

## REDLINED DRAFT

The current FAQ's are open for comment until Friday, June 18, 2010. Please email your comments to Greg Welker [gwelker@naic.org](mailto:gwelker@naic.org).

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### Producer Licensing Model Act Implementation Frequently Asked Questions

*This document has been prepared by the NAIC's Producer Licensing Working Group for informational purposes only. The following questions and answers are based upon the language of 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 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 Producer Licensing Model Act (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 fifteen days for insurer compliance by providing that "...the appointing insurer shall file...within fifteen (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; *et cetera*. 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 fifteen (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 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 (NARAB) provisions of the Gramm-Leach-Bliley Act.

**Question 6:** Should the record of producer qualifications obtainable from the NIPR PDB satisfy all certification requirements for state licensing?

**Answer 6:** Yes. PLMA Sections 7G, 8B and 9 make clear that states should adopt and use the PDB 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 Sections 3 and 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 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/her license to do business in the prior home state?

**Answer 10:** The producer should notify the prior home state of his/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/her new home state. Pursuant to Section 9 of the Producer Licensing Model Act, the producer/applicant is not required to complete any pre-licensing education or examination in order to secure the new resident license.

Question 11: What process is to be followed by the new home state regulator with regard to a producer changing his/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 PDB of the producer's new status as a resident licensee.

Question 12: What is the process to be followed by the prior home state regulator?

Answer 12: At the time the producer notifies the prior home state regulator of a change of address, the prior home state regulator should send to the PDB 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 which 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 and casualty 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 Producer Licensing Model Act (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) The 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.