] or any fee or amount collected by or paid to the producer that does not exceed an amount established by the commissioner.
 - (4) “Documented acknowledgement” means the customer’s written consent obtained prior to the customer’s purchase of insurance. In the case of a purchase over the telephone or by electronic means for which written consent cannot reasonably be obtained, consent documented by the producer shall be acceptable.
- E. This section shall take effect [insert date].

Drafting Note: States that are considering the licensing of business entities should reference Section 6B of the NAIC’s Producer Licensing Model Act and the Uniform Application for Business Entity License/Registration, which address the licensing of a business entity acting as an insurance producer.

Section 19. Regulations

The insurance commissioner may, in accordance with [insert appropriate reference to state law], promulgate reasonable regulations as are necessary or proper to carry out the purposes of this Act.

Section 20. Severability

If any provisions of this Act, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

Section 21. Effective Date

This Act shall take effect [insert date].

Note: A minimum of six months to one year implementation time for proper notice of changes, fees and procedures is recommended.

Part III - Section I – Appendix T

Professional Licensing Standards Recommendations



DATE: May 29, 2008

TO: NAIC Officers and the Market Regulation & Consumer Affairs (D) Committee

FROM: Anne Marie Narcini, Chair of the Producer Licensing Working (D) Group

RE: Professional Licensing Standards Recommendations

During the NAIC Spring National Meeting, the NAIC Officers formally requested the Producer Licensing (D) Working Group to evaluate the key findings and issues regarding the uniform licensing standards and provide a recommendation by the 2008 Summer National Meeting identifying the ones that should be considered professional licensing standards (i.e., standards that provide the basic requirements for engaging in the profession).

Process for Completion of Charge

To fulfill this charge, the Working Group solicited public comment at the 2008 Spring National Meeting and a small team of regulators from Alaska, District of Columbia, Kentucky, New Jersey, Pennsylvania and Utah met by conference call to discuss the task. The group concluded that the professional licensing standards outlined in the request are standards producers should satisfy to sell, solicit and negotiate insurance. Furthermore, the standards represent the knowledge, skills and conduct necessary both to commence acting as a producer and to maintain a basic level of professional knowledge and abilities to continue to engage in the business.

The conclusions of the focus group were presented to Working Group members and interested parties at the interim meeting of the Working Group on April 30, 2008. Additional public comment was requested; however, interested parties did not provide any comments.

Professional Standards

The Working Group has concluded that most of the appropriate standards are already contained within the Uniform Licensing Standards adopted by the NAIC in December 2002. The Uniform Licensing Standards address the professional standards for entry and continuation of licensure for producers, as well as administrative standards for regulators to achieve uniformity and increased efficiencies.

In summary the suggested professional standards are segmented into four broad categories: (1) legal authority to enter into contracts; (2) education and initial testing for minimum competency, (3) background checks for moral character and (4) ongoing commitment to professional conduct.

Legal Authority

All Producers must be 18 years of age. This is a required standard for entry into the profession since a person must be of majority age to execute a contract.

All producers must be a United States citizen or have legal work authorization if he/she is not a United States citizen. This standard addresses the requirement for all producers to have the authority to lawfully work in the United States.

Education and Testing

All producers must pass an examination that is monitored and independently proctored with adequate supervision. This standard addresses the measurement of the minimum subject matter expertise to engage in the profession.

The Working Group members want to emphasize that a high school diploma and prelicensing education should not be required to obtain a producer license. While individual insurance companies may establish such standards as a condition of employment, the Working Group concluded that demonstrating sufficient knowledge to engage in the business of insurance is accomplished by successfully passing the home state examination.

While the Uniform Licensing Standards do not require states to require prelicensing education for applicants, the Uniform Licensing Standards do address the desire for uniformity among the states by requiring any state with a prelicensing education requirement to have 20 hours per major line of authority.

Background Checks

All producers should undergo a background check that includes fingerprinting.

All producers should complete a uniform application for licensure that includes standard background check questions.

All producers should adhere to the integrity and personal qualifications outlined in Section 12 of the NAIC's Producer Licensing Model Act.

These three standards specifically address the fitness of character, professional competence and worthiness for licensure. It should also be noted that the background questions are a part of the license continuation/renewal process and assure continued fitness for licensure.

Ongoing Commitment to Professional Conduct

All producers should adhere to the integrity and personal qualifications defined in Section 12 of the NAIC's Producer Licensing Model Act.

All producers should complete a uniform renewal form application for licensure that includes standard background check questions.

All producers should satisfy twenty-four hours of continuing education for all major lines of authority with three (3) of the twenty-four hours covering ethics. Fifty minutes shall equal one hour of CE. Due to ongoing change in insurance products, policy forms and laws, continuing education is a basic requirement to maintain the level of professional standard necessary to continue selling, soliciting and negotiating insurance. Ongoing ethics education helps assure continued fitness for licensure and serves as a consumer protection.

Conclusion and Next Steps

The Working Group believes these standards provide the basic foundation for individuals to distinguish themselves from the general public as insurance professionals. The basic elements of legal authority, testing, background checks and continuing education are common elements for other professionals, such as securities brokers, real estate agents and attorneys.

Because insurance regulators want to ensure the highest level of consumer protection and a high degree of professionalism among those individuals selling, soliciting and negotiating insurance, insurance regulators firmly believe the producer community should openly embrace and support these standards. The open support of these standards will confirm the professionalism of the producer community. At the same time, the failure to support these standards raises serious concerns about the ongoing commitment of the producer community to a high level of professionalism commonly found in other professions.

To this end, the Working Group will be distributing a letter to the key producer trade associations within the next 30 days asking if they support the standards outlined in this memo. The key producer trade associations include the Council of Insurance Agents & Brokers, the Independent Insurance Agents & Brokers of America, the National Association of Insurance & Financial Professionals and the Professional Insurance Agents.

Part III - Section I – Appendix U**PUBLIC ADJUSTER LICENSING MODEL ACT****Table of Contents**

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Section 1. Purpose and Scope

This Act governs the qualifications and procedures for the licensing of public adjusters. It specifies the duties of and restrictions on public adjusters, which include limiting their licensure to assisting insureds in first party claims.

Drafting Note: It is recommended that any statute or regulation inconsistent with this Act be repealed or amended.

Drafting Note: This Act also requires a report to the insurance commissioner of any action in another jurisdiction against either the public adjuster license or licensee.

Section 2. Definitions

- A. “Apprentice public adjuster” means the one who is qualified in all respects as a public adjuster except as to experience, education and/or training.
- B. “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.
- C. “Catastrophic disaster” according to the Federal Response Plan, means an event that results in large numbers of deaths and injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; and severely affects state, local and private sector capabilities to begin and sustain response activities. A catastrophic disaster shall be declared by the President of the United States or the Governor of the state or district in which the disaster occurred.
- D. “Fingerprints” for the purposes of this act, means an impression of the lines on the finger taken for purpose of identification. The impression may be electronic or in ink converted to electronic format.
- E. “Home state” means the District of Columbia and any state or territory of the United States in which the public adjuster’s principal place of residence or principal place of business is located. If neither the state

in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare another state in which it becomes licensed and acts as a public adjuster to be the ‘home state.’

- F. “Individual” means a natural person.
- G. “Person” means an individual or a business entity.
- H. “Public adjuster” means any person who, for compensation or any other thing of value on behalf of the insured:
 - (1) Acts or aids, solely in relation to first party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;
 - (2) Advertises for employment as an public adjuster of insurance claims or solicits business or represents himself or herself to the public as an public adjuster of first party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or
 - (3) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.
- I. “Uniform individual application” means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Individual Application for resident and nonresident individuals.
- J. [Optional] “Uniform business entity application” means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Business Entity Application for resident and nonresident business entities.

Drafting Note: Subsection J is optional and would apply only to those states that have a business entity license requirement.

Drafting Note: If any term is similarly defined in a relevant section of the state’s insurance code, do not include the definition of the term in this Act or, in the alternative, reference the statute: “[term] is defined in [insert appropriate reference to state law or regulation].”

Section 3. License Required

- A. A person shall not act or hold himself out as a public adjuster in this state unless the person is licensed as a public adjuster in accordance with this Act.
- B. A person licensed as a public adjuster shall not misrepresent to a claimant that he or she is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster unless so appointed by an insurer in writing to act on the insurer’s behalf for that specific claim or purpose. A licensed public adjuster is prohibited from charging that specific claimant a fee when appointed by the insurer and the appointment is accepted by the public adjuster.
- C. A business entity acting as a public adjuster is required to obtain a public adjuster license. Application shall be made using the Uniform Business Entity Application. Before approving the application, the insurance commissioner shall find that:
 - (1) The business entity has paid the fees set forth in [insert appropriate reference to state law or regulation]; and
 - (2) The business entity has designated a licensed public adjuster responsible for the business entity’s compliance with the insurance laws, rules and regulations of this state.

Drafting Note: Subsection C is optional and would apply only to those states that have a business entity license requirement.

- D. Notwithstanding subsection A through C, a license as a public adjuster shall not be required of the following:
- (1) An attorney-at-law admitted to practice in this state, when acting in his or her professional capacity as an attorney;
 - (2) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;
 - (3) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including photographers, estimators, private investigators, engineers and handwriting experts;
 - (4) A licensed health care provider, or employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient; or
 - (5) A person who settles subrogation claims between insurers.

Section 4. Application for License

- A. A person applying for a public adjuster license shall make application to the commissioner on the appropriate uniform application or other application prescribed by the commissioner.]
- B. The applicant shall declare under penalty of perjury and under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the applicant's knowledge and belief.
- C. In order to make a determination of license eligibility, the insurance commissioner is authorized to require fingerprints of applicants and submit the fingerprints and the fee required to perform the criminal history record checks to the state identification bureau (or state department of justice public state agency) and the Federal Bureau of Investigation (FBI) for state and national criminal history record checks; the insurance commissioner shall require a criminal history record check on each applicant in accordance with this Act. The insurance commissioner shall require each applicant to submit a full set of fingerprints in order for the insurance commissioner to obtain and receive National Criminal History Records from the FBI Criminal Justice Information Services Division.
- (1) The insurance commissioner may contract for the collection, transmission and resubmission of fingerprints required under this section. If the commissioner does so, the fee for collecting, transmitting and retaining fingerprints shall be payable directly to the contractor by the person. The insurance commissioner may agree to a reasonable fingerprinting fee to be charged by the contractor.
 - (2) The insurance commissioner may waive submission of fingerprints by any person that has previously furnished fingerprints and those fingerprints are on file with the Central Repository of the National Association of Insurance Commissioners (NAIC), its affiliates or subsidiaries.
 - (3) The insurance commissioner is authorized to receive criminal history record information in lieu of the [insert reference to Department of Justice/Public Safety Agency] that submitted the fingerprints to the FBI.

- (4) The insurance commissioner is authorized to submit electronic fingerprint records and necessary identifying information to the NAIC, its affiliates or subsidiaries for permanent retention in a centralized repository. The purpose of such a centralized repository is to provide insurance commissioners with access to fingerprint records in order to perform criminal history record checks.

Drafting Note: The FBI requires that fingerprints be submitted to the state Department of Law Enforcement, Public Safety or Criminal Justice for a check of state records before the fingerprints are submitted to the FBI for a criminal history check. The FBI recommends all fingerprint submissions to be in an electronic format. The FBI has approved the language in Section 4 (C) to authorize a state identification bureau to submit fingerprints on behalf of its applicants in conjunction with licensing and employment.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

Drafting Note: This provision does not permit the sharing of criminal history record information with the NAIC or other insurance commissioners as such sharing of information is prohibited by 28 CFR 20.33.

Section 5. Resident License

- A. Before issuing a public adjuster license to an applicant under this section, the commissioner shall find that the applicant:
- (1) Is eligible to designate this state as his or her home state or is a nonresident who is not eligible for a license under Section 8;
 - (2) Has not committed any act that is a ground for denial, suspension or revocation of a license as set forth in Section 11;
 - (3) Is trustworthy, reliable, and of good reputation, evidence of which may be determined by the commissioner;
 - (4) Is financially responsible to exercise the license and has provided proof of financial responsibility as required in Section 12 of this Act;
 - (5) Has paid the fees set forth in [insert appropriate reference to state law or regulation]; and
 - (6) Maintains an office in the home state of residence with public access by reasonable appointment and/or regular business hours. This includes a designated office within a home state of residence.
- B. In addition to satisfying the requirements of Subsection A, an individual shall
- (1) Be at least eighteen (18) years of age; and
 - (2) Have successfully passed the public adjuster examination.
 - (3) Designate a licensed individual public adjuster responsible for the business entity's compliance with the insurance laws, rules, and regulations of this state; and
 - (4) Designate only licensed individual public adjusters to exercise the business entity's license.

Drafting Note: Subsection C is optional and would apply only to those states that have a business entity license requirement. C's PLMA Section 6B

- C. The commissioner may require any documents reasonably necessary to verify the information contained in the application.

Section 6. Examination

- A. An individual applying for a public adjuster license under this act shall pass a written examination unless exempt pursuant to Section 7. The examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state.

Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the commissioner.

- B. The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in [insert appropriate reference to state law or regulation].
- C. Each individual applying for an examination shall remit a non-refundable fee as prescribed by the commissioner as set forth in [insert appropriate reference to state law or regulation].
- D. An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

Drafting Note: A state may wish to prescribe by regulation limitations on the frequency of application for examination in addition to other prelicensing requirements.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

Section 7. Exemptions from Examination

- A. An individual who applies for a public adjuster license in this state who was previously licensed as a public adjuster in another state based on a public adjuster examination shall not be required to complete any prelicensing examination. This exemption is only available if the person is currently licensed in that state or if the application is received within twelve (12) months of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's producer database records or records maintained by the NAIC, its affiliates, or subsidiaries, indicate that the public adjuster is or was licensed in good standing.
- B. A person licensed as a public adjuster in another state based on a public adjuster examination who moves to this state shall make application within ninety (90) days of establishing legal residence to become a resident licensee pursuant to Section 5. No prelicensing examination shall be required of that person to obtain a public adjuster license.
- C. An individual who applies for a public adjuster license in this state who was previously licensed as a public adjuster in this state shall not be required to complete any prelicensing examination. This exemption is only available if the application is received within twelve (12) months of the cancellation of the applicant's previous license in this state and if, at the time of cancellation, the applicant was in good standing in this state.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

Section 8. Nonresident License Reciprocity

- A. Unless denied licensure pursuant to Section 11, a nonresident person shall receive a nonresident public adjuster license if:
 - (1) The person is currently licensed as a resident public adjuster and in good standing in his or her home state;
 - (2) The person has submitted the proper request for licensure, has paid the fees required by [insert appropriate reference to state law or regulation] [NAIC's PLMA Section 8A(2)], and has provided proof of financial responsibility as required in Section 12 of this Act;
 - (3) The person has submitted or transmitted to the commissioner the appropriate completed application for licensure; and

- (4) The person's home state awards nonresident public adjuster licenses to residents of this state on the same basis.
- B. The commissioner may verify the public adjuster's licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.
- C. As a condition to continuation of a public adjuster license issued under this section, the licensee shall maintain a resident public adjuster license in his or her home state. The nonresident public adjuster license issued under this section shall terminate and be surrendered immediately to the commissioner if the home state public adjuster license terminates for any reason, unless the public adjuster has been issued a license as a resident public adjuster in his or her new home state. Notification to the state or states where nonresident license is issued must be made as soon as possible, yet no later than thirty (30) days of change in new state resident license. Licensee shall include new and old address. A new state resident license is required for nonresident licenses to remain valid. The new state resident license must have reciprocity with the licensing nonresident state(s) for the nonresident license not to terminate.

Drafting Note: If the state has adopted the PLMA, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

Section 9. License

- A. Unless denied licensure under this Act, persons who have met the requirements of this Act shall be issued a public adjuster license.
- B. A public adjuster license shall remain in effect unless revoked, terminated or suspended as long as the request for renewal and fee set forth in [insert appropriate reference to state law or regulation] is paid and any other requirements for license renewal are met by the due date.
- C. The licensee shall inform the commissioner by any means acceptable to the commissioner of a change of address, change of legal name, or change of information submitted on the application within thirty (30) days of the change.
- D. A licensed public adjuster shall be subject to [cite state's Unfair Claims Settlement Act and state's Trade Practices and Fraud sections of the Insurance Code].
- E. A public adjuster who allows his or her license to lapse may, within twelve (12) months from the due date of the renewal, be issued a new public adjuster license upon the commissioner's receipt of the request for renewal. However, a penalty in the amount of double the unpaid renewal fee shall be required for the issue of the new public adjuster license. The new public adjuster license shall be effective the date the commissioner receives the request for renewal and the late payment penalty.
- F. Any public adjuster licensee that fails to apply for renewal of a license before expiration of the current license shall pay a lapsed license fee of twice the license fee and be subject to other penalties as provided by law before the license will be renewed. If the Department receives the request for reinstatement and the required lapsed license fee within sixty (60) days of the date the license lapsed, the Department shall reinstate the license retroactively to the date the license lapsed. If the Department receives the request for reinstatement and the required lapsed license fee after sixty (60) days but within one year of the date the license lapsed, the Department shall reinstate the license prospectively with the date the license is reinstated. If the person applies for reinstatement more than one year from date of lapse, the person shall reapply for the license under this Act.
- G. A licensed public adjuster that is unable to comply with license renewal procedures due to military service, a long-term medical disability, or some other extenuating circumstance, may request a waiver of those procedures. The public adjuster may also request a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures.

Drafting Note: References to license "renewal" should be deleted in those states that do not require license renewal.

- H. The license shall contain the licensee's name, city and state of business address, personal identification number, the date of issuance, the expiration date, and any other information the commissioner deems necessary.
- I. In order to assist in the performance of the commissioner's duties, the commissioner may contract with non-governmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees and data, related to licensing that the commissioner may deem appropriate.]

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

Section 10. Apprentice Public Adjuster License[Optional]

- A. The apprentice public adjuster license is an optional license to facilitate the training necessary to ensure reasonable competency to fulfill the responsibilities of a public adjuster as defined in [insert state statute].
- B. The apprentice public adjuster license shall be subject to the following terms and conditions:
 - (1) An attestation/certification from a licensed public adjuster (licensee) shall accompany an application for an initial apprentice public adjuster license assuming responsibility for all actions of such applicant;
 - (2) The apprentice public adjuster is authorized to adjust claims in the state that has issued licensure only;
 - (3) The apprentice public adjuster shall not be required to take and successfully complete the prescribed public adjuster examination;
 - (4) The licensee shall at all times be an employee of a public adjuster and subject to training, direction, and control by a licensed public adjuster;
 - (5) The apprentice public adjuster license is for a period not to exceed twelve (12) months, the license shall not be renewed;
 - (6) The licensee is restricted to participation in factual investigation, tentative closing and solicitation of losses subject to the review and final determination of a licensed public adjuster;
 - (7) Compensation of an apprentice public adjuster shall be on a salaried or hourly basis only; and
 - (8) The licensee shall be subject to suspension, revocation, or conditions in accordance with [Insert State Laws].

Section 11. License Denial, Non-renewal or Revocation

- A. The commissioner may place on probation, suspend, revoke or refuse to issue or renew a public adjuster's license or may levy a civil penalty in accordance with [insert appropriate reference to state law] or any combination of actions, for any one or more of the following causes:
 - (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
 - (2) Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of another state's insurance commissioner;
 - (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
 - (4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;

- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) Having been convicted of a felony;
- (7) Having admitted or been found to have committed any insurance unfair trade practice or insurance fraud;
- (8) Using fraudulent, coercive or dishonest practices; or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
- (9) Having an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district or territory;
- (10) Forging another's name to an application for insurance or to any document related to an insurance transaction;
- (11) Cheating, including improperly using notes or any other reference material, to complete an examination for an insurance license;
- (12) Knowingly accepting insurance business from an individual who is not licensed but who is required to be licensed by the commissioner;
- (13) Failing to comply with an administrative or court order imposing a child support obligation; or
- (14) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

Drafting Note: Paragraph (14) is for those states that have a state income tax.

- B. In the event that the action by the commissioner is to deny an application for or not renew a license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the non-renewal or denial of the applicant's or licensee's license. The applicant or licensee may make written demand upon the commissioner within [insert appropriate time period from state's administrative procedure act] for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within [insert time period from state law] and shall be held pursuant to [insert appropriate reference to state law].
- C. The license of a business entity may be suspended, revoked or refused if the commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the commissioner nor corrective action taken.
- D. In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine according to [insert appropriate reference to state law].
- E. The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this Act and Title [insert appropriate reference to state law] against any person who is under investigation for or charged with a violation of this Act or Title [insert appropriate reference to state law] even if the person's license or registration has been surrendered or has lapsed by operation of law.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. The state may want to amend its relevant insurance producer statute to include public adjusters.

Section 12. Bond or Letter of Credit

Prior to issuance of a license as a public adjuster and for the duration of the license, the applicant shall secure evidence of financial responsibility in a format prescribed by the insurance commissioner through a security bond or irrevocable letter of credit:

- A. A surety bond executed and issued by an insurer authorized to issue surety bonds in this state, which bond:
 - (1) Shall be in the minimum amount of \$20,000;
 - (2) Shall be in favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in his or her capacity as a public adjuster; and
 - (3) Shall not be terminated unless at least thirty (30) days' prior written notice will have been filed with the commissioner and given to the licensee.
- B. An irrevocable letter of credit issued by a qualified financial institution, which letter of credit:
 - (1) Shall be in the minimum amount of \$20,000;
 - (2) Shall be to an account to the commissioner and subject to lawful levy of execution on behalf of any person to whom the public adjuster has been found to be legally liable as the result of erroneous acts, failure to act, fraudulent acts, or unfair practices in his or her capacity as a public adjuster; and
 - (3) Shall not be terminated unless at least thirty (30) days' prior written notice will have been filed with the commissioner and given to the licensee.
- C. The issuer of the evidence of financial responsibility shall notify the commissioner upon termination of the bond or letter of credit, unless otherwise directed by the commissioner.
- D. The commissioner may ask for the evidence of financial responsibility at any time he or she deems relevant.
- E. The authority to act as a public adjuster shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired.

Section 13. Continuing Education

- A. An individual, who holds a public adjuster license and who is not exempt under Subsection B of this section, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, including ethics, reported on a biennial basis in conjunction with the license renewal cycle.
- B. This section shall not apply to:
 - (1) Licensees not licensed for one full year prior to the end of the applicable continuing education biennium; or
 - (2) Licensees holding nonresident public adjuster licenses who have met the continuing education requirements of their home state and whose home state gives credit to residents of this state on the same basis.
- C. Only continuing education courses approved by the commissioner shall be used to satisfy the continuing education requirement of Subsection A.

Section 14. Public Adjuster Fees

- A. [Optional] A public adjuster may charge the insured a reasonable fee as determined by state law [insert appropriate reference to state law or regulation].

Drafting Note: This model designates Section 14A as optional. A majority of the states do not require a cap on fees of public adjusters.

- B. A public adjuster shall not pay a commission, service fee or other valuable consideration to a person for investigating or settling claims in this state if that person is required to be licensed under this Act and is not so licensed.
- C. A person shall not accept a commission, service fee or other valuable consideration for investigating or settling claims in this state if that person is required to be licensed under this Act and is not so licensed.
- D. A public adjuster may pay or assign commission, service fees or other valuable consideration to persons who do not investigate or settle claims in this state, unless the payment would violate [insert appropriate reference to state law, i.e. citation to anti-rebating statute or sharing commission statute, if applicable].
- E. [Optional] In the event of a catastrophic disaster, there shall be limits on catastrophic fees, no public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than ten percent (10%) of any insurance settlement or proceeds. No public adjuster shall require, demand or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of a claim.

Drafting Note: This model designates Section 14E, as optional. It is recommended that the states that establish catastrophic fees utilize the recommended language in this model.

Section 15. Contract Between Public Adjuster and Insured

- A. Public adjusters shall ensure that all contracts for their services are in writing and contain the following terms:
 - (1) Legible full name of the adjuster signing the contract, as specified in Department of Insurance records;
 - (2) Permanent home state business address and phone number;
 - (3) Department of Insurance license number;
 - (4) Title of “Public Adjuster Contract”;
 - (5) The insured’s full name, street address, insurance company name and policy number, if known or upon notification;
 - (6) A description of the loss and its location, if applicable;
 - (7) Description of services to be provided to the insured;
 - (8) Signatures of the public adjuster and the insured;
 - (9) Date contract was signed by the public adjuster and date the contract was signed by the insured;
 - (10) Attestation language stating that the public adjuster is fully bonded pursuant to state law; and
 - (11) Full salary, fee, commission, compensation or other considerations the public adjuster is to receive for services.
- B. The contract may specify that the public adjuster shall be named as a co-payee on an insurer’s payment of a claim.
 - (1) If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.
 - (2) Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses first approved by the insured.

