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Introduction

The National Association of Insurance Commissioners (NAIC) is the organization of insurance regulators from the 50 states, the District of Columbia and five U.S. territories. The NAIC provides a forum for insurance regulators to develop uniform policy when uniformity is appropriate.

The NAIC has organized its work into various task forces and committees. Executive Committee, (EX), has working groups and task forces which focus on specific issues. In 2009 the NAIC formed the Producer Licensing (EX) Task Force to coordinate and oversee all NAIC groups addressing producer issues. One of the working groups that formerly reported to the Market Regulation (D) Committee and now reports to the Producer Licensing Task Force is the Producer Licensing Working Group (PLWG).

As its name suggests, the PLWG focuses its efforts on the licensing process for individuals who sell insurance products. The PLWG has worked toward the goal of streamlining and achieving uniformity in the insurance producer licensing process. The purpose of this handbook is to document current guidelines and recommended best practices.

The PLWG strongly encourages all states, districts and territories to adopt, without deviation, all provisions of the Producer Licensing Model Act, because true uniformity cannot be achieved until that happens.

Part I of this Handbook contains background information on these efforts and current information on the implementation of the Producer Licensing Model Act, reciprocity efforts, the Uniform Licensing Standards and related topics.

Part II of the Handbook includes information on other types of licenses that some states issue and that a state licensing director may encounter.

Part III contains Appendices to this Handbook.

The NAIC and the PLWG have been working to maintain reciprocity as required by the Gramm-Leach-Bliley Act (GLBA) and to create and implement uniform licensing standards and procedures in all states. This handbook contains the current recommendations and guidelines from the NAIC’s Executive (EX) Committee and the PLWG.
Part I  Insurance Producer Licensing

Section A  Governing Principles

Chapter 1  Modern Producer Licensing
Chapter 2  The Producer Licensing Model Act
Chapter 3  Uniform Licensing Standards
Chapter 4  Nonresident Licensing
Chapter 1

Modern Producer Licensing

The process for licensing insurance producers has had numerous phases. The first NAIC model on this subject was the NAIC Agent and Broker Model. The next phase was the NAIC Single License Procedure Model. Although development of the newest model began in the late 1990s, it was Congress’ passage of the Gramm-Leach-Bliley Act (GLBA) that caused the NAIC to speed the development of the NAIC Producer Licensing Model Act (PLMA).

One of the major provisions of GLBA was a provision to create an organization known as the National Association of Registered Agents and Brokers (NARAB).

If created, NARAB would provide a mechanism through which uniform licensing, appointments, continuing education and other insurance producer sales qualification requirements and conditions could be adopted and applied on a multistate basis. To prevent the creation of NARAB, the states had the option to either 1) enact in at least 29 states reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those states, or 2) enact uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the states. If the states failed to accomplish at least one of these options by Nov. 12, 2002, the NARAB provisions would preempt state insurance licensing laws.

Uniformity Provisions of GLBA

In order to achieve the licensing uniformity standards of GLBA, a majority of states would have to satisfy all five of the following requirements:

1) Adoption of uniform criteria regarding a producer’s integrity, personal qualifications, education, training, and experience, which must include qualification and training on suitability of products for a prospective customer.

2) Adoption of uniform continuing education requirements.

3) Adoption of uniform ethics course requirements in conjunction with other continuing education requirements.

4) Adoption of uniform suitability requirements based on financial information submitted by the customer.

5) Elimination of nonresident requirements posing any limitation or condition because of the place of the producer’s residence or business, except for countersignature requirements.

The NAIC determined to seek to meet the reciprocity threshold of GLBA to avoid preemption of state licensing laws. The NARAB Working Group was established to review state compliance with GLBA requirements. The PLMA was adopted, establishing guidelines for states to comply with reciprocity and uniform guidelines on a number of licensing issues. In addition, the PLMA grants a commissioner the authority to waive any existing state requirement that violates reciprocity. A sufficient number of states adopted the reciprocity provisions of the PLMA prior to the 2002 deadline, and NARAB was not created. The NARAB Working Group’s 2002 report appears in the Appendices.

Through the efforts of the Producer Licensing (EX) Task Force and the Producer Licensing (EX) Working Group (PLWG), the NAIC monitors state compliance with reciprocity guidelines. Under GLBA, NARAB could still be formed if the states fail to maintain the minimum reciprocity specified.
The NAIC also set a goal to create uniform licensing practices. The PLWG has adopted a number of Uniform Licensing Standards and guidelines, and continues to strive toward a more efficient licensing system among the states.

**Countersignature Requirements**

Some states used to require the signature of a resident producer on all policies placed by nonresident producers. Resident producers often charged a fee for their countersignature. The original intent of the requirement was to ensure that a policy issued by an out-of-state insurance company complied with local laws.

In 1998 the NAIC stated, “Countersignatures may have once served a limited purpose for personal lines coverages written by an out-of-state producer, by having the in-state producer countersign to guarantee that coverages were correct for the in-state resident. However, countersignatures no longer serve any useful purpose and there is no proof of value added for the cost to obtain the countersignature. Countersignature requirements delay the production of the policy and its delivery to the insured.”

After the adoption of the PLMA, more than a dozen states retained countersignature requirements. The Council for Insurance Agents and Brokers sued a number of these states and sought repeal of countersignature requirements. Currently all nonresident countersignature laws either have been repealed or have been declared unconstitutional by the courts.

**National Insurance Producer Registry**

The NAIC has long advocated for increased use of technology to streamline licensing processes. In 1996 the NAIC collaborated with industry to create the National Insurance Producer Registry (NIPR) as a nonprofit affiliate of the NAIC. The purpose of the NIPR was to work with the states and the NAIC to reengineer, streamline and make more uniform the producer licensing process for the benefit of regulators, the insurance industry and consumers. The NIPR worked with the NAIC to develop and implement the Producer Database (PDB) which includes licensing information from the 50 states, the District of Columbia and Puerto Rico, utilized by the industry for licensing and appointment information, and the State Producer Licensing Database (SPLD) for use by regulators.

