

## Business Entity Licensing

### Comments on Industry's Proposed Addition to the Uniform Licensing Standards

October 4, 2010

Jeff Baughman – State of Washington

After the discussion on the last PLTF conference call 9/15/10, I have some suggestions regarding standard 44 Affiliation Filings. I would suggest for consideration that upon initial licensure, the BE provide a list (and in our state pay for) any producer affiliation. From that point forward, any changes, such as addition or termination of affiliations, the BE shall report such changes within 30 days.

Diane Karis - Principal & Director of Regulatory Compliance Perr & Knight

From the industry perspective the appointment and affiliation issue is one of the most frustrating. I believe industry would be willing to follow any process as long as it is consistent. Currently there are states that require appointments for both the entity and the individual. There are states that require an affiliation, but still require an individual appointment. There are states where the affiliation covers the individual appointment as long as the entity is appointed. I also feel the definition and meaning behind the term "affiliation" is inconsistent and not always clear.

Regarding items 44 and 47, if a state requires an affiliation, and affiliation states and the requirements for affiliation should be clearly stated, then they should not require the appointment of the individual. If a state is not an affiliation state then the entity and the individual should be appointed. If a state is concerned about consumer protection in regard to tracking affiliation then perhaps those states should not be affiliation states, but should require both the entity and the individual be appointed, at least that way the public can look up what insurers are being represented by the individual. If the state is an affiliation state then the onus should be on the insurer to make sure the entities they appoint maintain a list of affiliated individual producers. If there is a revenue issue, maybe the insurer is required to submit a list by entity each year and possibly pay a nominal amount per affiliated producer. That will force them to maintain the list, review it annual, and still generate revenue.

I support all the changes on the document. I think consistency and uniformity across states would be great. Even if we can't get all the states uniform, maybe we can strive for 2 or 3 options and at least get each state to pick one option of uniformity.

Keith Kuzmich - California

**Standard 41:** Not licensing business entities (BE) by line of authority could cause confusion to consumers in regards to the fictitious names used by business entities. For instance, in California currently we would not approve a fictitious name that included the term, "excess lines" for a BE licensed for property/casualty but not licensed for surplus lines. Similarly, we would not approve a fictitious name that included the word, "broker" for a BE licensed for life but not licensed for property/casualty since California does not issue broker licenses to life agents. Consequently, if we no longer licensed BEs by license line of authority some BEs by the nature of their fictitious names may lead consumers to believe that they may provide services that they are not licensed to do.

**Standard 44:** Not allowing states to require the appointment and termination of BE endorsements (aka affiliations) will compromise California's consumer protection efforts. For instance, currently consumers may look up a licensed insurance producer on the California Department of Insurance's website under "Check License Status." Part of the information displayed on each license record is any insurance company appointments and any BE endorsements that the producer currently has or previously had with insurers and BEs. Further, California does not require producers who are affiliated with BEs to be appointed by each insurer that the BE has appointments with in order to transact insurance with those insurers. Therefore, if California was to no longer require appointments and terminations of BE endorsements (aka affiliations), consumers would not be able to find out which insurers and BEs that these producers represent. It would also create difficulty for our Investigators to make such determinations.

**Standard 45:** California has proof of responsibility (i.e. E&O) laws that are required from both resident and non-resident BEs who are identified as limited liability companies (LLC). The proof of responsibility LLC laws in California are not specific only to the insurance business. Further, BEs are required to report the names of officers, directors and stockholders for both resident BEs and non-resident BEs. If there are background issues on any of these individuals, the BE maybe required to submit documents related to the issues. Consequently, although as a general practice states should not request these documents from non-resident BEs, there are situations for which we will need to continue to request such documents.

## Comments of West Virginia in Italics

### Industry's Proposed Addition to the Uniform Licensing Standards August of 2010

#### BUSINESS ENTITY LICENSING STANDARDS

##### 40. Business Entity Licensing

States have the discretion to require business entities to obtain insurance licenses, but any state that does so shall adhere to the standards outlined in this section.