- (3) Compensation provisions in a public adjusting contract shall not be redacted in any copy of the contract provided to the commissioner. Such a redaction shall constitute an omission of material fact in violation of [insert reference to relevant state law].
- C. If the insurer, not later than seventy-two (72) hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:
 - (1) Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;
 - (2) Inform the insured that loss recovery amount might not be increased by insurer; and
 - (3) Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.
- D. A public adjuster shall provide the insured a written disclosure concerning any direct or indirect financial interest that the public adjuster has with any other party who is involved in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, including but not limited to any ownership of, other than as a minority stockholder, or any compensation expected to be received from, any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm which that provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged. The word "firm" shall include any corporation, partnership, association, joint-stock company or person.
- E. A public adjuster contract may not contain any contract term that:
 - (1) Allows the public adjuster's percentage fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as percentage of each check issued by an insurance company;
 - (2) Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster;
 - (3) Imposes collection costs or late fees; or
 - (4) Precludes a public adjuster from pursuing civil remedies.
- F. Prior to the signing of the contract the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:
 - (1) Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. There are three (3) types of adjusters that could be involved in that process. The definitions of the three types are as follows:
 - (a) "Company adjuster" means the insurance adjusters who are employees of an insurance company. They represent the interest of the insurance company and are paid by the insurance company. They will not charge you a fee.
 - (b) "Independent adjuster" means the insurance adjusters who are hired on a contract basis by an insurance company to represent the insurance company's interest in the settlement of the claim. They are paid by your insurance company. They will not charge you a fee.
 - (c) "Public adjuster" means the insurance adjusters who do not work for any insurance company. They work for the insured to assist in the preparation, presentation and settlement of the claim. The insured hires them by signing a contract agreeing to pay

- them a fee or commission based on a percentage of the settlement, or other method of compensation.
- (2) The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy, but has the right to do so.
 - (3) The insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, and the insurer's attorney, or any other person regarding the settlement of the insured's claim.
 - (4) The public adjuster is not a representative or employee of the insurer.
 - (5) The salary, fee, commission or other consideration is the obligation of the insured, not the insurer.
- G. The contracts shall be executed in duplicate to provide an original contract to the public adjuster, and an original contract to the insured. The public adjuster's original contract shall be available at all times for inspection without notice by the commissioner.
- H. The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest.
- I. The public adjuster shall give the insured written notice of the insured's right as provided in [cite the state consumer protection laws].
- J. The insured has the right to rescind the contract within three (3) business days after the date the contract was signed. The rescission shall be in writing and mailed or delivered to the public adjuster at the address in the contract within the three (3) business day period.
- K. If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within fifteen (15) business days following the receipt by the public adjuster of the cancellation notice.

Drafting Note: The details in this section should comply with your state's consumer protection contract rescission law.

Section 16. Escrow or Trust Accounts

A public adjuster who receives, accepts or holds any funds on behalf of an insured, towards the settlement of a claim for loss or damage, shall deposit the funds in a non-interest bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the public adjuster's home state or where the loss occurred.

Section 17. Record Retention

- A. A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section shall include the following:
- (1) Name of the insured;
 - (2) Date, location and amount of the loss;
 - (3) Copy of the contract between the public adjuster and insured;
 - (4) Name of the insurer, amount, expiration date and number of each policy carried with respect to the loss;
 - (5) Itemized statement of the insured's recoveries;
 - (6) Itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss;

- (7) A register of all monies received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees transfers and disbursements from a trust account and all transactions concerning all interest bearing accounts;
 - (8) Name of public adjuster who executed the contract;
 - (9) Name of the attorney representing the insured, if applicable, and the name of the claims representatives of the insurance company; and
 - (10) Evidence of financial responsibility in a format prescribed by the insurance commissioner.
- B. Records shall be maintained for at least five (5) years after the termination of the transaction with an insured and shall be open to examination by the commissioner at all times.
 - C. Records submitted to the commissioner in accordance with this section that contain information identified in writing as proprietary by the public adjuster shall be treated as confidential by the commissioner and shall not be subject to [insert reference to open record laws] of this state.

Section 18. Standards of Conduct of Public Adjuster

- A. A public adjuster is obligated, under his or her license, to serve with objectivity and complete loyalty the interest of his client alone; and to render to the insured such information, counsel and service, as within the knowledge, understanding and opinion in good faith of the licensee, as will best serve the insured's insurance claim needs and interest.
- B. A public adjuster shall not solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured's insurance contract.
- C. A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this Act.
- D. A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, unless full written disclosure has been made to the insured as set forth in Section 15G .
- E. A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer as set forth in Section 15G.
- F. The public adjuster shall abstain from referring or directing the insured to get needed repairs or services in connection with a loss from any person, unless disclosed to the insured:
 - (1) With whom the public adjuster has a financial interest; or
 - (2) From whom the public adjuster may receive direct or indirect compensation for the referral.

Drafting Note: Optional language for Subsection F: "Licensees may not solicit a client for employment between the hours of ___ pm and ___ am."

- G. The public adjuster shall disclose to an insured if he or she has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other firm that performs any work in conjunction with damages caused by the insured loss. The word "firm" shall include any corporation, partnership, association, joint-stock company or individual as set forth in Section 15A(4).
- H. Any compensation or anything of value in connection with an insured's specific loss that will be received by a public adjuster shall be disclosed by the public adjuster to the insured in writing including the source and amount of any such compensation.
- I. Public adjusters shall adhere to the following general ethical requirements:
 - (1) A public adjuster shall not undertake the adjustment of any claim if the public adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the public adjuster's current expertise;

- (2) A public adjuster shall not knowingly make any oral or written material misrepresentations or statements which are false or maliciously critical and intended to injure any person engaged in the business of insurance to any insured client or potential insured client;
- (3) No public adjuster, while so licensed by the Department, may represent or act as a company adjuster, or independent adjuster on the same claim;

Drafting Note: If a state only allows licensure in one class of adjuster licensing, the adjuster may not represent another type of licensure in any circumstance.

- (4) The contract shall not be construed to prevent an insured from pursuing any civil remedy after the three-business day revocation or cancellation period;
 - (5) A public adjuster shall not enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work; and
 - (6) A public adjuster shall ensure that all contracts for the public adjuster's services are in writing and set forth all terms and conditions of the engagement.
- J. A public adjuster may not agree to any loss settlement without the insured's knowledge and consent.

Section 19. Reporting of Actions

- A. The public adjuster shall report to the commissioner any administrative action taken against the public adjuster in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.
- B. Within thirty (30) days of the initial pretrial hearing date, the public adjuster shall report to the commissioner any criminal prosecution of the public adjuster taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

Section 20. Regulations

The commissioner may, in accordance with [insert appropriate reference to state law], promulgate reasonable regulations as are necessary or proper to carry out the purposes of this Act.

Section 21. Severability

If any provisions of this Act, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

Section 22. Effective Date

This Act shall take effect [insert date]. Provided, however that the provision of Section 4 do not become effective until a state participates in the NAIC's central repository for the purpose of obtaining criminal background information.

Drafting Note: A minimum of six months to one-year implementation time for proper notice of changes, fees, and procedures is recommended.

Chronological Summary of Action (all references are to the Proceedings of the NAIC).

2005 Proc. 2nd Quarter 698 (adopted by parent committee).

2005 Proc. 3rd Quarter 26, 35-49 (amended and adopted by Plenary).

NAIC Public Insurance Adjuster Surety Bond Sample

BOND NO. _____

Know All Persons by These Presents:

That we, _____

_____ as Principal, whose address is _____

_____ and _____

_____ as Surety, being a surety company authorized to do business in the State of _____ re bound to the _____ Department of Insurance in the sum of \$10,000.00 as specified at [insert reference to state law or regulation]. The specified sum is payable to the [insert state] Department of Insurance for the use and benefit of any customer of the above described Principal and as defined by the [insert state] Insurance Code, [insert citation] in acceptable currency of the United States in accordance with the statutory provision cited above. By this instrument, we jointly and severally firmly bind ourselves, out heirs, executors, administrators, successors and assigns.

The conditions of the above obligations are:

Whereas the above named Principal has applied to the [insert state] Department of Insurance for a license as a Public Insurance Adjuster to engage in or continue the business of insurance as a Public Insurance Adjuster in accordance with the [insert state] Insurance Code;

Now, Therefore, should the Principal discharge losses that result from any final judgment recovered against the Principal by any customer, this obligation will become void. If this obligation is not void, it remains in full force and effect, subject to the following conditions:

1. As of _____, 20_____, this bond will be in full force and effect indefinitely. Continuation or renewal certificates are unnecessary.
2. The surety may, at any time, terminate this bond by submitting written notice to the [insert state] Department of Insurance thirty (30) days prior to the termination date. The surety, however, remains liable for any defaults under this bond committed prior to the termination date.
3. In no event will the aggregate liability of the Surety under this bond, for any or all damages to one or more claimants, exceed the penal sum of this bond.

In Witness Whereof said Principal and Surety have executed this bond this _____ day of _____, 20_____ to be effective the _____ day of _____, 20_____.

 PRINCIPAL

 BY

 ADDRESS

Part III - Section I – Appendix V

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;

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

Additional states may be 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.

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 licensing renewal. Each participating state's business rules are developed in consultation with producer licensing personnel and are customized to applicable laws and practices of the jurisdiction.

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.

APPENDIX A

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.

Part III - Section I – Appendix W



**UNIFORM CRIMINAL HISTORY
&
REGULATORY ACTIONS BACKGROUND REVIEW GUIDELINES**

As part of the 2009 charges for the Producer Licensing Working Group (PLWG), the Producer Licensing Task Force asked the working group to develop uniform guidelines for background check reviews of producers. As Uniform Licensing Standards, including fingerprinting requirements, are adopted in all jurisdictions, the ultimate goal is for each jurisdiction to defer to the resident state for licensing determinations wherever possible. For all jurisdictions to have a comfort level with these licensing determinations, a uniform process of review appears warranted. The Working Group believes that if all jurisdictions implement these guidelines, in most situations, nonresident states will be able to defer to the resident state's licensing decision.

Generally, there are four situations when a review of criminal history or regulatory actions could come into consideration in the licensing process:

1. At the time of initial application the applicant is asked background questions, NAIC databases are checked for regulatory actions and the resident state, if it has adopted the Uniform Licensing Standards, will fingerprint to conduct a state and national criminal background check.
2. During the licensing term the producer must notify the Department of any administrative action taken against the producer in any other jurisdiction or any criminal prosecution in any jurisdiction within 30 days of the initial pretrial hearing in accordance with Section 17 of the Producer Licensing Model Act (PLMA).
3. During the licensing term some states that require fingerprinting will receive subsequent arrest and conviction notifications from the State Department of Justice or FBI on their licensee.
4. At the time of continuation or renewal of the license, the licensee is asked updated background questions and NAIC databases are checked for regulatory actions that may have occurred since the last renewal.

Although each situation may have slightly different procedures and considerations, overall the process itself should be consistent to assure fair and uniform handling of each licensee or applicant and to allow for a uniform process regardless of jurisdiction. These guidelines will address a general uniform process for consideration of criminal background and regulatory actions that can be applicable to each of these circumstances.

For illustration and discussion purposes, reference will be made in this document to producer applications and licensing decisions; however the Working Group believes that in most situations, the scope of the license does not impact the jurisdiction's license determination (issue, deny, place on probation, etc.). Therefore we recommend these guidelines for other license types such as adjusters, surplus lines agents, title agents and bail bondsmen.

Criminal History Background Review

The producer Uniform Licensing Standards (ULS) require the following background review for new applicants:¹

Standard 14. Background Checks: (Standard 14C for resident only)

Background checks will be conducted through the following three steps:

- A. States will ask and review the answers to the standard background questions contained on the Uniform Applications;
- B. States will run a check against the NAIC RIRS/SPLD and 1033 Application; and
- C(1). States will fingerprint their resident producer applicants and conduct state and federal criminal background checks on new resident producer applicants; or

¹Note Standard 14A and B apply to both resident and nonresident applicants while 14C is for resident applicants only

C(2) If a state lacks the authority or resources to accept and receive data from the FBI, it shall conduct a statewide criminal history background check through the appropriate governmental agency for new resident producer applicants until such time as it obtains the appropriate authority.

In order to be fully compliant with standard 14, a state must fingerprint and conduct state and federal criminal history background checks on their new resident applicants. Although electronic fingerprinting is strongly encouraged, a state will be compliant with this requirement if the fingerprints are obtained through paper when electronic means are unavailable.

A state may, but is not required to fingerprint resident producers not previously fingerprinted at the time of application or when adding additional lines of authority to their license. States shall not fingerprint nonresident applicants.

At the time of initial application, the applicant is asked the following question:

Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?

“Crime” includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. “Convicted” includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

The applicant is also asked if the crime is a felony, has he or she applied for a written consent when required by 18 USC 1033 and if so, was the written consent granted. A similar question is asked on the Uniform renewal application; however the applicant need only answer based on any changes since the last renewal.²

Applicants who respond affirmatively to this question are required to provide a copy of the charging document(s), the official document(s) which demonstrates the resolution of the charge(s) or any final judgment and a written statement explaining the circumstances of each incident. If the applicant answers yes to the sub-question regarding any felony convictions requiring a written consent as required by 18 USC 1033, a copy of the written consent is requested. The working group recommends that each jurisdiction require such information prior to making a decision regarding licensure.

Upon receipt of this documentation, the Department should consider the nature of the crime committed and the circumstances surrounding the crime. This information should be compared to the duties requisite to holding an insurance license and any regulatory requirements or responsibilities that apply to a licensee such as a fiduciary duty. Although this list is not exhaustive, the following types of crimes may have impact on fitness for licensure and warrant further review:

A conviction which evidences present or potential unfitness to perform the functions authorized under the license in a manner consistent with the public health, safety and welfare including, but not limited to:

1. Crimes involving dishonesty or fraud
2. Convictions involving conduct related to the applicant’s business conduct or profession
3. Crimes involving theft, burglary or robbery
4. Crimes involving breach of trust or breach of fiduciary duties
5. Violent crimes including, but not limited to murder, attempted murder, assault, rape and other sexual crimes that impact public safety
6. Multiple convictions that demonstrate a repeated disregard for the law

Department staff should review Appendix F the NAIC’s Antifraud (D) Task Force’s *Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994: 18 United States Code Sections 1033 and 1034* for examples of the types of criminal felonies that involve dishonesty or breach of trust.

