



**National Association of Professional Insurance Agents**

400 North Washington Street, Alexandria, Virginia 22314

General Phone: 1-703-836-9340 and FAX: 1-703-836-1279

General E-mail: [piaweb@pianet.org](mailto:piaweb@pianet.org) & website: [www.pianet.com](http://www.pianet.com)

August 20, 2008

Mr. Roger Sevigny  
President-Elect, National Association of Insurance Commissioners  
2301 McGee Street, Suite 800  
Kansas City, MO 64108-2604

Dear President-Elect Sevigny:

In light of the meeting of the NAIC Producer Licensing Coalition on Friday, August 15, we submit further comments on business entity vs. individual licensing in order to clear up some confusion that arose from the discussion.

**PIA supports Business Entity Licensing**

PIA's members like the flexibility of being able to obtain a *resident* insurance producer/business entity license. PIA believes that, among other benefits, agency owners securing this *additional resident insurance producer/business entity license* will permit states to then only require an individual nonresident insurance producer license for any individual entering a nonresident state on behalf of the licensed, resident insurance producer business entity. The individual nonresident license can be amended to include the needed information for cross-check/reference.

These nonresident individual licenses would only apply if these individuals conduct insurance producer nonresident activities beyond the modest and limited scope of the ancillary business exception, i.e. they are conducting regular, ongoing, solicitation, sales and the like of consumers of the nonresident state.

Through a fully participating all states NIPR system nonresident state DOIs are able to verify the resident business entity license in good standing status of the agency employer of the individual nonresident applicant. The resident and nonresident state DOIs agree to alert the other to any material information concerning the status of either the business entity or the nonresident individual.

Thus states (A&B) working together have a more effective enforcement of any noncompliance, because *both* the nonresident individual (in State A) *and* their resident-only licensed agency-employer/business entity (in State B) will be made aware of the infraction and remediation.

Further, states' cooperation (A&B) can also determine whether the nonresident individual's infraction was their error alone or reflects a pattern of incorrect practice of the agency-employer resident business entity. If the former, the agency-employer will see to it that *their* nonresident individual employee is complying properly going forward (as a conditions of continuing employment) or decide to terminate them. If the latter, then both states will make sure that both the nonresident individual and their agency-employer resident business entity are making the joint changes necessary to assure full enterprise-wide compliance.

This creates a complete system that replicates what each state DOI does currently per their resident/intrastate actions. We are taking this existing framework of enforcement and applying it in a multi-state cooperative format. DOIs today must assess whether noncompliance of an individual insurance producer represents their own actions or reflects the business practice of the agency or carrier for which they work. It also follows the current common and regulatory law treatment and attachment of the agency to the actions or potential actions of their employees/independent contractors. This procedure maintains the recognized DOI structure and expertise to best protect consumers – while furthering our modernization goals.

### *Background*

Historically, DOIs licensed insurance producers on an individual basis. In the 1960s, issues began to arise concerning individuals conducting business together. When a number of individuals formed an alliance to conduct transactions together, they more closely resembled an entity than a group of separate individuals. **Because only individuals were licensed at the time, state DOIs lacked the authority to reprimand the agency-entity for violations. State authority over individuals and entities is largely executed through the license.**

If a business is licensed in addition to the individual, the business can be held accountable for its actions. When a complaint is made about an individual, the DOI may question that person. If the DOI suspects an ongoing practice of misbehavior, they can sanction the entity, *if licensed*.

Beginning in 1982, PIA members saw the benefits of having licensing responsibility follow their business entity. They saw this as a way to prevent an ongoing problem of conflicting obligations. The individual license issued to the producer stood independent of the employer who paid for the license. Therefore, although the employer was still liable for the producer's actions, the producer was granted a separate authority via the resident license, which often conflicted with the authority bestowed upon the producer by their employer.

### *Current Situation*

When insurance agencies seek to conduct business in another state they have always been required to have the individual representing the agency obtain a non-resident license. But now, business entity licenses are being required on a non-resident basis. We believe that a non-resident business entity license should not be required because the non-resident state may request information on the licensee through their individual license. **The consumers will always be protected under this system.**

The reality lately is that we have been operating under a licensing system that requires three licensing procedures: foreign licenses, agency licenses and individual licenses. As a consequence, some suggest we abolish foreign licenses and entity licenses, and only make individual licenses available as a streamlined solution. However, an increasing number of non-traditional competitors in insurance, such as PEOs, also want to establish or broaden their current exemptions from having their individuals licensed. Insurance company personnel have an exemption for “agent” licensing even though they perform many of the same functions and tasks insurance agency staff perform.

**It is not necessary for agencies to be licensed in all states.** The agencies that employ producers seeking a non-resident license do not have a physical location in the perspective state. They conduct their business in that state only through the foundation they have established in their resident state and therefore, we believe that only an individual non-resident license should be required. We advocate this method because this procedure allows the non-resident state to know who is working with whom. Instead of the individual filing for a non-resident license separate from and in addition to the business entity, they file together. A connection is established; the state DOI maintains its authority over the entity.

PIA supports states offering both individual and entity licenses because the licenses give the DOIs the authority to regulate both individuals and business entities. Further, this practice mirrors common law where a principal is responsible for the activities of their employees.

We applaud your leadership, along with President Praeger, to attack this issue now. We look forward to continuing our working relationship and reporting back to the NAIC the status of the states.

As you know, we cannot solve all the issues surrounding licensing uniformity until we address the secretaries of state inserting themselves into the insurance licensing process. These requirements violate the GLBA’s uniformity provisions and in many cases, state statutes. We appreciate the rapid progress you have shown in this area recently and look forward to resolving this matter soon.

Sincerely,

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Donna Pile  
Immediate Past President

CC: NAIC Executive Committee  
The Honorable John Morrisson  
Director of Insurance, State of Montana  
Chair, NAIC D- Committee  
Ann Marie Narcini, Chair, NAIC Producer Licensing Working Group  
PIA Executive Committee  
Andy Beal, NAIC Acting Executive Vice President, CEO  
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