##### 41. Licensing of Business Entities by Line of Authority

States shall not require the licensing, registration, or appointment of business entities by line of authority.

##### 42. Business Entity Branches

States shall not require the licensing, registration, or appointment of individual branch locations or require a designated responsible producer to be onsite at a branch location at all times.

*(Caveat: Provided, said brand location is not a subsidiary or affiliated separate legal business entity. In such case each separate legal business entity may be required to obtain a license).*

##### 43. Designated Responsible Producers

States may require an entity's designated responsible producer (DRP) to possess an individual insurance producer license, but states shall not require a DRP to be an officer of the business entity. *(If the DRP is not an officer of the business entity, the DRP must have been granted authority by the business entity's officers to respond to the regulator on its behalf).*

##### 44. Affiliation Filings

States may require each licensed business entity to maintain a list of its affiliated producers and make it available to regulators upon reasonable request, but states shall not require the filing or ongoing reporting of such affiliations.

##### 45. Organizational and Other Filings

Nonresident states shall not require business entities to submit organizational documents, filings related to officers and directors, proof of financial responsibility, or similar documents. *(The Uniform Corporation Code and Uniform Limited Liability Company Act for which both have been adopted by most states prohibit the use of the terms corporation, company, LLC, etc... unless the entity is actually organized as such. These acts further required said entities to use these identifiers in their names. A state may verify the entity is organized in such manner that the name meets these statutory requirements).*

##### 46. Corporate Registration

Nonresident states shall not require a business entity to register as foreign corporation as a condition of obtaining or maintaining a nonresident insurance license. *(A state may require the nonresident business entity to attest that it is in compliance with the state's business registration, licensing, and tax reporting requirements as a condition to granting said business entity license).*

#### **47. Appointment of Business Entities**

States that require business entities to be appointed shall not also require the appointment of individual producers affiliated with the business entity.

# Industry's Proposed Addition to the Uniform Licensing Standards August of 2010

## Ohio's Comments 10/12/2010

### BUSINESS ENTITY LICENSING STANDARDS

#### 41. Licensing of Business Entities by Line of Authority

States shall not require the licensing, registration, or appointment of business entities by line of authority.

*Ohio believes states should be able to license, register or appoint business entities by line of authority ("LOA") for the following reasons:*

- *Various lines of insurance have different regulatory requirements (i.e. – crop, travel, credit, etc.). If states are unable to license by LOA, it will limit the ability of the state to ensure producers and business entities have met the applicable regulatory guidelines.*
- *The licensing of LOA provides an important level of regulatory oversight and leads to improved customer protection.*
- *Business entities have contracts with insurance companies to sell, solicit, and negotiate business in the state and as such, should be required to obtain an insurance license.*
- *The licensing of business entities by line of authority assists states in identifying and communicating important information (i.e. – bulletins, correspondence, proposed legislation, etc.) to entities licensed to sell specific insurance products.*

#### 42. Business Entity Branches

States shall not require the licensing, registration, or appointment of individual branch locations or require a designated responsible producer to be onsite at a branch location at all times.

*Ohio is not opposed to this suggestion, however, we believe the statement should be amended to read the following:*

*"States shall not require the licensing, registration, or appointment of individual branch locations who operate under the same FEIN as the home office or require a designated responsible producer to be onsite at a branch location at all times.*

*It is our opinion that any and all branches who operate under a different FEIN should obtain its own license, registration and appointment.*

#### 44. Affiliation Filings

States may require each licensed business entity to maintain a list of its affiliated producers and make it available to regulators upon reasonable request, but states shall not require the filing or ongoing reporting of such affiliations.