²The current draft of changes to the uniform application awaiting adoption by Executive/Plenary includes language that requires disclosure only if the Department has not been previously advised

The Department should also review and consider the applicant's statement and evidence of rehabilitation. Information to consider includes, but is not limited to:

1. The nature and severity of the crime(s).
2. The total criminal record of the applicant – is this a single conviction or a pattern of convictions?
3. The age of the applicant at the time of the crime.
4. The length of time that has passed since the incident(s).
5. Whether the applicant has fulfilled the terms of parole or probation.
6. Whether the applicant has satisfied any requirement to make restitution.
7. Whether the crime adversely impacted other person(s).
8. Whether the applicant has been involved with or completed any program to address the underlying circumstances that may have played a part in conduct that lead to committing the crime (such as rehabilitation, counseling or community involvement to address social problems).
9. Character references
10. Whether the applicant was given a certificate of good conduct or a pardon to the offense(s) and the timing of such award (for example, part of a plea bargain or after successful completion of the sentencing requirements).

Once the information and documentation has been reviewed, the Department has several choices. While different jurisdictions have laws that permit slightly different practices, some options include: Issue the license, deny the application, issue a probationary license or in situations where a license is already in place, suspend, revoke or refuse to renew the license. Section 12 of the Producer Licensing Model Act provides guidance for reasons to take action on the application or license. The primary goal of the review and determination is to assess whether the applicant/licensee is sufficiently rehabilitated such that he is fit to hold the type of license to be issued. If the determination is that evidence does not exist to show rehabilitation and the issuing the license could impact public health, safety or welfare, the application will be denied or the license revoked. In a situation where the documentation demonstrates that either the nature of the crime would not impact the fitness for licensure or that the applicant is sufficiently rehabilitated to hold a license, the Department will issue the license. If there may be a question of fitness for all aspects of the license, the Department may consider a probationary license where the applicant must work under certain constraints for a period of time (e.g. limited scope of duties; periodic reports to the Department; working under the oversight of another licensee). The Department may also consider issuance of a restricted license in which the licensee must abide by all laws or their license may be summarily suspended or revoked.

In some situations, such as where the nature of the crime would not normally affect the ability to obtain a license, however the applicant failed to disclose the conviction, the Department may issue the license only after payment of a monetary penalty and all the conditions thereto.

If the license is denied or issued with restrictions, notice should be provided in writing to the applicant or licensee and the jurisdiction's appeal rights and procedures, if applicable, should be contained within the notice. In some jurisdictions, the Department must afford a right to a hearing to the applicant. A statement of issues or accusation is issued in conjunction with the right to a hearing. Once action is finalized, if the license is denied or limited or if the applicant is fined, the Department should post the action on the NAIC's Regulatory Information Retrieval System (RIRS).

Criminal Background and the 1033 Written Consent Process

18 U.S.C. Sec. 1033 makes it a felony crime for a person convicted of a felony involving dishonesty or breach of trust or an offense under 18 U.S.C. § 1033 to engage in the business of insurance without having first obtained the written consent of the Commissioner or his or her designee. The NAIC's Antifraud (D) Task Force has published a document entitled *Guidelines for State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994: 18 United States Code Sections 1033 and 1034* (also known as the "1033 Guidelines") that jurisdictions should refer to for standard procedures regarding 1033 written consent. This document also encourages all jurisdictions to defer to the resident state for the 1033 written consent and, once issued, to honor the written consent in all other nonresident jurisdictions.

Regulatory Actions

At the time of initial application for a producer license, question 2 asks:

2. Have you or any business in which you are or were an owner, partner, officer or director, or member or manager of limited liability company, ever been involved in an administrative proceeding regarding any professional or occupational license, or registration?

“Involved” means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation or surrendering a license to resolve an administrative action. “Involved” also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license. “Involved” also means having a license application denied or the act of withdrawing an application to avoid a denial. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.³

The uniform producer renewal application asks the licensee to provide updated information on regulatory actions that may have occurred since the last renewal. If the applicant’s response is affirmative, a written statement identifying the type of license and explaining the circumstances must be provided, as well as copies of the documents that state the charge(s) and document the resolution.

When the jurisdiction reviews an applicant or licensee’s history of regulatory actions, it should consider the history in a manner similar to its treatment of criminal history. Items to consider include but are not limited to:

1. What was the nature of the regulatory action?
2. Does the violation evidence present or potential unfitness to perform the functions authorized under the license in a manner consistent with the public health, safety and welfare?
3. What license type was subject to the regulatory action and does the conduct directly relate to activities for which the applicant or licensee would engage in while selling, soliciting or negotiating insurance?
4. What is the total regulatory record of the applicant – is this a single incident or a pattern of violations? Patterns of violations should not include regulatory action in multiple states as a result of an isolated action in a single state (such as the domino effect of failure to report a regulatory action within 30 days)
5. The age of the applicant at the time of the administrative action.
6. The length of time that has passed since the incident(s).
7. Whether the action resulted in probation, suspension or revocation of the license and if applicant has fulfilled the terms of any license suspension or probation.
8. Whether the applicant has satisfied any requirement to make restitution or other terms of the consent agreement or order from the regulatory agency.
9. Whether the regulatory violation adversely impacted other person(s).
10. Whether the regulatory action involved fraud, dishonesty, breach of trust or fiduciary duty or misappropriation of premiums or other funds held on behalf of others.
11. Whether the resident state took action against the applicant/licensee.

Like affirmative responses to criminal background questions, once the information and documentation has been reviewed, the Department has several choices. While different jurisdictions have laws that permit slightly different practices, some options include: issue the license, deny the application, issue a probationary license or in situations where a license is already in place, suspend, revoke or refuse to renew the license. Section 12 of the Producer Licensing Model Act provides guidance for reasons to take action on the application or license. The primary goal of the review and determination is to assess whether the applicant/licensee is fit to hold the type of license to be issued. If the determination is that evidence does not exist to show rehabilitation and the issuing the license could impact public health, safety or welfare, the application will be denied or the license revoked. In a situation where the documentation demonstrates that either the nature of the regulatory action would not impact the fitness for licensure or that the applicant is sufficiently rehabilitated to hold a license, the Department will issue the license. If there may be a question of fitness for all aspects of the license, the Department may consider a probationary license where the applicant must work under certain constraints for a period of time (e.g. limited scope of duties; periodic reports to the Department; working under the oversight of another licensee). The Department may also consider issuance of a restricted license in which the licensee must abide by all laws or their license may be summarily suspended or revoked.

In some situations, such as where the nature of the regulatory action would not normally affect the ability to obtain a license, however the applicant failed to disclose the action, the Department may issue the license only after payment of a monetary penalty.

If the license is denied or issued with restrictions, notice should be provided in writing to the applicant or licensee and the jurisdiction’s appeal rights and procedures, if applicable, should be contained within the notice. In some jurisdictions, the

³The current draft of changes to the uniform application awaiting adoption by Executive/Plenary clarifies the language to state “Have you ever been named or involved as a party in an administrative proceeding regarding any professional or occupational license or registration?”

Department must afford a right to a hearing to the applicant. A statement of issues or accusation is issued in conjunction with the right to a hearing. Once action is finalized, if the license is denied or limited or if the applicant is fined, the Department should post the action on the NAIC's Regulatory Information Retrieval System (RIRS).

Deference to the Resident State

As stated previously, the ultimate goal of all jurisdictions conducting a uniform background check including asking the questions on the NAIC Uniform application; reviewing RIRS and 1033 Application data and resident states fingerprinting resident applicants and conducting state and federal criminal history background checks is to provide a process whereby the nonresident jurisdictions can defer to the resident states for licensing determinations whenever possible. If a nonresident state becomes aware of a criminal or regulatory action against the applicant or licensee that may affect fitness for licensure, it is recommended that, if its laws permit, contact should be made with the resident state to confirm that the state was aware of the background at the time the decision was made to issue the license. If the answer is yes, every attempt should be made to defer to the resident state's determination.

It should be noted that there may be situations in which a nonresident state may decline an initial application despite the applicant having a license in the home state. An example would be, in situations where the crime or regulatory offense occurred after the home state license is issued, it may, depending on the jurisdiction, be more difficult to deny a renewal or revoke the license than it is to deny an initial license. There may also be situations where the resident state was not made aware of certain details that could affect the licensing determination. In such situations it is possible that the nonresident state may deny the initial application while the resident state initiates appropriate administrative action to revoke the existing license.

In order to effectively render timely and reasonable licensing determinations in a uniform manner while still providing appropriate consumer protections, all regulatory jurisdictions are encouraged to communicate with each other and when warranted, explain the rationale behind licensing determinations. In situations where adverse licensing determinations are rendered, the regulator should post the information on RIRS or 1033 Application as appropriate, so other jurisdictions are notified and can take appropriate regulatory action.

Part III - Section I – Appendix X

Uniform Appointment Process

Uniform Appointment Procedures

1. Any state that requires notice of appointment of an insurance producer acting as an agent of an insurer will adopt the uniform procedures for notice of appointments/terminations of such producers as soon as is practicable or when that state adopts the requirements of the NAIC Producer Licensing Model Act.
2. States will encourage electronic filing and will discourage and phase out paper filings no later than January 1, 2004. Paper filings will be accepted, but will only be accepted upon written request to the state.
3. States will use the new uniform appointment form for paper appointments.
4. States will utilize a billing system for payment by insurers of initial appointments. Each state may elect to bill either monthly, quarterly or annually. States that are unable to change their laws to switch to a billing system will endeavor to utilize the banking service offered by NIPR so that the method of payment does not interfere with the use of electronic process.
5. Insurers shall select the effective date of the initial appointment. The date must be expressed as mm/dd/yyyy. The appointment shall be continuous until such appointment is terminated. Each state shall establish a fee billing date by zone or other method. Insurers shall pay the appropriate fee for their appointments as of the billing date. Each state, if necessary, will enact or promulgate language similar to the following:

An insurer shall, within 15 days from the date the agency contract is executed or the first insurance application is submitted or longer if specified by state law, after its appointment or termination of its agency relationship with a producer, notify the commissioner (director) in a format prescribed by the commissioner (director).

Failure to timely file appointment or termination notifications may subject an insurer to sanctions under (insert reference to regulation that sets amount).

6. Only one appointment/termination form or transaction shall be required per producer per company. It is the insurer's responsibility to verify that the producer is licensed and qualified to sell all products the producer sells for that insurer. States will strongly consider enacting language which permits, upon a finding of the commissioner (director), filing appointments/terminations via use of holding company numbers. Appointments may not be required for insurance agencies. (Each state will determine whether appointments will be required for insurance agencies.)
7. Terminations for cause may be submitted on the uniform form (or electronically). Additional written documentation must be submitted to the Insurance Department in accordance with the requirements of (insert appropriate citation to the state statutory provision based on NAIC Producer Licensing Model Act Section 15). Any information received by the Insurance Department must remain confidential in accordance with the (insert appropriate citation to the state statutory provision based on NAIC Producer Licensing Model Act Section 15).
8. Suggested definitions for states to adopt:

Appointment – means a notification filed with the insurance department that an insurer has established an agency relationship with a producer.

Appointment renewal – Continuation of a company's existing appointment based on payment of the required fee without submission of an appointment form.

Termination for cause – means an insurer has ended its agency relationship with a producer for one of the reasons set forth in (NAIC Producer Model Section 12) or that the producer has been found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities set forth in (NAIC Producer Model Section 12).

9. Appointment renewals – In states that renew appointments, the following procedures shall be used:

States shall provide or publish pre-notice to companies informing them that appointment renewals are imminent.

At the time for renewal, a state will generate an invoice and may include a renewal list for delivery to each insurer. States shall work to develop electronic methods to deliver the renewal lists.

The invoice may not be altered, amended or used for appointing or terminating producers.

Payment is due at the insurance department on the prescribed due date.

The only items to be returned to the department or the department's designee shall be the invoice and the payment.

States shall establish a dispute resolution process to accommodate errors after the fact.

Part III - Section I – Appendix Y

**REVISIONS AND CLARIFICATIONS TO THE UNIFORM LICENSING STANDARDS**

The uniform licensing standards, adopted by the NAIC in December 2002, were revised in December 2008 based upon issues identified during the Producer Licensing Assessments conducted in 2007 and 2008. The standards were revised to more specifically address limited line requirements in 2010 and 2011. In the Fall of 2012 the Producer Licensing (EX) Working Group added new language to the standards addressing Testing and Examination language.

The standards are broken down into the following broad categories (1) licensing qualifications standards; (2) pre-licensing education requirements; (3) integrity and personal background checks; (4) application for licensure; (5) the appointment process; (6) continuing education requirements; (7) limited lines, (8) surplus lines, (9) commercial lines multi-state exemption and (10) commission sharing.