States use the NIPR to link state insurance departments with the entities they regulate. Applicants and licensees can transmit licensing applications, appointments and terminations, and other information to regulators in multiple states, thereby creating electronic solutions that are easy and efficient to use by the states and industry. Additionally, with the recent launch of the Attachment Warehouse, an applicant who answers yes to any background question on the NAIC Uniform application, can now submit the required supporting documentation at the time they are applying for or renewing a license. The submission of a document to the Attachment Warehouse will trigger an e-mail alert to the appropriate states applied in, that will notify the state that supporting documentation has been submitted to fulfill document requirements pertaining to the yes answer on the background question and allow the state to conduct its thorough review of the application. The advantage to the producer and the states is that the documentation can be sent to the Attachment Warehouse once, and all appropriate states will be notified and have the ability to view, download, or print the document. The Attachment Warehouse also allows a producer to meet the requirement from the states to report and submit documentation related to any regulatory action taken against them. This enables the producer to meet this regulatory obligation quickly in order to comply with the 30 days typically required by the states for the reporting of an action and all states in which the producer is licensed will be notified with an e-mail alert and have access to the document.

A complete list of jurisdictions utilizing NIPR products and services is available at www.nipr.com. The website will have an updated list of the states that are making active use of NIPR electronic processing. (Product List by State)
Chapter 2

The Producer Licensing Model Act

Uniformity Provisions of the PLMA

Through the PLMA, the NAIC created a system of reciprocity for producer licensing and also established uniform standards in key areas of producer licensing. The PLMA was initially adopted in January 2000. It was subsequently amended in October 2000 and in 2005. In 2002, the PLWG adopted a set of Uniform Resident Licensing Standards (URLS). In 2008, the standards were revised and updated to incorporate standardization and uniformity for both resident and nonresident licensing. The standards were therefore renamed the Uniform Licensing Standards (ULS). The PLMA and the ULS are designed to complement each other and assist the states in creating a uniform system of producer licensing. In 2008 the PLWG was charged with reviewing the ULS. The revised standards are included in the Appendix and updates can be found under Committees and Activities, Executive (EX) Committee, Producer License Task Force, then select the on the PLWG page of the NAIC Web site.

The key uniformity provisions of the PLMA are:

1) Definitions for “negotiate,” “sell” and “solicit,” and uniform exceptions to licensing requirements.

2) An application process for both resident and nonresident producer license applications which uses the NAIC Uniform Application for resident and nonresident producers.

3) Definitions for the six major lines of insurance: Life, Accident and Health, Property, Casualty, Personal Lines, and Variable Life/Annuity Products.

4) Exemptions from completing prelicensing education and examinations for licensed producers who apply for nonresident licenses.

5) Standards for license denials, nonrenewals and revocations.

6) Standards regarding which individual producers and business entities may receive a commission related to the sale of an insurance policy.

7) Standards for producer appointments for those states that choose to retain an appointment system.

8) Procedures for regulators, companies and producers to report and administratively resolve “not for cause” and “for cause” appointment terminations.

9) A definition for limited lines insurance. The PLWG has adopted a recommended list of limited lines licenses, as set forth in the ULS, and has encouraged states to eliminate licensing categories for other lines of insurance.

Other Key Provisions of the PLMA

The PLMA also contains a number of provisions which promote simplified licensing procedures.

Home State

The intent of the PLMA was for a producer to have one state of residence. Section 2(B) of the PLMA defines this concept as the home state:
“Home state” means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer.

A producer is permitted to designate either the actual state of residence or the principal place of business as the home state. The PLMA does not specifically prohibit the existence of two home state licenses. The producer may select either the resident state or the principal place of business. This option was intended to accommodate a producer who lives in one state but maintains their business in another state. However, it was the intent of the drafters for one state to be designated as the home state to prevent forum shopping. The PLWG has discouraged any state from adopting a stance that a producer can maintain two home states.

Change of Home State

Under the PLMA, there is now a simplified process for producers who move from state to state and were in good standing prior to the change of residence.

Section 9 of the PLMA provides a mechanism for licensed producers to maintain an active license when changing the state of residence. Section 9(A) creates an exemption from prelicensing education or examination for a line of authority held by a former nonresident producer who moves to another nonresident state. In this scenario, the producer receives a new nonresident license for the same lines of authority, so long as the producer applies for a resident license within 90 days.

Section 9(B) creates an exemption from prelicensing education or examination for a line of authority held by a former nonresident producer who moves into a state and becomes a resident of that state. In practice, when a nonresident becomes a resident, that producer is to be granted the same lines of authority previously held, so long as the producer applies for a resident license within 90 days. States are not to impose prelicensing education or an examination on a nonresident producer who subsequently moves into another state and declares it to be the home state, unless “the commissioner has determined otherwise by regulation.”

Under the PLMA, letters of certification were eliminated as a prerequisite to granting a nonresident license. The SPLD provides verification of good standing in the producer’s home state.

One unresolved issue is the long-established practice of requiring a letter of clearance for producers changing their resident state. Despite the fact that the PLMA does not contain any reference to a letter of clearance, some states still require the producer to provide a letter of clearance from the former state before the new state will grant the producer an active resident status. Other states grant the new nonresident license but continue to monitor the producer’s record to make sure that the prior resident license changes in status from resident to nonresident. This is done to prevent the producer from holding two active resident licenses.

At this writing, the PLWG and the NIPR have identified this as an issue that could best be resolved by the establishment of an electronic method for the producer to communicate the desired changes to all affected states in one transaction. With the recent launch by the NIPR of the Address Change Request (ACR), the PLWG can now turn its attention to solving the issues surrounding a change of resident state.

Commissioner Discretion

The PLMA contains language that allows a state to adopt regulations to cover a state-specific situation. States should carefully consider the impact that deviation from the PLMA might have on NAIC uniformity and reciprocity initiatives.
Section-by-Section Summary of the PLMA

The full text of the PLMA is in the Appendices.

Section 1: Purpose and Scope
  • To promote efficiency and uniformity in producer licensing.

Section 2: Definitions
  • Defines the terms “home state,” “limited lines,” “sell,” “solicit,” “negotiate” and other pertinent terms.

Section 3: License Required

Section 4: Exceptions to Licensing
  • Lists the persons and entities that do not need licenses, even though they participate in the insurance industry.

Section 5: Application for Examination
  • Requires that producers must pass an examination in the lines of authority for which application is made.
  • Allows use of outside testing services to administer examinations.

Section 6: Application for License
  • Sets forth the qualifications for licensure as an individual or business entity. Provides that limited line credit insurers must provide instruction to individuals who will sell credit insurance.