*Ohio believes states should require all business entities report all affiliated producers, on an on-going basis, and should be able to charge a fee for such filings, for the following reasons:*

- *The tracking and reporting of producers affiliated with business entities assists states in offering consumer protection as it allows regulators the ability to quickly identify the names of individuals associated with a particular business entity. It further provides states the ability to share such information with consumers so they are able to verify an individual's relationship with a business entity.*
- *This requirement further enhances regulatory oversight as the business entity is verifying that they have a contractual relationship with a specific producer and that they are responsible, in part, for the actions of their producers.*
- *Obtaining the names of affiliated producers from a single source is a valuable tool that streamlines the licensing process.*

*As Ohio believes there should be a standard process to assist business entities in notifying states of their affiliated producers, Ohio would like to suggest that the NAIC explore NIPR developing an application business entities could utilize.*

#### **47. Appointment of Business Entities**

States that require business entities to be appointed shall not also require the appointment of individual producers affiliated with the business entity.

*Ohio does not support the adoption of the above noted standard as it would compromise consumer protection efforts of state regulators. States should be allowed to require appointments on both the business entity as well as the individual producers affiliated with the business entity. Appointments are important as they:*

- *The appointment of both individuals and business entities assists states in offering consumer protection as it allows regulators the ability to quickly identify which individuals and business entities are associated with an insurer. It further provides states the ability to share such information with consumers so they are able to verify an individual or business entity is able to write insurance for a specific insurer.*
- *This requirement further enhances regulatory oversight as the insurer has verified that they have a contractual relationship with a specific individual or business entity and that they are responsible, in part, for the actions of that individual or business entity.*

#### **Additional Comments:**

- *While Ohio believes there should be standards adopted to promote uniformity in licensing business entities, we would like to point out that changing the current uniformity standards would result in a number of states who were deemed compliant to be placed in a non-compliant status.*
- *As states, over the years, have worked very hard to bring their laws into compliance with the uniformity and reciprocity standards established, it is suggested that if new uniformity standards are in fact created for all states to adopt, states should be given several years to adopt such standards so they would have an adequate period of time to determine the potential impact to their current revenue structure, draft proposed legislation and obtain legislative support.*
- *Ohio is also very concerned with Standards 41, 44 & 47 as the standards conflict with one another. Specifically, if the above noted standards are adopted as written:*
  - 1) *States will not know who the affiliated producers are because the business entities do not have to report affiliations to the state.*

- 2) *States will not know which producers must be appointed as they will have no information regarding their affiliations/appointments with business entities.*
- 3) *States will not know if business entities or producers are qualified to sell certain insurance products if business entities or producers are not appointed by LOA.*



REPRESENTING  
**ALEX SINK**  
CHIEF FINANCIAL OFFICER  
STATE OF FLORIDA

September 13, 2010

Linda S. Hall, Director  
Division of Insurance  
Department of Community  
and Economic Development  
PO Box 110805  
Juneau, Alaska 99811-0805

Subject: Producer Licensing Task Force  
Comments on Proposed Business Entity Licensing Standards

Dear Director Hall:

Thank you for the opportunity through this letter to share our views on the insurance industry's proposed additions to the Business Entity Licensing Standards section of the Producer Licensing Model Act (PLMA).

We have a concern with the language in standard number 45 (Organizational and Other Filings) of the proposed additions. We do not routinely require the filings/documents in this proposed standard; however, we occasionally have cause to conduct additional pre-licensing investigations when background concerns arise. In these situations, our state's insurance code clearly gives us the authority to request such documents as part of a pre-licensing investigation [please see ss. 626.172(2)(g) and s. 626.201, Florida Statutes].

Therefore, we recommend that standard number 45 be amended as follows:

Nonresident states shall not, as a routine practice, require business entities to submit organizational documents, filings related to officers and directors, proof of financial responsibility, or similar documents.

We appreciate the opportunity to share our views on the proposed additions. Please contact me at (850) 413-5416 should you need clarification regarding the concern expressed above. We will also be joining the Producer Licensing Task Force's conference call on September 15, 2010 should you wish to have a dialog with us or other interested regulators.

Sincerely,

A handwritten signature in black ink, appearing to read "Philip M. Fountain".