LICENSING QUALIFICATIONS STANDARDS**1. Age:**

Applicant must be 18 years of age.

2. Citizenship:

No U.S. citizenship is required but applicant must have legal work authorization if he/she is not a U.S. citizen. The resident state will require proof of proper work authorization for non-citizens at the time of initial application. The resident state may ask for evidence of current work authorization if the initial work papers have expired.

3. Education:

No high school diploma is required.

PRE-LICENSING EDUCATION TRAINING STANDARDS FOR RESIDENT APPLICANTS**4. Hours Required:**

No pre-licensing education is required; however, states that require pre-licensing education shall require 20 hours of pre-licensing education per major line of authority. For example, an applicant seeking 2 major lines of authority, such as the property line and the casualty line needs 40 hours of pre-licensing education. If a state has less or more hours per line of authority, it would not be compliant with this standard and will need to increase or decrease the number of required hours. States may waive pre-licensing education requirements for the variable line of authority. States shall independently determine the content requirements for pre-licensing education. No state shall require additional pre-licensing education for non-resident applicants or non-resident producers who change their state of residency.

5. Training Method:

States must accept classroom study verifiable self-study or a combination of both. Online learning may be a combination of verifiable self-study and classroom study. Classroom study may include distance learning, webinars, virtual classes and traditional classroom teaching. States have discretion to limit, but may not prohibit, verifiable self study.

6. Verification of Completion:

Applicant or pre-licensing education provider must submit original certificate of completion or verification of completion to the insurance department or to the testing vendor of the applicant's home state through a hard copy submission or electronic transmission.

7. Waiver/Exemption:

States must allow for waiver or exemption of pre-licensing education if the applicant can verify he or she has obtained certain verifiable, recognized professional designation(s) that requires education and formal testing, or a bachelor's or advanced degree in insurance. The following designations are **examples** of those which may be authorized for waiver of pre-licensing education:

- CEBS, ChFC, CIC, CFP, CLU, FLMI, LUTCF for Life Line of Authority.
- RHU, CEBS, REBC, HIA for Health Line of Authority.
- AAI, ARM, CIC, CPCU for Property and Casualty Lines of Authority.

A bachelor's degree or advanced degree in insurance would waive/exempt the pre-licensing education for all lines of authority.

PRODUCER LICENSING TEST STANDARDS FOR RESIDENT APPLICANTS

8. Lines of Authority:

States must adopt the six major lines as defined in the Producer Licensing Model Act (PLMA). These are as follows: (1) Life, (2) Accident and Health or Sickness, (3) Property, (4) Casualty, (5) Variable Life and Variable Annuity Products and (6) Personal Lines. States must offer a separate test for each major line of authority; however, combination exams may be offered. States may, but are not required to, waive testing for the Variable Products line. The resident state shall verify an applicant for Variable Product line has successfully completed the appropriate securities exams and is registered with FINRA.

9. Waiver/Exemption:

No waiver or exemption except for those noted in Section 9 of the PLMA. An individual who applies for an insurance producer license in this state and who was previously licensed for the same lines of authority in another state shall not be required to complete any pre-licensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety (90) days of the cancellation of the applicant's previous license and at the time of cancellation, the applicant was in good standing in that state. Verification shall be done via the State Producer Licensing Database (SPLD) unless data is unavailable.

10. Exam Content and Testing Administration Standards:

States will implement the Producer testing Programs Recommended Best Practices found in Chapter 8 of the NAIC State Licensing Handbook, attached as an Appendix to these Standards.

Producer Exam Content and Testing Administration Recommended Best Practices for Regulators

- States should use accepted psychometric methods including job analysis to determine if the examination content falls within the content domain that a minimally competent candidate of that specific line of authority tested would be expected to know.
- States should set passing scores (cut scores) and difficulty level using psychometric methods and appropriate Subject Matter Experts and based on what an entry level producer needs to know.
- States are encouraged to move to one part exams
- States should require the test vendor or other entity responsible for test development, to document the process for ensuring quality control and validity of the examination including psychometric review and editing and analysis of item bias or cultural and gender sensitivity.
- To allow for meaningful comparison, all jurisdictions should define first time pass rate as the percentage of candidates who pass the whole test the first time.
- At least annually, reports regarding exam pass rates, candidate demographics when collected, and number of exams administered should be made available to the public. Reports should include first-time pass success; and average scoring by subject area. Whenever possible, the reports should be available by education provider and provided to those providers
- A state advisory committee consisting of regulators and industry, including, where possible, recently licensed producers, should annually work with the testing vendor to review the questions on each examination form for substantive and psychometric requirements. If during any other time any examination results exhibit significant unexplained deviations, the examination should be reviewed.

- States should work with testing vendors and approve Candidate Information Bulletins (CIB) that describe the examinations and examination policies and procedures, and provide sufficient examination content outline and study references for the candidate to prepare for the examination. Updated editions of the CIB/ Content Outline should be provided to prelicensing education providers at least six weeks in advance of implementation so that training materials can be updated.
- Testing should be made available at locations reasonably convenient to residents of all areas of the state, with registration available online or by telephone and the ability for a candidate to schedule testing within 2- 5 business days of registration.
- Pass/Fail notices should be issued at exam sites upon taking the exam. The fail notice should break scores out by each subject area. The state should provide a method to facilitate prompt retesting, while allowing a reasonable time for candidates to review and prepare for retest.
- States should deliver exams in a secure test center network that employs qualified test proctors.
- States should set clear performance standards for test vendors and require accountability

INTEGRITY/PERSONAL QUALIFICATIONS/BACKGROUND CHECKS STANDARDS

11. Integrity/Personal Qualifications:

At a minimum, as defined in Section 12 the PLMA.

12. Background Checks: (Standard 12C for resident only)

Background checks will be conducted through the following three steps:

- States will ask and review the answers to the standard background questions contained on the Uniform Applications;
- States will run a check against the NAIC RIRS/SPLD and 1033 SDR; and

C(1). States will fingerprint their resident producer applicants for major lines of authority, and crop and where required, designated responsible producers for limited lines business entities and conduct state and federal criminal background checks on new resident producer applicants; or

C(2). If a state lacks the authority or resources to accept and receive data from the FBI, it shall conduct a statewide criminal history background check through the appropriate governmental agency for new resident producer applicants for major lines of authority, and crop and where required, designated responsible producers for limited lines business entities until such time as it obtains the appropriate authority.

In order to be fully compliant with standard 14, a state must fingerprint and conduct state and federal criminal history background checks on their new resident applicants. Although electronic fingerprinting is strongly encouraged, a state will be compliant with this requirement if the fingerprints are obtained through paper when electronic means are unavailable.

A state may, but is not required to fingerprint resident producers not previously fingerprinted at the time of application or when adding additional lines of authority to their license. States shall not fingerprint nonresident applicants.

APPLICATION FOR LICENSURE/LICENSE STRUCTURE STANDARDS

13. Application:

States must use the current version of the NAIC Uniform Application for initial licensing as set forth in the PLMA. A state which accepts electronic applications shall be considered compliant if it is using the same data fields and questions contained in the most current version of the NAIC Uniform Application.

14. Lines of Authority Issued:

Six major lines of authority consistent with the definitions found in the NAIC's PLMA. A state's definition of a major line of authority should not expand or reduce the products that can be offered under the major lines defined by PLMA. Each major line of authority must be offered independently and cannot be offered as a limited line (such as industrial life or fire or personal lines or auto).

A state may require a life license requirement for a resident producer seeking variable products authority. States that adopt surety as a separate line must designate it as a limited line since surety is typically included within the casualty line of authority.

If an applicant is in good standing in his or her home state for the line(s) of authority requested, the nonresident state shall grant the line(s) of authority without further verification of eligibility for the authority. This standard does not limit the state's ability to deny the license based on integrity/personal qualifications and background check standards

Core limited lines as defined in Standard-33. If a state elects to offer other non-core limited lines, such as legal expense insurance or pet insurance, it shall do so in accordance with Standard 37.

15. License Term:

The term of the license shall be perpetual contingent upon payment of fee and completion of resident CE, as set forth in Subsection 7B of the PLMA.

16. Continuation Process:

Individual licenses will renew/continue on a biennial basis on the licensee's month of birth or date of birth. Business entity licenses will continue on a date certain.

States are compliant when using either date of birth or birth month. Birth month is defined as the last date of birth month. States that need to make changes to become compliant, however, are urged to choose birth month.

States may wish to consider having the year of renewal/continuation based on the year of birth. For example, if the producer was born in an odd-numbered year, the producer would renew his/her license in odd numbered years. If the producer was born in an even-numbered year, the producer would renew his/her license in even numbered years.

If a state is only collecting a fee for continuation, no application is required; however, if the state is using an application or asking questions as part of the renewal/continuation process, the state must use only the most current version of the NAIC Uniform Application for Producer License Renewal/Continuation. A state shall be considered compliant if the state is using the same data fields contained in the most current version of the NAIC Uniform Application.

17. Enforcement:

Denial/revocation and imposition of civil penalties at minimum as established in Section 12 of the PLMA. The state shall participate in the NAIC attachment warehouse Personal Information Capture System (PICS) alerts or another appropriate mechanism to monitor actions against existing licensees and take necessary action, when warranted based on the information obtained through such notifications.

18. Fee:

Non-resident licensing fees must not be so high as to be a barrier to entry as set forth in GLBA.

APPOINTMENT PROCESS STANDARDS

19. Process:

If a state requires appointments, it shall follow the appointment and termination process as defined in the Uniform Appointment Process or use the NIPR electronic appointment and termination process. In addition, states shall mail a pre-notice renewal letter or provide electronic notice to companies informing them that appointment renewals are imminent. (Process and form attached).

20. Appointment Renewal Cycle:

Appointments shall be continuous subject to payment of any applicable fees. Fees must be calculated as of a date certain.

CONTINUING EDUCATION REQUIREMENTS STANDARDS FOR RESIDENT PRODUCERS**21. Credit Required:**

Twenty-four (24) hours of CE for all major lines of authority with three (3) of the twenty-four hours covering ethics. Fifty minutes shall equal one hour of CE.

22. Term of Compliance:

The biennial CE compliance period shall coincide with the producer's license continuation date.

23. Lines of Authority:

CE shall be required for the six (6) major lines of authority contained in the PLMA.

24. Subject Area Requirements:

States may determine the subject area requirements for CE except that 3 of the 24 hours of CE shall be in ethics.

25. Repeating of CE Courses:

Producers may repeat CE courses for credit but will not be permitted to take a course for credit more than once in a license continuation period.

26. CE Study Method:

States must accept both classroom study, verifiable self-study or a combination of both. On-line learning may be a combination of verifiable self-study and classroom study. Classroom study may include distance learning, webinars, virtual classes and traditional classroom. States have discretion to limit, but may not prohibit, verifiable self study.

27. Verification of Completion:

The Producer or CE provider must submit the original certificate of completion or verification of completion to the insurance department of the producer's home state through either a hard copy submission or electronic transmission.

28. Waiver/Exemption:

None, except as provided in subsection 7D of the PLMA.

A state may not permit any waivers or exemptions except as provided in subsection 7D of the PLMA. States must eliminate waivers based on age or years in the business on a prospective basis. In so doing, those producers currently licensed and exempt or eligible for a waiver prior to the elimination of the exemption would remain exempt. A state which has successfully effectuated such a change shall be considered compliant with this standard. States with waivers for professional designations should consider allowing CE credits for filed and approved courses used to obtain and maintain professional designations.

29. Course Approval Standards and Process:

Follow the standards set forth in the CE Reciprocity (CER) Course Filing Form (CER Form and instructions attached).

30. Advertising of CE Programs:

CE hours should not be advertised until state course approval is received; however, if the course is advertised prior to start approval, the advertisement must clearly state that the course is pending state approval.

LIMITED LINES UNIFORMITY STANDARDS**31. Definitions of Core Limited Lines:**

A state shall have nine or fewer limited lines, which include the core limited lines. A state shall adopt definitions for car rental, credit, crop, and travel that are consistent with the definition of the core limited lines adopted by the NAIC in Appendix A. The state must have Credit as defined in PLMA.

32. Limited Lines Travel Insurance Standard (adopted 8/16/10)

- Definitions.
 - "Limited Lines Travel Insurance Producer" means an insurer designee, such as a managing general underwriter, managing general agent, or limited lines producer of Travel Insurance.
 - "Travel Retailer" means a business entity that offers and disseminates Travel Insurance on behalf and under the direction of a Limited Line Travel Insurance Producer.

- “Travel Insurance” means Insurance coverage for personal risks incident to planned travel, including but not limited to:
 - Interruption or cancellation of trip or event;
 - Loss of baggage or personal effects;
 - Damages to accommodations or rental vehicles;
 - Sickness, accident, disability or death occurring during travel.

Travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting 6 months or longer, including for example, those working overseas as an expatriate or military personnel being deployed.

