



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 SAD 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 Special Activities Database (SAD) 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.

Recommendations:

- 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 SAD 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 non-resident 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 pre-licensing education requirements for the variable line of authority.

States that do not require prelicensing education shall not be required to implement pre-licensing 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 pre-licensing 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 pre-licensing education: Individuals with the following designations are exempt from pre-licensing 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. College insurance degree exempt 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 pre-licensing 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 pre-licensing 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 pre-licensing 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.