Philip M. Fountain

FLORIDA DEPARTMENT OF FINANCIAL SERVICES  
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From: jshemanske@nautilus-ins.com [<mailto:jshemanske@nautilus-ins.com>]  
Sent: Wednesday, September 15, 2010 10:38 AM  
To: linda\_hall@commerce.state.ak.us; Bales, Chris  
Subject: Re: FW: NAIC Call Notice: Producer Licensing (EX) Task Force Producer Licensing (EX) Task Force Industry's Proposed Addition to the Uniform Licensing Standards Comments on Business Entity Licensing Standards

Dear Director Hall:

At the August NAIC meeting we briefly discussed a few of the issues relative to business entity licensing and appointment requirements and that I would follow up with written comments.

The issue of whether or not to license business entities is one that requires a full understanding of the impact to the process. We would like to comment on Business Entity Licensing Standard number 47. Appointment of Business entities as this is where the requirement to license or not license the business entity may have the greatest impact on the business entity, the [authorized] insurer and the state.

Current State requirements for appointments:

States vary on who should be appointed

- 13 states require both the business entity and the producers to be appointed
- 16 states require the business entity only to be appointed
- 13 states require only the individual producers to be appointed
- 9 states require the insurer to maintain in-house records

In addition, a few states have some anomalies within their practices. For example, Kansas requires the initial business entity appointment to be submitted to the state, but upon renewal of the appointment bills the company for not only the business entity appointment, but every affiliated producer in their office regardless if the insurer actually utilizes the affiliated producer.

In the state of Michigan you must appoint an affiliated producer before you can appoint the business entity otherwise the state will not accept the business entity appointment.

Taking the Kansas example a little further, one business entity appointment renewal resulted in being charged for 39 affiliated producers. Insurers rarely would receive submissions from all the affiliated producers in an office. Additionally if the business entity is large and has a division of personal lines and commercial lines and the insurer appointing the business entity only contracts for commercial lines, the insurer becomes responsible for appointing affiliated producers for lines they would do not write.

Another point in favor of appointing the Business Entity vs. appointing the affiliated producer is the huge administrative burden when a state requires notice of appointment and termination of the affiliated producers by the insurer. Generally when an insurer enters into an agreement to do business, it is generally does so with the business entity

and its principals. When an individual affiliated producer changes employment, the business entity must notify every insurer in order for the insurer to appoint a new affiliated producer or terminate the appointment of the producer leaving. To accomplish this task the business entity would have to track which of its employed affiliated producers were appointed with each of the insurers it has a contract with or in essence force the insurer to appoint all of the affiliated producers and pay for appointments that may not be needed by the insurer.

In the end, the business entity is closest to the comings and goings of its affiliated producers, and supplying a list directly to the state of the individuals moving from job to job would seem more timely and efficient for the business entity, the insurer and the state.

Further commissions are generally paid to the business entity not to the individual producers in the business entity, thus as a general rule, appointments would be better suited based on who is contracted and who the commissions are paid too.

Other variances as it relates to appointments in general:

Massachusetts requires appointments to be made only through their portal, thereby not participating in the NIPR program.

In Florida and Wisconsin new appointments can be made through NIPR but the renewals must go through their [state] portal.

We hope that these comments assist with your review of business entities licensing. If you need further information, please feel free to contact me at [jshemanske@nautilus-ins.com](mailto:jshemanske@nautilus-ins.com) or via phone at 800-842-8972 ext. 4045.

Sincerely,

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**Insurance Trade Association Comments  
Uniform Business Entity Standards  
October 11, 2010**

Director Linda Hall, Chair  
Producer Licensing (EX) Task Force  
National Association of Insurance Commissioners

Thank you for the opportunity to comment on proposed Business Entity Licensing Standards as presented by interested parties to the Task Force at the National Association of Insurance Commissioners' (NAIC) summer meeting in Seattle and subsequently discussed on a September 15<sup>th</sup> conference call. We appreciate your ongoing efforts to bring greater uniformity to the business entity licensing and appointments process. We are especially appreciative of your comments on the conference call encouraging fellow members of the Task Force to develop consensus driven standards so as to better facilitate their adoption across all jurisdictions.