Section 7: License
  • Sets forth the six major lines of authority and the limited line of credit insurance.
  • Provides guidelines for license continuation and reinstatement.
  • Provides for hardship exemptions for failure to comply with renewal procedures.

Section 8: Nonresident Licensing
  • Requires states to grant nonresident licenses to persons from reciprocal states for all lines of authority held, including limited lines and surplus lines insurance, if those persons are currently licensed and in good standing in their home states.
  • Requires a nonresident licensee who moves from one state to another to file a change of address and certification from the new resident state within 30 days with no fee or application.

Section 9: Exemption from Examination
  • Exempts licensed individuals who change their home state from prelicensing and examination, unless “the commissioner determines otherwise by regulation.”
  • Requires a licensed nonresident who becomes a resident to register in the new home state within 90 days of establishing legal residence.
Section 10: Assumed Names

- Requires a producer to notify the commissioner prior to using an assumed name.

Section 11: Temporary Licensing

- Allows temporary licensure for 180 days without requiring an exam in certain specific circumstances.

Section 12: License Denial, Nonrenewal or Revocation

- Lists 14 grounds for denial, nonrenewal, or revocation of a producer license.
- Provides that a business entity license may be revoked if an individual licensee’s violation was known or should have been known, and the violation was not reported to commissioner nor was corrective action taken.

Section 13: Commissions

- Prohibits payment of commissions or other compensation to or acceptance by an unlicensed person for “selling, soliciting or negotiating” insurance.
- Allows payment of renewal commissions to an unlicensed person if the person was licensed at the time of the sale, solicitation or negotiation.
- Permits payment or assignment of commissions or other compensation to persons who do not sell, solicit or negotiate, unless the payment would violate rebate provisions.

Section 14: Appointments (optional)

- Prohibits a producer from acting as a producer for an insurer unless appointed, or unless the insurance company appoints the producer within 15 days of the date the agency contract is executed or the first insurance application is submitted.
- Sets forth processes for initial and renewal appointments.

Section 15: Notification to the Insurance Commissioner of Termination

- Requires the insurer to notify the commissioner within 30 days following the effective date of termination of a producer’s appointment if the termination is for cause. The insurer also has a duty to inform the commissioner of any new facts learned after the termination.
- If termination of a producer is not for cause, the insurer must notify the commissioner within 30 days following the effective date of termination.
- Sets forth a detailed process for notifying the producer and for a producer to submit comments to the state.
- Provides that in the absence of actual malice, insurers have immunity from any actions that result from providing information required by or provided pursuant to this section.
- Contains penalties for insurers who fail to report or who report with actual malice.
- Requires that documents furnished to the commissioner pursuant to this section shall be confidential and privileged.
Section 16: Reciprocity

- A state cannot impose additional requirements on nonresident producers if the other state grants nonresident producer licenses on the basis of Section 8 of the PLMA.

- A nonresident’s satisfaction of CE in the producer’s home state shall constitute satisfaction of all CE requirements in the nonresident state if the home state practices reciprocity.

Section 17: Reporting of Actions (by producers)

- A producer must report any administrative actions taken in another jurisdiction or by another government agency in the home jurisdiction within 30 days of the final disposition of the matter.

- A producer shall report any criminal prosecution within 30 days of the initial pretrial hearing date.

Section 18: Compensation Disclosure

- Under certain situations, a producer is required to disclose to the customer the amount and sources of compensation the producer will receive if the customer makes an insurance purchase.

Section 19: Regulations

- The commissioner may promulgate regulations to carry out the purposes of the Act.

Section 20: Severability

Section 21: Effective Date
Frequently Asked Questions (FAQ)

The PLWG has created several documents that answer frequently asked questions about reciprocity, uniformity and how to administer the PLMA. The current version of the FAQ appears below. The latest version of these documents can be found on the NAIC Web site on the page for the PLWG.

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 15 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, etc. 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 the 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 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 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.

**Question 17:** Section 14B of PLMA states “To appoint a producer as its agent, 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.” In a situation where a producer is not currently appointed by an insurer, but was previously appointed by and submitted an application to that insurer, must that producer now obtain a new appointment before submitting a new application to that insurer because it would not be the first application the producer ever submitted to that insurer?

**Answer 17:** No. Section 14B of the PLMA requires appointment within 15 days of the date an insurer receives the first application submitted by a producer who is not currently appointed, even if that producer was previously appointed by that insurer and submitted business in the past. Reference to the agency contract or the first application is based on the current time period. If a producer’s prior appointment with the insurer was terminated, each jurisdiction would consider the time period to start again with the new contract execution or the time period when the agent submits his first insurance application following the prior termination.
Chapter 3

Uniform Licensing Standards

In 2002 the PLWG adopted Uniform Licensing Standards (ULS). The standards were revised and updated to incorporate standardization and uniformity for both resident and nonresident licensing. The standards were renamed to the Uniform Licensing Standards (ULS) in 2008. These standards will be referenced throughout this handbook. The full text of the ULS is in the Appendices. The latest information can be found under Committees and Activities, Executive (EX) Committee, Producer License Task Force on the PLWG page of the NAIC Web site.

These standards establish an important baseline to assure regulators that all states are applying the same standards to resident applicants. The PLWG monitors compliance with the uniform standards. Since the adoption of the ULS, the PLWG has adopted interpretative guidelines and clarifications to further explain the proper implementation of the ULS.

