

*2009 Fall National Meeting
Washington, DC*

**Producer Licensing Working Group
Producer Licensing (EX) Task Force
Meeting Summary and Action Items
September 22, 2009**

Meeting Summary Report

The Producer Licensing Working Group met on Sept. 22, 2009.

During this meeting, the Producer Licensing Working Group:

- Received an update on the Continuing Education Issues. The Working Group adopted the Guidelines for Online Continuing Education Courses on Aug. 27, 2009 and the Continuing Education Reciprocity Form Revisions on Sept. 10, 2009.
- Received an update from the Federal Emergency Management Agency (FEMA). FEMA offered assistance to the Working Group members and all other State Insurance Departments on their advanced flood insurance training program.
- Discussed and adopted the Uniform Criminal History and Regulatory Actions Background Review Guidelines draft document.
- Discussed the Limited Lines Charge, reviewing the current status. The new version of the ancillary line definition and the suggested structure will be distributed out to the Working Group by October 6, 2009. The working group will meet by conference call to complete the definition of ancillary line and the licensing requirements of individuals selling insurance products.
- Received an update from NIPR regarding the storing of emails and phone numbers. NIPR will create a repository to hold the collected data. NIPR notified the Working Group on the current status of the Reporting of Actions. NIPR plans to roll this out on Friday, Sept. 25, 2009.

Action Items:

- The Working Group made a motion to adopt the Criminal History and Regulatory Actions Background Review Guideline.

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**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 SAD; 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 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

¹ Note Standard 14A and B apply to both resident and nonresident applicants while 14C is for resident applicants only

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.

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.

² The 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

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 disclosed 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?

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?"

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 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

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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 SAD 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 SAD as appropriate, so other jurisdictions are notified and can take appropriate regulatory action.



**NAIC/Industry Producer Licensing Coalition
Meeting Summary and Report to Producer Licensing Task Force
September 23, 2009**

The NAIC/Industry Producer Licensing Coalition met on Tuesday, September 22, 2009. During the meeting, the Coalition:

- 1) Received a report from Maryellen Waggoner, NIPR Executive Director, providing statistics regarding electronic processing of state licensing transactions through NIPR. The statistics demonstrate tremendous progress on most all NIPR processes, with NIPR staff very focused on working remaining product implementations. The Coalition was reminded of the need for states to issue the NAIC-approved model bulletin regarding the use of the Attachments Warehouse, which provides producers with the ability to report administrative, civil or criminal actions, and provide supporting documents for affirmative answers to background questions on the uniform licensing applications.
- 2) Received a report from NIPR and NAIC staff regarding state electronic processing business rules and key differences in state licensing and processing requirements among the states, or as outlined within the NAIC's Producer Licensing Model Act.
- 3) Received a summary report of state compliance with NAIC uniform resident licensing standards. The attached chart represents the information gathered and updated through all of the state assessments earlier this year, and a few updates from state-reported information since that time. NAIC staff have compiled this at the request of industry members to provide a quick summary of states who may still need some assistance in making the requisite legislative or process changes to achieve compliance. Any members with questions or corrections may contact Tim Mullen or Greg Welker.
- 4) Received an update from the NAIC Legal Division on 2009 state legislative activity. In summary, there were 31 bills in 24 states, with 17 bills enacted, 11 of which take effect in 2009 and 6 which take effect in 2010. There are still 8 bills pending and 6 bills that failed in 2009. Regarding subject matter, 7 bills relate to fingerprinting, 13 relate to continuing education and 9 relate to major and/or limited lines of authority. Again, the purpose of this report and the NAIC's legislative tracking is to provide Coalition members and producer trade representatives with state legislative changes needed and/or in process to achieve compliance with NAIC standards.
- 5) Discussed the need to begin our fall 2009 outreach efforts to the states, in order to stay in front of state legislative deadlines for 2010. NAIC staff will pull together a schedule and logistics for these outreach calls and are seeking volunteers from both the Commissioner and producer trade representative ranks to prepare for and lead outreach calls with each state in October and November. NAIC legal staff are also researching legislative deadlines in each state in order to prioritize the outreach schedule accordingly.
- 6) Discussed the Producer Licensing Working Group's work on "ancillary lines of authority", the purpose of which is to maintain and enforce the core limited lines per NAIC uniformity standards, but also categorize other than core limited lines for purposes of streamlining the electronic processing for other than core limited lines, and ensure states recognize one category of "ancillary limited lines" on a uniform and reciprocal basis.