- A Travel Retailer may offer and disseminate Travel Insurance under Limited Lines Travel Insurance Producer business entity (“licensed business entity”) license only, if the Limited Lines Travel Insurance Producer holds a business entity license and:
 - The licensed business entity is clearly identified as the licensed producer on marketing materials and fulfillment packages distributed by Travel Retailers to customers; identification shall include the entity’s name and contact information;
 - The licensed business entity keeps a register of each Travel Retailer that offers Travel Insurance on the licensed business entity’s behalf. The register shall include the name and contact information of the Travel Retailer and an officer or person who directs or controls the Travel Retailer’s operations, and the Travel Retailer’s FEIN number. The licensed business entity shall also certify that the Travel Retailer registered complies with 18 USC 1033. The licensed business entity shall submit such Register within 30 days upon request by the state insurance department;
 - The licensed business entity has designated one of its employees as a licensed individual producer (a “Designated Responsible Producer” or “DRP”) responsible for the business entity’s compliance with the insurance laws, rules and regulations of the state;
 - The DRP, president, secretary, treasurer, and any other officer or person who directs or controls the licensed business entity’s insurance operations comply with the fingerprinting requirements applicable to insurance producers in the resident state of the business entity;
 - The licensed business entity has paid all applicable insurance producer licensing fees as set-forth in applicable state law; and
 - The licensed business entity requires each employee of the Travel Retailer whose duties include offering and disseminating Travel Insurance to receive a program of instruction or training, which may be subject to review by the commissioner.
- A Travel Retailer, including its employees, whose activities are limited to offering Travel Insurance on behalf of and under the direction of a licensed business entity meeting the conditions stated in paragraph A above, is authorized to do so upon registration by the licensed business entity as described in paragraph A.2.above.
- As the insurer designee, the Limited Lines Travel Insurance Producer is responsible for the acts of the Travel Retailer.

Drafting Note: For purposes of state implementation, states may incorporate Limited Lines Travel Insurance as an authorized limited line by way of statute, administrative regulation, order, bulletin or similar regulatory action pursuant to the state statutory authority for designation of limited lines.

33. Crop Limited Lines Standard

Both individuals and business entities selling, soliciting or negotiating crop insurance are required to be licensed. If the state requires appointments or affiliations for other lines of insurance, they are also required for crop.

34. Testing and Prelicensing Education Requirement Resident Applicants

For crop insurance, states may independently determine the need for or extent of prelicensing education ~~independently~~, as well as the content requirements, if prelicensing education is required. States requiring prelicensing education may waive it upon verification of completion of the RMA required 12 hour structured training program.

There will be no testing requirement for limited lines; although, states may choose to test for certain limited lines, such as surety, if a limited line, and crop, as long as content is limited to the subject matter. States requiring testing for crop may waive it upon verification of passing the RMA required basic competency test No state shall require additional pre-licensing education or testing for nonresident applicants or non-resident producers who change their state of residency.

35. Standards for Non-Core limited lines:

A state is not required to implement any non-core limited line of authority for which a state does not already require a license or which is already encompassed within a major line of authority; however states should consider products where the nature of the insurance offered is incidental to the product being sold to be limited line insurance products. If a state offers non-core limited lines such as pet insurance or legal expense insurance, it shall do so in accordance with the following licensing requirements.

- A.) A limited line license for non-core limited lines identified by the Insurance Commissioner may be issued to a person or entity, inclusive of profit and non-profit, who sells solicits, or negotiates the limited line insurance.
- B.) A business entity may act as a Limited Line Insurance Producer if it:
 - (1) Has obtained the Limited Lines Insurance Producer License by submitting the appropriate application form and paid all applicable fees as set forth in applicable state law;
 - (2) The business entity has designated an individual Limited Lines Insurance Producer to act as the business entity's Designated Responsible Producer (DRP) and who would be responsible for the business entity's compliance with insurance laws, rules and regulations of the business entity's resident state.
 - (3) The designated individual must meet the requirements for a DRP pursuant to the insurance laws, rules and regulations of the business entity's resident state.
 - (4) The business entity DRP and officers must comply with the fingerprint requirement applicable to insurance producers in the resident state of the business entity; and
 - (5) The licensed business entity keeps a register of each employee that offers Insurance on the licensed business entity's behalf. The licensed business entity shall also certify that the registered employees comply with 18 USC 1033. The licensed business entity shall submit such Register within 30 days upon request by the state insurance department.
- C. An employee of the limited lines insurance producer business entity that offers and disseminates limited line insurance on behalf of the business entity and under the direction of a Limited Line Insurance Producer is not required to be licensed if the employee:
 - (1.) Receives a program of instruction or training subject to review by the insurance department prior to receiving permission to operate on behalf of the business entity and under the direction of the DRP; and
 - (2.) Does not receive a commission or compensation that is dependent on the placement of the insurance product.
- D. Individuals who sell, solicit or negotiate insurance or who receive commission or compensation that is dependent on the placement of the insurance product must obtain a limited line insurance producer license. The individual applicant must:
 - (1) Obtain the Limited Lines Insurance Producer License by submitting the appropriate application form and paying all applicable fees as set forth in applicable state law; and
 - (2) Receive a program of instruction or training subject to review by the insurance department
- E. No preclicensing or testing shall be required for the identified non-core limited lines insurance. All employees offering the products; individuals licensed to sell, solicit or negotiate; insurance producers and all DRP's shall receive a program of instruction.

Definitions for legal expense and pet insurance are provided for guidance and states are encouraged to adopt the same or substantially similar terms.

States may elect to add a miscellaneous limited line to issue a nonresident license for those nonresidents who have requested a line of authority outside the major or core limited lines and not offered by the state. A state must issue the nonresident a license in compliance with GLBA.

36. CE Requirement Resident Producers:

CE will not be required, however, due to federal requirements; states may require CE for Crop authority

SURPLUS LINES STANDARDS**37. Surplus Line Standards:**

States shall require an underlying property & casualty license prior to the issuance of a resident surplus lines license.

38. Surplus Line Exam

States may, but are not required to have a surplus line examination.

COMMERCIAL LINE MULTI-STATE EXEMPTION STANDARD**39. Commercial Line Multiple Exemption**

The state must adopt Section 4B (6); of the Producer Licensing Model Act which states:

A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

This exemption applies at minimum to admitted business.

COMMISSION SHARING STANDARD**40. Commission Sharing**

The state must adopt Section 13D of the Producer Licensing Model Act which states:

An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate [insert appropriate reference to state law (i.e., citation to anti-rebating statute, if applicable)]. Reference to the anti-rebating statute is not exclusive. It may also refer to other state laws which limit the scope.

APPENDIX A:**LIMITED LINES DEFINITIONS (Originally Adopted on 6/10/02. Amended 8/16/10)**

CAR RENTAL – insurance offered, sold, or solicited in connection with and incidental to the rental of rental cars for a period of [insert relevant time period per state law], whether at the rental office or by pre-selection of coverage in master, corporate, group or individual agreements that (i) is non-transferable; (ii) applies only to the rental car that is the subject of the rental agreement; and (iii) is limited to the following kinds of insurance:

- Personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs with the rental car during the rental period;
- Liability insurance that provides protection to the renters and other authorized drivers of a rental car for liability arising from the operation or use of the rental car during the rental period;
- Personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period;
- Roadside assistance and emergency sickness protection insurance; or
- Any other coverage designated by the insurance commissioner.

CREDIT – credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, or any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation and that is designated by the insurance commissioner as limited line credit insurance.

CROP INSURANCE – Insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease or other yield-reducing conditions or perils provided by the private insurance market, or that is subsidized by the Federal Crop Insurance Corporation, including Multi-Peril Crop Insurance.

SURETY – Insurance or bond that covers obligations to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust. For purpose of limited line licensing, Surety does not include Surety Bail Bonds.

(OPTIONAL) Surety also includes surety insurance as defined in (insert state-specific reference). *It is recommended that surety be eliminated as a core limited line going forward and states considering surety are encouraged to offer it under the Casualty major line (adopted on 8/16/10)*

TRAVEL INSURANCE (Amended 8/16/10)

Means Insurance coverage for personal risks incident to planned travel, including but not limited to:

- A. Interruption or cancellation of trip or event;
- B. Loss of baggage or personal effects;
- C. Damages to accommodations or rental vehicles;
- D. Sickness, accident, disability or death occurring during travel.

Travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting 6 months or longer, including for example, those working overseas as an ex-patriot or military personnel being deployed.

Recommended Definitions for Certain Non-Core Limited Lines Adopted by NAIC Full Membership in August 2011

- (1) “Limited Lines Pet Insurance Producer” means an insurer designee, such as a managing general underwriter, managing general agent, or limited lines producer of Pet Insurance.
- (2) “Pet Insurance” means health insurance coverage including but not limited to coverage for injury, illness, and wellness, for pets such as birds, cats, dogs, and rabbits.
- (3) “Legal Expense Insurance” means a contractual obligation to provide specific legal services, or to reimburse for specific legal expenses, in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiaries individually or by a third person for them, but does not include the provision of, or reimbursement for, legal services incidental to other insurance coverages.; or consultation or advice in connection with, or a part of referral services. Legal expenses insurance does not include a retainer agreement directly between the lawyer and the client, where no third party is at risk.

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Part III - Section I – Appendix Z

Licensable / Non-Licensable: Implementation Guidelines

Adopted by the Producer Licensing (EX) Working Group and Producer Licensing (EX) Task Force 8.16.10

| ACTIVITIES | LICENSABLE “AGENT” ACTS | NON- LICENSABLE “CLERICAL” ACTS |
|---|-------------------------------|--|
| <i>Solicit</i> | | |
| Dispense brochures, and other general information (so long as no conversation relating to the terms of a contract) | | X |
| Disseminating buyer’s guides, applications for coverage, coverage selection forms or other similar forms in response to a request from prospective or current policyholders | | X |
| Receiving and recording information from a policyholder to give to an insurance producer for his or her response | | X |
| Scheduling appointments with insurance producers to discuss insurance | | X |
| Offering general information, which may include a description of the coverage, and the price, as well as processing the application, collecting premiums, and other activities permissible under the Guidelines, on behalf of a licensed business entity that is clearly identified as such on the marketing materials and fulfillment packages for limited lines of insurance offered, solicited, or sold to the consumer under an individual, group or group enrolment under a maker policy in with an incidental to non insurance goods or services, including coverage for (i) travel, (ii) car rental, (iii) [state may list other lines it fits into this category including self-storage, pet, portable electronics]; or [(iv)] another similar coverages as designated by the insurance commissioner. | | X |
| Disseminating information as to rates secured by reference to a published or printed list or computer data base of standard rates | X | |
| <i>Negotiate</i> | | |
| Communicating with the policyholder or prospective policyholder in order to obtain factual information necessary for an insurance producer to complete a review | | X |
| Explain, discuss or interpret coverage, analyze exposures or policies, or give opinions or recommendations as to coverage | X | |
| Discuss the effect of age, health or other risk-related conditions of the prospective policyholder | X | |
| Counsel, urge or advise any prospective purchaser to buy a particular policy or to insure with a particular company | X | |
| <i>Sell</i> | | |
| Receiving requests for coverage for transmittal to a licensed insurance producer or for processing through an automated system developed and maintained under the supervision of an insurer or licensed insurance producer | | X |

| ACTIVITIES | LICENSABLE “AGENT” ACTS | NON- LICENSABLE “CLERICAL” ACTS |
|---|---|---|
| <i>Sell (continued)</i> | | |
| Receiving and recording information from an applicant or policyholder and preparing an application for insurance pursuant to instructions from and for the review of an insurance producer | | x |
| Obtain underwriting information from credit agencies, DMV, and other insurance agencies and companies | | x |
| As an underwriter employed by an insurer or by a licensed insurance producer, upon receipt of an application submitted by a licensed producer, requesting and reviewing information relating to the audit of records or loss control on underwriting verifications and inspections, requesting and reviewing the results of a physical examination of a prospective insured named in a submitted application, requesting and reviewing information from persons other than the applicant, making a determination that the applicant meets the insurer’s underwriting criteria, and mailing the policy to the policyholder or the producer | | x |
| Indicate that requested coverage is or will be bound or issued | x | |
| Bind coverage | x | |
| Receiving and recording information from an applicant or policyholder and preparing for an insurance producer’s review and signature all binders, certificates, endorsements, identification cards or policies pursuant to instructions from the insurance producer | | x |
| Receiving premiums at the recorded place of business where the payment is being made on a binder, endorsement or existing policy | | x |
| Issue certificates of insurance, endorsements, binders, commitments, insurance policies or insurance identification cards | Dependent upon whether issuance is physical delivery only or the effectuation of the insurance policy | |
| <i>Servicing of Existing Policyholders</i> | | |
| Receiving and recording an insured’s request concerning any additions or deletions to an existing policy and preparing the appropriate endorsements or processing the appropriate changes. | | x Person could give rate quote on the requested change only. |
| Informing the insured as to his or her coverage as Indicated in policy records | | x |
| Receive telephone calls reporting additional or replacement items (vehicles, property, drivers) for policies currently in force | | x |
| Opening mail, office filing and mailing billings | | x |

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Part III - Section II – General Reference Materials

- A. Sample Continuing Education Program Instructions to Course Providers
- B. Sample Frequently Asked Questions by Producers Regarding Continuing Education Requirements
- C. Sample State Licensing Department Internal Training Manual

Part III - Section III – Appendix A

Sample Continuing Education Program Instructions to Course Providers

This Appendix contains a sample outline of the type of information a state may consider providing to Continuing Education providers. It may also serve as a guide to states that wish to adopt formal regulations on CE provider requirements. This document has not been formally adopted by the PLWG or the NAIC. See also information on the CER and the PLWG guidelines on CE in this appendix.