The ULS contain guidelines in the following categories:

1) Licensing Qualifications
2) Prelicensing Education Training
3) Producer Licensing Test
4) Integrity/Personal Qualifications/Background Checks
5) Application for Licensure/License Structure
6) Appointment Process
7) Continuing Education Requirements
8) Limited Lines Uniformity
9) Surplus Lines Standards
10) Commercial Line Multi-State Exemption Standard
11) Commission Sharing

Initial and Renewal Producer License Applications

The PLWG has adopted initial and renewal NAIC Uniform Applications for resident and nonresident individuals and business entities. Under the ULS, states are directed to use the Uniform Applications rather than state-specific applications. The PLWG has established a schedule for review and update of the applications. States are encouraged to use the most current form of the Uniform Applications. The forms are available on the NAIC Web site. All NIPR online applications utilize the most recent approved uniform initial and renewal application forms.
**Recommended Best Practices for Regulators**

- Conduct a regular review of state business rules, as well as any state-specific requirements for paper and electronic applications that are posted on NIPR’s Web site, with the NIPR or other vendor to maintain compliance with reciprocity and the ULS.
- Consider whether existing business rules are statutorily required. To the extent they are not statutorily required, they should be removed. To the extent they are statutorily required, the state licensing director should consider whether they are necessary. To the extent they are not necessary for consumer protection, the commissioner should take steps to have such statutory requirements repealed.
- Carefully consider whether licensing staff should be given authority to change internal business rules or to give direction to a vendor without the director’s approval. A change in procedure that may seem to be appropriate could cause problems with reciprocity or the ULS.
- If a state uses an outside vendor to receive and process license applications, monitor the vendor to ensure that applicants are provided only the most current NAIC uniform application, whether the applicant applies or renews online or via paper application.
- Adapt the department Web site to direct applicants to a single electronic location to obtain the most current version of the NAIC uniform forms, or specifically to the link for the electronic process...
- Departments should encourage the use of electronic processes, when available, rather than paper processes, to expedite the licensing process.
- Eliminate all state-specific application forms and use only the most recent version of the NAIC uniform forms.
- Develop a procedure manual and cross-train staff so that several personnel can perform all licensing tasks.
- Provide adequate notice of changes to licensing and appointment fee structures, as well as changes to applications and other forms required to be submitted by applicants. With regard to the transition from an old application form to a new form, states should continue to accept original, signed applications up to a reasonable transition period beyond the inception date for the new form. Prior to the effective revision date, the state should provide adequate notice by way of electronic mail, Web site updates, and any other appropriate communication device to interested parties.
Chapter 4

Nonresident Licensing

The reciprocity provisions of GLBA require that barriers to nonresident producer licensing be eliminated. The PLMA contains specific guidance on this issue. A producer licensed in good standing in the home state must be granted a nonresident license unless good cause for denial exists under Section 12 of the PLMA.

There are four key components to licensing reciprocity:

1) Administrative procedures
2) Continuing education requirements
3) Elimination of any limitations on nonresidents
4) Reciprocal reciprocity

Administrative Procedures

Under the administrative procedures for reciprocal licensing mandated by GLBA, a nonresident person shall receive a nonresident producer license if:

1) The person is currently licensed as a resident and in good standing in the person’s home state.
2) The person has submitted the proper request for licensure and has paid the fees required by the nonresident state’s law or regulation.
3) The person has submitted or transmitted to the insurance commissioner the application for licensure that the person submitted to the person’s home state, or in lieu of that, a completed NAIC Uniform Application.
4) The person’s home state awards nonresident producer licenses on the same basis to residents of the state in which the applicant is seeking a nonresident license.

States are required to license nonresident applicants for at least the line of authority held in the home state. This is true even if the line of authority held in the applicant’s home state may not precisely align with the major or limited lines of authority in the other state. States are not allowed to charge a licensing fee to a nonresident that is so different from the fee charged a resident so as to be considered a barrier to nonresident licensure. States are also not allowed to collect fingerprints from nonresident applicants.

Section 8(C) of the PLMA makes it clear that a licensed nonresident producer who changes residency is not required to surrender the license and submit a new application. All that is required is a change of address within 30 days of the change of legal residence. The model provides that a state should not charge a fee for processing this change of address.

The reciprocity provisions of the PLMA also extend to surplus lines producers. A majority of states treat surplus lines as a distinct license type. Persons holding surplus lines producer licenses in their home states shall receive nonresident surplus lines producer licenses unless some other reason for disqualification exists.

A producer holding a limited line of insurance is eligible for a nonresident limited lines producer license for the same scope of authority as granted under the license issued by the producer’s home state. The nonresident state may require only what is permitted under Section 8 of the PLMA for limited lines applicants. A limited line is any authority that restricts the authority of the licensee to less than the total authority prescribed in the associated major line.
**Continuing Education Requirements**

A nonresident state must accept the producer’s proof of the completion of the home state’s continuing education (CE) requirements as satisfaction of the nonresident state’s CE requirements. The nonresident state cannot require an applicant from another state to complete the nonresident state’s CE requirement.

**Limitations on Nonresidents**

States must eliminate licensing restrictions that require a nonresident producer to maintain a residence or office in the nonresident state so long as the nonresident’s license is from one of the United States, the District of Columbia or U.S. territories. The NARAB Working Group has stated that it is not a violation of GLBA reciprocity requirements if a state requires nonresidents to provide proof of citizenship; however, under the Uniform Licensing Standards, it is the responsibility of the resident state to verify an applicant’s citizenship status.

**Reciprocal Reciprocity**

To comply with the reciprocal reciprocity provisions of GLBA, a majority of the states must meet all three of the above components and grant reciprocity to all residents of the other states who have met those components.

**Reciprocity Examples**

The PLMA contains specific guidance on the proper reciprocal treatment that a state licensing director should grant. This chapter contains illustrative examples of these provisions. Unless otherwise specified, these examples assume that the applicant is in good standing in the home state and has not requested a change in line of authority (LOA). There are some states that have not adopted all the reciprocity standards as expressed in GLBA or in the PLMA. The answers to the following examples will vary when a nonreciprocal state is involved. There also are examples in the PLWG’s *Frequently Asked Questions* contained in Chapter 1.

**Example A**

A producer whose home state is State A has a nonresident license from States B and C and moves to State D as the producer’s new home state.

What should happen: Producer timely files a change of address in States A, B and C. State A changes the license from resident to nonresident. States B and C record a change of address. The producer should apply for a license with State D within 90 days. State D should issue the license and may not require the producer to complete either an examination or prelicensing education, State D should verify that the license was in good standing in State A via the State Producer Licensing Database (SPLD).

**Example B**

A producer who holds a line of authority for surety in the home state, State A, applies for a nonresident license in State B that does not have a surety line of authority.

What should happen: State B issues the license for at least the surety LOA that the producer holds in the home state.

**Example C**

A producer’s home state, State A, does not have a prelicensing education requirement for any LOA, and the producer holds a life insurance LOA. The producer applies for a nonresident license in a state that has a prelicensing education requirement.