Each of the seven standards proposed by the industry is critical to bringing greater uniformity to the business entity licensure and appointment process. We look forward to the continued discussion of each of them. In reviewing standards 44. Affiliation Filings and 47. Appointment of Business Entities, which have tended to be the focus of the discussions thus far, we believe we have identified state practices that may serve as a guide in reaching consensus on these proposed standards. In both instances, we see an opportunity to greatly reduce the administrative burden resulting from having to comply with different business entity licensing standards in different jurisdictions. Our suggestions are as follows.

**1. Eliminate Individual Producer Appointments in All Jurisdictions Requiring Appointments in Association with Business Entities**

Where companies conduct business through a formal relationship with a business entity rather than with individual producers, companies must appoint the entity with which they have a contract and to whom they pay commissions. We have noted that the NAIC's Business Entity Licensing Priority List for Simplification document issued by the Task Force in November 2009 indicates that in about 15 of those 26 jurisdictions requiring business entity appointments the appointment of the business entity eliminates the requirement for individuals to obtain an appointment. (See, Issue 4: Appointments and Affiliations). Thus, we highly recommend

adoption of this approach by all jurisdictions that require the appointment of business entities. Fifteen is a significant springboard from which to build a consensus.

## **2. Individual Producer Identification is Best Facilitated in States that Implement Affiliation Rules for Business Entities.**

In those states that only require the appointment of a business entity, companies are relieved of a time consuming and resource intensive administrative tracking burden. It should come as no surprise that companies face the same problems and difficulties state departments experience in keeping track of producers who come and go from business entities. According, we believe that adopting Standard 44. Affiliation Filings with the simultaneous adoption of standard 47. Appointment of Business Entities is necessary and appropriate.

It is obvious from Task Force discussions that states assign a high level of importance to being able to identify producer affiliations with a business entity for consumer protection purposes. We believe the ability to identify producers is best facilitated by affiliation rules for business entities, and would highlight to you the fact that licensing staff in California, Utah and Washington have all expressed their satisfaction with affiliation rules in this regard. Affiliation rules, then, not only provide states a level of certainty in identifying producers but they also relieve the multiple companies a producer may have a relationship with from having to appoint and track the same individual producer who is already associated with an appointed business entity.

We believe similar affiliation rules are in place in approximately a dozen states that require business entity appointments. We encourage the Task Force to recognize the experience of these states and incorporate into Standard 44 a uniform process of identifying affiliated producers that relieves companies of the administrative burden of tracking individual producers. Recent discussions have highlighted the possibility of handling the affiliation process on a uniform basis through the National Insurance Producer Registry (NIPR) and we encourage the Task Force to investigate such a possibility.

## **3. Adjust Business Entity Appointment Fees to Reflect Revenue Received by States that Require Individual Appointment of all Producers Affiliated with the Entity.**

We recognize that appointment fee revenue is important to states as reflected by the issues raised regarding Standard 47. Thus, we encourage the Task Force to study how fees are administered in the 15 states where appointment of the business entity alleviates appointment of individual producers. We have heard from companies that the administrative burdens associated with attempting to track individual producers presents more concern than the fees collected by the state. Consequently, we are open to discussing a revenue neutral system as long as Standard 47 references development of a uniform method of fee collection, and we

would be more than happy to assist the Task Force or individual states in identifying and/or developing such a method.

We appreciate the time and effort that Task Force members and individual state licensing staff have devoted to reviewing the standards proposed by the industry. We look forward to working with you to develop a consensus approach to these issues that will truly realize a uniform licensing and appointment process for business entities in the very near future.

Respectfully,

American Insurance Association  
National Association of Mutual Insurance Companies  
Property Casualty Insurers Association of America