Fees and Recordkeeping Requirements

- Continuing Education providers' initial application fee is ____.
- Course approval filing fee shall be ____.
- CE providers must maintain attendance records, course outlines and course completion records of participants for ____ years following each course offering. The insurance department will periodically conduct audits of provider's records. Any provider who cannot furnish the requested records when audited shall be subject to suspension or revocation.

Providers are responsible for advertising where and when a course offering will be held. A course should not be advertised before it has been approved. Failure on the part of a course provider to hold a course may result in suspension and/or revocation of the provider's authority, if the course is not rescheduled or the fees refunded to the participants.

Section I – CE Provider Responsibilities

1. The CE provider must meet the criteria defined by state laws and regulations.
2. If the state uses a vendor, insert instructions on filing with the vendor.
3. The CER form must be used. All CE provider application forms submitted to the department must be typed. The application form must include the name of the person who will represent the provider for continuing education purposes. If any part of the application is not filled out, the application will be returned to the applicant, delaying the approval process.
4. The CE provider is responsible for ensuring that each participant satisfactorily completing a course is furnished with a Certificate of Completion. The provider must also send CE course completion rosters/reports electronically to the department or its vendor within ____ days of course completion.
5. The CE provider shall maintain attendance records, course outlines and course completion records of participants for ____ years following each course offering. Any provider who cannot furnish the requested records when audited shall be subject to suspension or revocation.
6. CE course completion reports must be formatted correctly and information must be accurate. If not, reports will be rejected and returned.
7. All CE providers, study materials and certifications are subject to audit by the department or designated representatives of the department at any time. An audit may be conducted through class schedules and records of the course or through actual attendance of class presentations at any time and without warning.
8. Each licensee taking the course must be issued a certificate. CE providers should instruct the class participants to keep these certificates in a safe place until the next license renewal (reporting period) in the event that they are audited.
9. Providers may submit a course outline for approval only after having been approved as a CE provider. CE providers are responsible for their own advertisements.

Section II – Course Approval

1. All course applications and required forms must be submitted for approval to the department (vendor) at least _____ days prior to the first course offering.
2. The CE provider must submit a detailed course summary in outline form. In addition to the outline, if the proposed course is self-study, the provider must also submit all the course material that the licensee will receive for department review. Self-study and online courses must include an appropriate testing instrument requiring a grade of 70 percent or higher to successfully complete the course. The examination must be administered by a licensed producer or representative of the CE provider. The outline should state a description of the course content, including a time frame for each major topic area to be covered in the course. If the content of an approved course should change, the provider must resubmit the course along with a new course outline and time frame for approval. Courses can be approved for classroom instruction, seminar, self-study (correspondence), and/or online in whole credit-hour increments only.

The following are examples of subjects that most likely will qualify for continuing education credits:

- Fundamentals/principles of property insurance
- Fundamentals/principles of casualty insurance
- Fundamentals/principles of life insurance
- Fundamentals/principles of health insurance
- Estate planning/taxation (may not be for personal benefit)
- Ethics in insurance
- Legal, legislative and regulatory matters in insurance
- Insurance policy contents
- Proper use of insurance products
- Insurance rating
- Accounting/actuarial considerations in insurance
- Principles or risk management
- Provisions/differences in insurance policy contracts
- Professional designation courses (see list of designations in Pre-license Education section)

Examples of subjects that most likely will NOT qualify for prelicensing or continuing education credits:

- Prospecting
- Motivation
- Sales
- Psychology
- Recruiting
- Basic non-insurance related computer training
- Office skills
- Time management
- Telephone skills
- Health/Stress/Exercise courses
- Personal finance or tax courses intended for the producer instead of his/her clients

Section III – Instructor

The CE provider must monitor the activities of instructors. Each CE provider is responsible for the actions of their instructors. An instructor teaching an approved course shall qualify for the same number of classroom hours as would be granted to a person taking and successfully completing such a course or seminar. The instructor, if also a licensee, should be issued a Certificate of Completion and entered on the roster for the course offering.

Section IV – CE Reciprocity Course Filings

(See also PLWG CE guidelines regarding courses that are part of a national designation program.)

(Insert information on the NAIC Continuing Education Reciprocity (CER) filings)

Section V – Definitions

Course – A course is an organized, outline body of information intended to convey knowledge to the licensee.

Continuing Education Course Provider (CE Provider) – A CE provider is an entity that has been approved by the department to offer continuing education courses to insurance producers in the state.

CE Credit – Fifty (50) minutes of participation in an approved course is equal to one CE credit.

Part III - Section III – Appendix B

Sample Frequently Asked Questions by Producers Regarding Continuing Education Requirements

This Appendix contains sample questions and answers regarding continuing education requirements. These examples contemplate that a producer must complete a certain number of credits to be eligible to renew their license. A state should alter the questions to refer to a continuing education reporting period if the state does not renew licenses. This document has not been formally adopted by the PLWG or the NAIC.

Q: How many hours do I need to renew my license?

A. (Insert state requirement)

Q: Do I need to complete the CE requirements if I am a nonresident?

A: No. A nonresident who has satisfied his/her home state's continuing education requirement is exempt.

Q: Does my company renew my license?

A: No. Companies renew appointments. License renewal is the producer's responsibility.

Q: Must licensees take courses related to the lines of insurance they hold?

A: No. You may take any approved course without regard to the type of license you hold.

Q: Can I count the prelicensing course I recently took for my CE requirements?

A: No. This course is not approved for CE credits, only prelicensing.

Q: Can extra credits earned from the previous year count for this year's renewal requirements?

A. No. Carryover is not allowed.

Q: Can credits earned while taking courses to obtain a professional designation be used for the annual CE requirements?

A: Yes, but only after the provider and courses have been approved by the state department of insurance and only if the course is completed after the producer has already received an insurance producer license.

Q: Do I need to send my certificates of completion to the state department of insurance?

A: No, if you renew online, there is no need to send certificates to the department; however, always keep your certificates on file. (Other possible answers: Yes, if you are unable to renew online due to a CE discrepancy or upon a CE audit request, you may have to send certificates for verification.)

Q: Can the person who teaches the course receive CE credits?

A: Yes, instructors will receive the same number of credits as the individuals who take the course.

Q: Can I go to the Department Web site to look up how many CE credits I have?

A: (It is recommended that states offer this service.)

Q: How can I find out how many continuing education hours I have?

A: It is your responsibility to keep a record of your CE credits and retain your certificates of completion. If a department requires CE providers to file attendance reports, the department will only be able to verify the number of credits that have been reported by CE providers.

Q: Do I have to take 12 credits for my life license and 12 credits for my property license?

A: No, you only have to submit the total number of credits hours required, no matter how many lines of authority you hold.

Q: Can I take online CE courses?

A: Yes, if the provider and course is approved in your state.

Q: Can I take the same CE course two years in a row and receive credit?

A: No. You cannot receive credit for any course more than once in any CE reporting period.

Part III - Section III – Appendix C

Sample State Licensing Department Internal Training Manual

This Appendix contains a sample outline and some suggested text for a state insurance department to use to create an internal training manual for licensing staff. This document has not been formally adopted by the PLWG or NAIC.

Introduction

The State of _____ Insurance Department is required by the Code of _____ to license individuals to sell insurance in the state of _____. The Producer Licensing Division's responsibility is to make sure this is carried out as written.

The Producer Licensing Division is governed by laws and regulations adopted by the commissioner to provide the basic details necessary to implement statutory requirements. Regulations most likely to be of interest to employees in this division are _____. A brief description of each is found in the glossary.

The Continuing Education Program was established to provide producers with information to keep them informed of new laws, rules and regulations governing the insurance industry. It also serves the consumer by providing licensed continuing education providers to industry personnel so that they may provide a more informative means of communication. Many other states require continuing education hours. In an effort to aid the process, the department, like most states, participates in a reciprocal program where we accept hours from other states and they do the same for our resident producers.

This resource manual is compiled to serve as a guide to employees in the insurance department who work directly and/or indirectly with the Producer Licensing Division. It contains pertinent regulatory information that is applicable to the prelicensing education, testing, licensing, license renewal and continuing education requirements. This manual will be used as a training guide for new employees and as a reference guide for other employees.

Contents

- Division Organization Chart
- Prelicensing Information
- Testing Information
- Licensing Information
- Renewal Information
- Continuing Education Information
- Miscellaneous Forms
- Exhibits
- Glossary

Answering Calls

1. Answer promptly (before the third ring if possible).
2. Before picking up the receiver, discontinue any other conversation or activity such as eating, typing, etc., that can be heard by the caller.
3. Speak clearly and distinctly in a pleasant tone of voice.
4. Use "hold" button when leaving the line so that the caller does not accidentally hear conversations being held nearby.
5. When transferring a call, be sure to explain to the caller that you are doing so and where you are transferring them.
6. Remember that you may be the first and only contact a person may have with your department, and that first impressions will stay with the caller long after the call is completed.
7. If the caller has reached the wrong division, be courteous. Sometimes they have been transferred all over the department with a simple question. If possible, attempt to find out where they should call/to whom they should speak. They will greatly appreciate it.
8. When the called party is not in, use a tactful response to protect the privacy of the office staff.
9. At the end of the day, spend a few moments reflecting on what you have accomplished. Tally up the good experiences against the bad. You might be surprised to find that on any given day, there were many more "pluses" than "minuses."

10. Because you are a professional, it's natural to remember and be concerned about the negative contacts you experience. But don't let the negatives overwhelm you; take those few minutes to tally the successes.

Mail/Fax Procedures

Address and Name Changes

1. Name and address changes are processed_____.
2. Name change requests must be accompanied by a marriage certificate, divorce decree, or other court document.
3. Address change forms do not have to be verified.
4. Make sure all names are spelled correctly, whether in the address or name.
5. Name changes can now be done online.

(Address changes can easily be made online through NIPR's Address Change Request – ACR)

Prelicensing Education Information (optional)

Individuals must complete a prelicensing course of study for the lines of authority desired before taking most of the insurance producer license examinations. The prelicensing course must consist of 20 credit hours per line of authority, or equivalent individual instruction, on the general principles of insurance for that line of authority. The lines of authority requiring a prelicensing course are as follows:

- Life
- Accident & Health or Sickness
- Variable Life & Variable Annuity
- Property and/or Casualty
- Personal Lines

Once the prelicensing course is completed and a certificate is awarded, the insurance licensing examination can be taken within _____ from the date of the certificate. If the examination is not taken, the certificate will expire, and the course must be retaken to qualify for the examination.

Prelicensing Course Exemptions

- Holders of the following designations are exempt from the prelicensing requirement:

Life: CEBS, ChFC, CIC, CFP, CLU, FLMI, LUTCF

Health: RHU, CEBS, REBC, HIA

Property/Casualty: AAI, ARM, CIC, CPCU

- Applicants for the following limited lines of authority may be exempt from the prelicensing requirement:

Crop Insurance
 Credit Insurance
 Travel Insurance
 Car Rental Insurance
 Surety

Examinations

Once the appropriate prelicensing course is completed, an individual is eligible to sit for the insurance producer examination. If not reported electronically, test candidates must present an original certificate of completion from an approved prelicensing provider at the time of the examination. A prelicensing course certificate is valid for _____ from date of completion. The insurance producer examination is available in locations around the state. Information about testing locations is on the department Web site. This Web site also contains information on insurance licensing, the application process, registration for examinations and the issuance of licenses. The examination fee is \$ _____.

Initial Licensing Qualifications

The qualifications necessary to become an insurance producer include, but are not limited to, the following:

- Must be at least 18 years of age.
- Must not have committed any act that is a ground for denial, suspension or revocation of license (See PLMA section 12).
- Must complete a prelicensing course of study, if required, for the major lines of authority for which the person is applying.
- Must successfully complete the examination for the lines of authority for which the individual has applied.

Initial Licensing Process

Residents

There are two options available to obtain a resident license:

Option 1: Test results are reported electronically to the insurance department. Applications can be submitted online at the department Web site. (or)

Option 2: After successfully completing the examination, applicants must attach both the original examination results certificate and a \$ _____ fee to the uniform application form for Individual Producer License and send to _____.

Nonresidents

- Applicants must be in good standing and hold an active license in their resident state for the same lines of authority for which they are applying.
- Applicants must complete the NAIC Uniform Application for Individual License.
- No letter of certification is required with application.

Appointments (Optional)

Once licensed, a producer can then be appointed by one or more insurers to act as their producer.

Renewal Process

Upon license expiration, producers are eligible to reinstate their license for a period of 12 months from the last day of their birth month without the necessity of completing the prelicensing course or passing a written examination.