What should happen: State B issues a nonresident license with the life LOA and does not require any prelicensing education before issuance.
Example D

A producer’s home state, State A, does not have a prelicensing education requirement for any LOA, and the producer holds a life insurance LOA. The producer holds a nonresident license from State B that has a prelicensing education requirement. The producer moves into that state.

What should happen: State B should issue a resident license to the producer with a life LOA and does not require prelicensing education or completion of an examination before issuance, “except where the commissioner determined otherwise by regulation.” (See PLMA Section 9B)

Example E

A producer’s home state, State A, has a prelicensing education requirement and a CE requirement that is less than the ULS, and the producer holds a life insurance LOA. The producer applies for a nonresident license in State B, which has a prelicensing requirement that matches or exceeds the ULS and a CE requirement that matches the ULS.

What should happen: State B issues the nonresident license with the life LOA and does not require the completion of either additional prelicensing education or additional CE.

Example F

A nonresident producer applies for the variable products LOA in State A. A check of the SPLD reveals that the applicant is not licensed for variable products in the home state, State B. Upon investigation, it is learned that State B either issues life/variable as a combined LOA or has a requirement for variable products licensing, but, it is not specifically tracked by the Department.

What should happen: This is a challenge, as State B has failed to adopt the variable products line of authority as defined in the PLMA. A second challenge is that the records on the SPLD and/or the NIPR may not accurately reflect the home state business rule. In this example, the nonresident state will have to pend the application and contact the home state to verify if the applicant is in compliance with the home state law on variable products. The nonresident state must then decide if the applicant should be granted a license.
Section B  Licensing Processes

Chapter 5  Activities Requiring Licensure
Chapter 6  Prelicensing Education
Chapter 7  Application Review for Initial Licenses
Chapter 8  Testing Programs
Chapter 9  Lines of Insurance
Chapter 10  Surplus Lines Producer Licenses
Chapter 11  Appointments
Chapter 12  Business Entities
Chapter 13  Temporary Licenses
Chapter 5

Activities Requiring Licensure

License Required to Sell, Solicit and Negotiate

The PLMA uses three key words to determine when a person is required to have an insurance producer license:

“Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

“Solicit” means attempting to sell insurance, or asking or urging a person to apply for a particular kind of insurance from a particular company.

“Negotiate” means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

The specific requirement to hold a license is found in Section 3 of the PLMA and reads as follows:

A person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this Act.

The PLWG clarified in 2006 that, in traditional life insurance sales transactions, licensure should be determined solely by the PLMA’s “sells, solicits or negotiates” standard, without reference to the insured’s state of residence. The key is to determine if the producer was properly licensed in the state in which the activity requiring a license took place. See also FAQ Number 16 in Chapter 2.

During the drafting of the PLMA, there was considerable discussion about who should be required to hold an insurance producer license. Prior to the adoption of the PLMA, the PLWG discussed guidelines for “licensable” and “non-licensable” activities. The main thrust of that effort was to distinguish acts that constitute the sale, solicitation or negotiation of insurance from ministerial or clerical acts. The guidelines document gives numerous examples of “Agent” activities that do require an insurance producer license and “Clerical” activities that do not. The document is included in the Appendices. Check the PLWG Web page for any updates.

Commissions

Section 13 of the PLMA provides guidance regarding the relationship between being licensed and receiving commissions. Section 13(A) prohibits the payment of commission to a person who is required to be licensed. Section 13(B) prohibits a person from receiving a commission if that person was unlicensed and was required to hold a license under the Act.

Section 13(C) of the PLMA states that it is not necessary nor should any state require a producer to maintain an active license solely to continue to receive renewal or deferred commissions.

Section 13(D) of the PLMA provides that an insurer or a producer licensed in a state may assign commissions, services fees, brokerages or similar compensation to an insurance agency (business entity) or to persons (individuals) who are not selling, soliciting or negotiating in that state and who are not licensed in that state. For example, if a regional manager in State A is, by contract with an insurer, to receive an override commission on all sales activities from subagents located in States B and C but the manager does not engage in any activity that would require licensure under section 3 of the PLMA, no license should be required by States B or C in order for the manager to receive commission payments.
Another example: A trade association with members in all states is headquartered in State A. An insurer pays a fee to the association for each member who purchases insurance from that insurer through an affinity marketing program. The association does not have to be licensed in any state because the association does not sell, solicit or negotiate insurance.

In 2008, the PLWG provided guidance on uniform interpretation of the commission sharing provision in PLMA and recommended that adoption of Section 13 be included in the Uniform Licensing Standards. The Commission Sharing guidance document is included in the Appendix of this Handbook.

Exceptions to Licensing

The PLMA contains two key sections that clarify when a license is not required. When considering whether to require a license, states should carefully review Sections 4 and 13 of the PLMA.

Section 4 of the PLMA contains a specific list of exceptions from the licensing requirement. States should take special note of section 4(B)(6), which provides an exception for producers placing commercial insurance for a multi-state risk with an incidental exposure in several states. As the section provides, in this situation a license is only required in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

The following is a summary of types of persons and entities that are exempted from licensing:

1) An officer, director or employee of an insurer or insurance producer, provided that the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in the state.

2) A person who secures and furnishes information for or enrolls individuals in group life insurance, group property and casualty insurance, group annuities, or group or blanket accident and health insurance.

3) An employer or association; its officers, directors, employees; or the trustees of an employee trust plan.

4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks.

5) A person whose activities in a state are limited to advertising without the intent to solicit insurance in that state.

6) A person who is not a resident of a state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract.

7) A salaried full-time employee who counsels or advises the employer relative to the insurance interests of the employer.

Recommended Best Practice for Regulators

For uniformity purposes, states that still use a “transaction-based licensure” approach should eliminate that standard and change to the PLMA standard.
Chapter 6

Prelicensing Education

Prelicensing education is required in some states as a condition of licensure for resident insurance producers. Neither the PLMA nor the ULS suggest that a state must have a requirement for prelicensing education. States that have a prelicensing education requirement should follow the uniform standards as adopted by the PLWG.

The ULS set a minimum credit hour requirement for prelicensing education. In 2010 the PLWG has been charged with reviewing this standard. Updated information if there are any changes to this standard will be found on the PLWG’s website.