Part III - Section IV – Glossary 1033 (1033 consent waivers)

A federal law commonly referred to by licensing directors as “1033” establishes a ban on certain individuals 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 participate in the insurance business.

Adjuster

A person who determines coverage and evaluates the damage caused to property or people when an insurance-related accident occurs. There are three classes of adjusters: company adjusters (employed by an insurance company), independent adjusters (independent contractors with an insurance company) and public adjusters (employed by the policyholder).

Appointment

A notification filed with the insurance department that an insurer has established an agency relationship with an insurance producer.

Appointment renewal

The continuation of a company’s existing appointment.

Bail Bond Agents

Any person or corporation that will act as a surety and pledge money or property, or that will sell an insurance product as bail for the appearance of a criminal defendant in court.

Business Entity

Under the Producer Licensing Model Act, a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

Central Registration Depository (CRD)

The securities industry online registration and licensing database, operated by FINRA contains reports on industry registration/licensing forms completed by brokerage firms and regulators. Contains professional background information on approximately 660,000 currently registered brokers and 5,100 currently registered securities firms. Information is also available on thousands of formerly registered firms and brokers.

Charitable Gift Annuities (CGA)

An arrangement in which an individual transfers cash or marketable securities to a charitable organization. The organization issues the gift annuity and makes a promise to make fixed annual payments to the individual for life. In exchange, the individual is eligible for a current income tax deduction. In some states, charitable organizations engaging in this activity are required to register with the state insurance department.

Charitable Organizations

Under *Charitable Gift Annuities Exemption Model Act (#241)*, an entity described by either Section 501(c)(3) or Section 170(c) of the Internal Revenue Code.

Continuing Education Reciprocity (CER)

A simplified filing method for continuing education courses approved by other states.

Controlled Business

Insurance business over which an insurance producer is able to exercise personal influence. Some states prohibit a producer from obtaining or continuing to hold a producer license if more than a certain percentage of the producer's business is generated through controlled business.

Financial Industry Regulatory Authority (FINRA)

The non-governmental regulator (a self-regulatory association designated by Congress) for all securities firms doing business in the United States. FINRA oversees more than 5,000 brokerage firms, about 171,000 branch offices and more than 672,000 registered securities representatives. FINRA was created in July 2007 through the consolidation of the National Association of Securities Dealers (NASD) and the member regulation, enforcement and arbitration functions of the New York Stock Exchange.

Fraternal Benefit Society

A membership organization that is legally required to offer life, health and related insurance products to its members, be not-for-profit and carry out charitable and other programs for the benefit of its members and the public.

Gramm-Leach-Bliley Act (GLBA)

Congress passed GLBA in 2000, which required that a majority (29) of state insurance departments were required to adopt uniform licensing standards by November 2002, or all state insurance departments would face preemption in the licensing arena by the new National Association of Registered Agents and Brokers (NARAB). GLBA Section 321 requires twenty-nine (29) states, no later than 3 years after the date of the enactment of the GLBA, to enact: (1) uniform laws and regulations governing the licensure of individuals and entities to sell, solicit and/or negotiate the purchase of insurance within the State; or (2) reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell, solicit or negotiate the purchase of insurance within those States.

Home State

Under the Producer Licensing Model Act, 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.

I-SITE

An online interface designed for state insurance departments to obtain comprehensive financial, market conduct, producer licensing, and securities information. I-SITE offers regulators access to NAIC database information including Summary Reports, Batch Reports, and Detailed Lookup Reports.

Interstate Insurance Product Regulation Compact

An organization formed by the states to provide a vehicle to (1) develop uniform national product standards that will afford a high level of protection to consumers of life insurance, annuities, disability income and long-term care insurance products; (2) establish a central point of filing for these insurance products; and (3) thoroughly review product filings and make regulatory decisions according to the uniform product standards. The compact is administered by the Interstate Insurance Product Regulation Commission (IIPRC). For more information visit the Web site at: www.insurancecompact.org.

Life Settlement

A transaction (also referred to as a viatical settlement) in which the owner of a life insurance policy sells the right to receive the death payment due under the policy to a third party. Typically the owner/insured receives a cash payment, and the buyer agrees to make any remaining premium payments on the policy.

Managing General Agents (MGA)

An agent authorized by an insurance company to manage all or a part of the insurer's business in a specific geographic territory. Activities on behalf of the insurer may include marketing, underwriting, issuing policies, collecting premiums, appointing and supervising other agents, paying claims, and negotiating reinsurance. Many states regulate the activities and contracts of managing general agents.

Market Analysis Working Group (MAWG)

Identifies and reviews insurance companies that are exhibiting, or may exhibit, characteristics indicating a current or potential market regulatory issue that may impact multiple jurisdictions. The Working Group determines if regulatory action is being taken and supports collaborative actions in addressing problems identified. MAWG meets in closed session and its membership is limited to 16 regulators appointed by the Chair of D Committee.

Market Regulation Handbook

Developed by the NAIC Market Regulation Handbook Working Group and contains guidelines for market regulation examinations and investigations. The handbook contains guidelines for regulators on different options for investigation techniques, called the continuum of regulatory responses.

Multiple Employer Welfare Arrangements (MEWA)

Arrangements allowed under the federal Employee Retirement Income Security Act (ERISA) law that allow a group of employers collectively to offer health insurance coverage to their employees. MEWAs are most often found among employer groups belonging to a common trade, industry or professional association.

National Association of Insurance Commissioners (NAIC)

A U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

National Association of Registered Agents and Brokers (NARAB)

H.R. 5611, the National Association of Registered Agents and Brokers (NARAB) Reform Act of 2008 ("NARAB II") would amend the Gramm-Leach-Bliley Act to reestablish NARAB as a nonprofit corporation ("Association") to provide a mechanism through which licensing, continuing education and other insurance producer qualification requirements and conditions can be adopted and applied on a multi-state basis, while preserving the right of states to: (1) license, supervise and discipline insurance producers; and (2) prescribe and enforce laws and regulations regarding insurance-related consumer protection and unfair trade practices.

If states fail to maintain compliance with the standards expressed in GLBA, NARAB would be established to provide a mechanism through which uniform licensing, appointment, continuing education and other insurance producer sales qualification requirements and conditions would be adopted and applied on a multistate basis. NARAB guidelines would preempt state licensing laws.

National Flood Insurance Program (NFIP)

A federal program enabling property owners in participating communities to purchase insurance as protection against flood losses. The program is administered by FEMA. Individuals selling flood insurance must be licensed as an insurance producer.

National Insurance Producer Registry (NIPR)

A non-profit affiliate of the NAIC created in 1996 through collaboration of the NAIC and industry. The purpose of the NIPR was to work with the states and the NAIC to reengineer, streamline and make more uniform the producer licensing process for the benefit of regulators, the insurance industry and consumers. The NIPR worked with the NAIC to develop and implement the Producer Database (PDB) utilized by the industry for licensing and appointment information and the State Producer Licensing Database (SPLD) for use by regulators.

National Producer Number (NPN)

The National Producer Number is a unique NAIC identifier assigned through the licensing application process or the NAIC reporting systems to individuals and business entities (including, but not limited to producers, adjusters, and navigators) engaged in insurance related activities regulated by a state insurance department. The NPN is used to track those individuals and business entities on a national basis.

Negotiate

Under the Producer Licensing Model Act, 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.

North American Securities Administrators Association (NASAA)

A voluntary association, similar to the NAIC, whose membership consists of 67 state, provincial and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada and Mexico.

Producer (Insurance Producer)

Under the Producer Licensing Model Act (PLMA) a person required to be licensed under the laws of a state to sell, solicit or negotiate insurance. A producer may be an individual or a business entity.

Producer Database (PDB)

The Producer Database (PDB) is a central repository of producer licensing information updated on a timely basis by participating state insurance departments. The PDB includes data from external databases such as the Regulatory Information Retrieval System (RIRS) to provide a more comprehensive producer profile.

Producer Licensing Model Act (PLMA)

A model act adopted by the NAIC to update and standardize many aspects of state producer licensing. Full text available through the NAIC Model Law Service.

Producer Licensing Task Force (PLTF)

The NAIC Task Force develops and implements uniform standards, interpretations and treatment of producer and adjuster licensees and licensing terminology; 2) monitor and respond to developments related to licensing reciprocity; 3) coordinate with industry and consumer groups regarding priorities for licensing reforms; and 4) provide direction based on NAIC membership initiatives to the NIPR Board of Directors regarding the development and implementation of uniform producer licensing initiatives, with a primary emphasis on encouraging the use of electronic technology.

Psychometrician

One who designs, administers and interprets quantitative tests for the measurement of psychological variables such as intelligence, aptitude and personality traits. In licensing, the duties relate more to the interpretation of the data derived from the knowledge-based licensing exams. He/she basically looks at the test statistics and makes appropriate suggestions for any adjustments to the test items.

Regulatory Information Retrieval System (RIRS)

A database maintained by the NAIC that includes information filed by states to report formal administration actions.

Reinsurance Intermediary

Acts as a broker in soliciting, negotiating or procuring the writing of any reinsurance contract or binder. Acts as an insurance producer in accepting any reinsurance contract or binder on behalf of an insurer.

Risk Management Agency (RMA)

Part of the United States Department of Agriculture. RMA operates and manages the Federal Crop Insurance Corporation (FCIC). The RMA was created in 1996.

Risk Purchasing Group (RPG)

Allowed under Federal Law to form so that similar risks may pool purchasing power. RPGs are purchasing entities, not insurers, and are not generally subject to state insurance laws. RPGS are only allowed to place liability coverage.

Risk Retention Group (RRG)

Under the Federal Liability Risk Retention Act certain product sellers are allowed to provide group self-insurance. RRGs are insurers licensed and fully regulated in one state pursuant to that state's laws. RRGs are limited to providing non-workers' compensation commercial lines liability insurance to their members. All owners of an RRG must be insureds, and all insureds must be owners.

Securities and Insurance Licensing Association (SILA)

An industry association created for the purpose of communication and education for licensing and education experts whose occupations encompass all areas of securities and insurance licensing and registration.

Sell

Under the Producer Licensing Model Act, to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

Solicit

Under the Producer Licensing Model Act, attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

Stamping Offices

Nonprofit non-governmental agencies whose existence is authorized by law. These offices act as a liaison between the surplus lines producer and the state insurance department. Stamping office duties vary among the 14 states in which they exist. Responsibilities may include evaluation of insurance companies for inclusion on a white list, review of surplus lines policies, and education. Stamping offices are funded by stamping fees assessed on each policy of surplus lines insurance written in the state.

State Producer Licensing Database (SPLD)

An electronic database consisting of information relating to insurance producers. Participating states regularly send updates from their state licensing database to the SPLD. The SPLD links participating state regulatory licensing systems into one common repository of producer information.

STOLI or IOLI

Stranger-originated life insurance or investor-originated life insurance. The typical scenario for this type of transaction involves the recruitment of an individual to consent to the purchase of life insurance or an annuity with a promise to, in some manner, finance the purchase of the product. The “stranger” or investor becomes the owner of the product and will receive the death benefits paid under the product.

Surety

Under the Uniform Licensing Standards, insurance or bond that covers obligations to pay the debts of, or answer for the default of, another, including faithlessness in a position of public or private trust. For purpose of limited line licensing, surety does not include Surety Bail Bonds.

Surplus Lines Insurance (SLI)

Products sold by authorized nonadmitted companies. SLI companies provide access to products and coverages not available in a state. In some states, SLI companies are required to file a special registration with the state.

System for Electronic Rate and Form Filing (SERFF)

An NAIC program that allows companies to send and states to receive, comment on, and approve or reject insurance industry rate and form filings. For more information, visit the NAIC Web site or www.serff.org.

Terminate

Under the Producer Licensing Model Act, the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer’s authority to transact insurance.

Termination for Cause

When an insurer has ended its agency relationship with a producer for one of the reasons set forth in Section 12 of the PLMA or that the producer has been found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities set forth in Section 12.

Third-Party Administrators (TPA)

A person who directly or indirectly underwrites, collects charges or premium, or adjusts or settles claims on behalf of a self-funded insurance plan for life, annuity or health coverages.

Title Insurance

Insurance against losses from defects in title to real property and from the invalidity or unenforceability of mortgage liens. It is meant to protect an owner’s or lender’s financial interest in real property against loss due to title defects, liens or other matters.

Title Insurance Agent

An individual who sells title insurance. In most states, title insurance agents are required to either register or obtain a license from the state insurance department.

Uniform Applications

The Producer Licensing Task Force has adopted uniform applications for individual producers, business entities and third-party administrators. The forms are available at http://www.naic.org/paper_licensing/maps_paper_licensing.htm.

Uniform Licensing Standards (ULS)

A set of standards adopted by the Producer Licensing Working Group to guide state licensing directors in implementing uniform standards among the states.

Viatical Settlement

A transaction (sometimes called a life settlement) in which the owner of a life insurance policy sells the right to receive the death payment due under the policy to a third party. Typically the owner/insured receives a cash payment, and the buyer agrees to make any remaining premium payments on the policy.



National Association of Insurance Commissioners

The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

For more information, visit www.naic.org.