States that require prelicensing education shall require 20 credit hours of prelicensing education per major line of authority. States must accept both classroom study and verifiable self-study, which includes both text and online courses, and the ULS does not have a limit on the number of credits that can be obtained by self-study. States shall independently determine the content requirements for prelicensing education. The ULS require that a state have a method to verify completion of prelicensing education, but do not prescribe a method.

The ULS provide that a person who has completed a college degree in insurance shall be granted a waiver from all prelicensing education requirements. The standards also provide that individuals holding certain professional designation approved by the insurance department should be granted a waiver from the prelicensing education requirement. In 2008, the ULS was updated to indicate the following list of designations is provided as guidance for designations that would waive prelicensing education, but the list is not exhaustive:

Life: CEBS, ChFC, CIC, CFP, CLU, FLMI, LUTCF
Health: RHU, CEBS, REBC, HIA
Property/Casualty: AAI, ARM, CIC, CPCU

Under both reciprocity standards and the ULS, no state shall require prelicensing education for nonresident applicants or nonresident producers who change their state of residency.
Chapter 7

Application Review for Initial Licenses

Individual Application Forms

The PLWG has adopted a uniform application, and the ULS require its use for all producer applicants. Section 6 of the PLMA outlines the process a state is to follow in reviewing the application and in making the determination as to whether to grant a resident producer license.

Before issuing a resident producer license to an applicant, the state must find that an applicant for a resident license:

1) Is at least 18 years of age.
2) Has not committed any act that is a ground for denial, suspension or revocation set forth in PLMA Section 12.
3) Where required by the insurance commissioner, has completed a prelicensing course of study for the lines of authority for which the person has applied.
4) Has paid the appropriate fees.
5) Has successfully passed the examinations for the lines of authority for which the person has applied. Note that the ULS provide that examinations are not generally required for limited lines, but that it is acceptable for examinations for areas such as crop and surety.

Business Entity Applications

The following requirements are optional and would only apply to those states that have a business entity license requirement.

The PLWG has adopted a uniform application form for business entities, and the ULS require its use. Section 6 of the PLMA requires that before approving an application for a resident business entity, the state shall find that:

1) The business entity has paid the appropriate fees.
2) The business entity has designated a licensed producer responsible for the business entity’s compliance with the insurance laws, rules and regulations of the state.

Section 6 also gives the commissioner authority to require any documents necessary to verify the information contained in an application. In 2010, the Producer Licensing Task Force is considering methods to expedite and streamline business entity licensing. Updated proposals can be found under Committees and Activities, Executive (EX) Committee, then select the Producer License Task Force page of the NAIC Web site.

Background Checks

The GLBA allows states to perform criminal background checks on applicants. The ULS contain guidelines on how to perform background checks, including the following three-step process for background checks:

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.

Fingerprints

Under the ULS, the goal is that all states will electronically fingerprint their resident producers and as part of the initial resident producer licensing process. States that lack the authority to run criminal history background checks through the FBI are encouraged to at least run a statewide background check until such time that state and national fingerprinting is implemented.

The PLWG has adopted model language that will allow a state to access federal databases. (See NAIC Model 222, Authorization for Criminal History Record Check.) States are encouraged to adopt this language.

1033 Consent Waivers

A federal law, 18 U.S.C. section 1033, commonly referred to as “1033,” establishes a ban on individuals who have been convicted of certain felony crimes involving dishonesty or breach of trust from working in the insurance business. The law provides that a banned person can apply to the state insurance commissioner for a written consent to work in the insurance business. If an individual with a felony involving dishonesty or breach of trust obtains a 1033 consent waiver from that person’s resident state, the person cannot be prosecuted for engaging in the business of insurance in violation of 18 United States Code, Sections 1033 and 1034.

When one state grants a written consent waiver to an individual pursuant to 18 U.S.C. 1033, the consensus of legal opinion is that this written consent waiver is effective nationwide.

The PLWG has determined that the resident state bears responsibility for consideration of applications for consent waivers. Nonresident applicants should not be subject to additional procedures, nor should producers seeking nonresident licenses have to go through the 1033 process in all states after the producer’s resident state has issued a waiver. However, producers who have received waivers are required to attach them to applications for nonresident licenses. To assist these applicants, states should include a specific reference to 18 USC 1033 within the text of the document that grants a waiver. States may exercise their discretion to deny licenses based on the types of criminal convictions disclosed in consent waivers. The NAIC Antifraud Task Force has adopted guidelines for review and granting of these consent waivers. Under the guidelines, states are to report all activity on these consent waivers to the Special Activities Database (SAD). The full text of the guidelines is available through I-SITE.

NAIC Databases Relevant to Initial Application Review

The NAIC maintains three databases that should be consulted as part of application review.

1. The Complaint Database System (CDS) contains information on closed complaints as reported by the states.

2. The Regulatory Information Retrieval System (RIRS) contains any action taken by a state insurance department where the action is against an entity and where the disposition is public information. All final adjudicated actions taken and submitted by a state insurance department are reflected in RIRS. The information typically includes: administrative complaints, cease and desist orders, settlement agreements and consent orders, receiverships, license suspensions or revocations, corrective action plans, restitutions, closing letters, and letter agreements. RIRS does not include exam report adoption orders without regulatory actions.
3. The Special Activities Database (SAD) is a method by which regulators may share information on a confidential basis with fellow regulators. It is important to emphasize that the mere existence of an entity on the SAD system is not necessarily an indicator of wrongdoing and that each entry should be fully investigated before any further regulatory action is contemplated. The SAD contains information that state and federal regulators and NAIC staff have reported is of insurance regulatory concern.

A record of 1033 actions and waivers is maintained in SAD. The SAD also includes all companies on the Market Analysis Working Group (MAWG) agenda. Reports to SAD are channeled through the NAIC Antifraud Coordinator for consistency and quality control. The SAD is not designed to provide all the particulars of events, dates or related issues. It is designed to indicate that information exists and to track preliminary, non-adjudicated activity. For example, states might report entities that have had charges brought against them, have been the subject of specific insurance department or other governmental investigation, or have been reported to be involved in fraudulent, unlicensed, unauthorized or other unique or unusual activity. Many of the entries consist of information that can be confirmed or is otherwise available in public records.

**Review of Applications When Criminal History Is Disclosed.**

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. For all jurisdictions to have a comfort level with licensing determinations made by a resident state when the applicant has a criminal history, a uniform process of review is warranted. If all jurisdictions implement these guidelines, in most situations, nonresident states will be able to defer to the resident state’s licensing decision. A copy of the Uniform Criminal History and Regulatory Actions Background Review Guidelines is included in the appendix of this Handbook.

When an application contains a disclosure with a “yes” answer to a criminal history question, in determining whether to issue a license, states should consider the following factors:

**Resident vs. Nonresident**

If the application is for a resident producer license, it is incumbent upon the resident state to scrutinize all “yes” answers on the application and to request and obtain documentation and a detailed explanation for all criminal charges. Nonresident applicants’ criminal histories also should be documented and explained with consideration given to the fact that the resident state already has issued a license to the applicant.

**Severity and Nature of the Offense**

Felony convictions should always be considered in determining whether to issue a license to an individual, and may require the applicant to apply for a 1033 Consent Waiver prior to application (see section on 1033 Consent Waivers).

A criminal conviction is only relevant to the licensing decision if the crime is related to the qualifications, functions or duties of an insurance producer. Examples include theft, burglary, robbery, dishonesty, fraud, breach of trust or breach of fiduciary duties, any conviction arising out of acts performed in the business of insurance, or any actions not consistent with public health, safety and welfare. Special scrutiny should be given to financial and violent crimes.

**Frequency of Offenses**

While a producer’s past criminal history is a red flag and may be a predictor of future behavior, the frequency of offenses should be considered, with more weight given to a pattern of illegal behavior than to a one-time minor indiscretion.
Date of the Offense

The application form requires the applicant to disclose all criminal charges except minor traffic offenses. A reviewer should consider when the offenses occurred and the age of the applicant at the time of the offense.

Completion of Terms of Sentencing

Applicants should provide evidence that they have completed all the terms of their sentences, including paying restitution, or completing any probationary periods or community service.

Evidence of Rehabilitation

The applicant should be required to provide evidence of rehabilitation. Completion of the terms of sentencing alone does not demonstrate rehabilitation. A state may request a statement from the applicant’s probation officer or other appropriate official.

Statutory Obligations and Discretion

Regulators should review state law to determine guidelines for approval or denial of the application. After consideration of the above factors, the regulator has several options:

1) Request additional information or documentation.
2) If the producer failed to report an action, contact the producer and request an explanation from the producer. (Technical violations, such as bad address or failure to timely report, generally do not merit formal action. However, the failure to report an action in itself can be cause for administrative penalty or a warning letter, depending on the particular state’s law).
3) Approve the application with no conditions.
4) Approve the application with conditions.
5) Deny the application.

In some cases, it may be appropriate to grant a conditional license. This option may not be available in all states and may be limited by state law or regulation. Some options include:

1) Issue a probationary license, which will expire after six months or a year, or which will coincide with the applicant’s criminal probationary period. At the end of the probationary period, and prior to consideration of full licensure, the regulator should confirm that the applicant successfully completed all terms of the sentence and probation. This option also can be used for a producer with a record of prior administrative action.
2) Enter into a supervisory agreement, whereby another established licensed producer agrees to be responsible for the applicant during a certain period of time of the applicant’s license term. This is a good option for producers who have criminal records in another state or some other evidence of past bad conduct. The supervisory agreement should include a requirement that the supervising producer report to the regulator any inappropriate behavior that is relevant to the agreement and to the applicant’s license status.
3) Issue only a limited or restricted license for a particular product, such as credit life insurance. The theory of this option is that some types of products present individuals with less opportunity to commit bad acts.
4) Issue the license along with a requirement that the producer must report all complaints received against the producer and under the condition that there will be an immediate suspension for any bad act.
Recommended Best Practices for Regulators

- Work with state officials to adopt a fingerprint program that allows your state criminal justice agency to receive electronic prints, as well as electronically submit the reports back to the state DOI.
- If no fingerprint program is in place, inquire of the state criminal investigation department to determine if an alternative system for meaningful state background checks can be arranged.
- Allow pre-exam and post-exam fingerprinting.
- Make electronic fingerprinting available at test sites.
- Allow re-fingerprinting, if necessary, on a walk-in basis with no additional cost.
- Include registration for fingerprinting with registration for the exam or link the online websites to allow for electronic registration.
- Streamline the background check process to avoid delay in the overall licensing process such as allowing for a temporary work authority pending receipt of the background check results.
- Check with other state agencies to determine what vendor(s) are utilized for the submission of electronic prints (agencies that oversee programs such as teachers, bus drivers, social workers, foster parents, etc.)
- Adopt the NAIC’s Authorization for Criminal History Record Check Model Act for all license classes (allow some lag time before the effective date to provide sufficient time to establish procedures) Note that Uniform Licensing Standard 14 has since been updated to fingerprint new resident producers and that
- Fingerprints are no longer required for additional lines of authority under an existing home state license.
- The PLMA allows a producer to reinstate a lapsed license within 12 months of expiration so only resident producers who are reinstating a license lapsed over 12 months should be required to submit fingerprints.
- Work with your state District Attorney official to coordinate review and approval of the enabling statute which must be approved by the US Attorney General to access the Criminal Justice Information Services division of the Federal Bureau of Investigation (FBI) criminal history record information.
- Establish a set number of times an applicant should be reprinted (at times, prints are rejected) If reprinting is required, and the prints are still rejected, establish a process to perform a state and federal NAME check.
- If your state is unable to use a vendor to electronically collect the cost of the criminal history background check from applicants, work with NIPR to collect this fee from new resident producer applicants during the electronic resident licensing application.
- Work with state officials to establish a reimbursement services agreement (RSA) for the payment of fingerprint/background checks.
- If your jurisdiction is just implementing fingerprinting, reach out to other jurisdictions for suggestions and best practices.
- Develop a system for review of 1033 consent waiver applications and post relevant information on the department Web site.
- Post all information regarding 1033 consent waiver requests, approvals and denials on the I-SITE Special Activities Database (SAD).
- Accommodate applicants to the greatest extent possible with flexible hours of operation.
- Allow payment by check, credit card or debit card.
Chapter 8

Testing Programs

Introduction

The states have a responsibility to ensure that licensing examinations are fair, sound, valid and secure. Directors must consider how an exam is developed, who is involved in the development process, how the exam is offered and how security is maintained. Nearly every state has contracted with an outside vendor to assist in examination development and administration. These testing vendors employ test development experts and psychometricians to construct and evaluate examinations.

The primary purpose of a state examination and licensing program is to protect consumers. Examinations should be consistent across the states in difficulty level, content and subject matter. They should be uniformly administered and scored. Examinations should be psychometrically sound, utilizing methods for setting and maintaining passing standards (i.e., cut scores) that are in accordance with testing industry best practices, using resources such as the Standards for Educational and Psychological Testing, developed jointly by the American Educational Research Association, the American Psychological Association and National Council on Measurement in Education, and the U.S. Equal Employment Opportunity Commission’s (EEOC) Uniform Guidelines on Employee Selection Procedures (29 CFR 1607). Through valid, reliable and legally defensible test development practices, candidates will have a fair and equitable opportunity to pass an exam, regardless of which state exam they take. Ideally, pass rates should be consistent throughout the states; however, statistics from national examination administration have shown that the pass rates for examinations for the same line of insurance vary significantly among the states. Other variables may contribute to pass rates, such as state education systems, demographics, the existence of a prelicensing education requirement and the quality of such prelicensing education, but the states should work with their test vendors to be sure that they eliminate any practices that do not measure the entry-level knowledge, duties and responsibilities of an insurance producer.

Different states take different approaches to the development and administration of producer license examinations. Some of the states exercise significant control over test development and review. Other states rely almost entirely on outside experts. In most of the states, the state does not pay any fee to a testing vendor, and the cost of test development and administration is passed through to the test-takers. Most of the states reserve the right to preapprove any fees charged by testing vendors.

With the state licensing system increasingly built on reciprocity, it is in the best interest of consumers, regulators, industry, producers and prospective producers for state licensing directors to establish guidelines that promote efficiency and consistency throughout the licensing process. Directors also should reduce or eliminate artificial barriers that impede qualified applicants from obtaining a license.

The purpose of this chapter is to recommend best practices for states in testing administration in the following areas:

1) Test development and review
2) Test administration
3) Test results
4) Expectations for test vendors

This chapter was developed with assistance from insurance test vendors, industry representatives, education providers and insurance regulators.
PLMA Guidelines on Examinations

Section 5 of the PLMA contains guidance for administering licensing examinations. Under Section 5, all residents are expected to complete a written examination, which should include the following:

- The entry-level knowledge required for an individual concerning the lines of authority for which the application is made.
- The duties and responsibilities of an insurance producer.
- The applicable insurance laws and regulations of the state.

Section 5 grants the commissioner authority to hire an outside testing service to administer examinations and impose nonrefundable examination fees.

The PLMA contains several exemptions from prelicensing education and examination requirements. An individual who is licensed as a nonresident in a state and who moves into that state or an individual who moves from his/her home state to another state and seeks a resident license is not required to complete an examination for the line(s) of authority previously actively held in the prior resident state as long as application is made within 90 days of the change in residence and the prior resident state indicates the producer was licensed in good standing. In this situation, a nonresident state should never impose prelicensing education or examination requirements.

The ULS provide that examinations are not generally required for limited lines, but that it is acceptable to require examinations for areas such as crop and surety.

The PLMA leave test development and administration to the discretion of the individual states. Section 5(A) of the PLMA requires that “[a] resident individual applying for an insurance producer license shall pass a written examination,” and requires that the examination must test the knowledge of the individual in three areas:

1) The specific lines of authority for which the application is made.
2) The entry level duties and responsibilities of an insurance producer.
3) The applicable insurance laws and regulations of the state.

Beyond these broad subject matter categories, Section 5 states that tests “shall be developed and conducted under rules and regulations prescribed by the insurance commissioner.”

In order to provide more uniformity in state licensing practices, the 2012 revised ULS for Exam Content/Subject Area and Testing Administration Standards establishes implementation of the “Exam Content and Testing Administration Recommended Best Practices found in Chapter 8 of the NAIC State Licensing Handbook” as the uniform standard.

Test Development and Review

Test development experts believe that licensing examinations should measure the minimum competency required for a candidate to perform at an entry level. Therefore, test content and curriculum development should be focused on assessing whether a candidate demonstrates sufficient knowledge to pass an examination that is appropriately targeted to an entry-level producer.
The examination should not dictate the curriculum that an entry-level insurance producer should master. Instead, the test content should be developed using the steps outlined below. Examinations and curriculums should be updated to reflect any changes in insurance laws, regulations or industry practice. An online candidate guide should be available and should provide detailed testing and licensing procedures and content outlines with cross-references to the curriculum.

Input from trainers who conduct test preparation courses may assist in the development of the curriculum and the exam content outline; however, some regulators believe it is not appropriate to invite these trainers to participate in reviewing final examination questions. Education providers who do not offer prelicensing education courses (such as CE providers) sometimes are utilized during test development. There are generally two approaches to examination construction. A bank-based test generates individual examinations from a large bank of items. A form-based examination will consist of a specified set of predesigned test forms that are rotated. The states use both methods, and both are psychometrically acceptable. Although, in most jurisdictions, contracted outside experts play a major role in test development, the state should have a regular process and procedures for developing and reviewing licensing examinations to ensure that those examinations are properly focused on the minimum competencies required of an entry-level producer. Some items that should be included in the plan include:

- Procedures to ensure that a job analysis survey that includes input from regulators and the industry is conducted at regular intervals to determine the requirements and work performed by an entry-level insurance producer.
- Regular, ongoing review and assessment of producer licensing examinations in the event of legislative or regulatory changes that could impact the accuracy of exam content.
- An annual review of the examination development process conducted with the state and the testing vendor.
- Depending on test volume, test performance and the need for content changes, either an annual (or at least biannual) substantive review of the examination and the psychometric properties of the test. These efforts should include the involvement of content/test development professionals, department personnel and industry representatives, including recent, entry-level producers.
- A fair and valid state-based test should incorporate knowledge, skills and abilities that measure state-specific and national expertise. This balance will shift depending on the subject matter. For example, life insurance laws and regulations tend to be more similar among the states, while health insurance standards can vary widely.
- If the state collects demographic data, it should be reviewed annually.

Developing the Questions

Developing a valid and sound bank of test questions, often called “items,” is perhaps the most critical piece of any testing program. The items need to be at the appropriate level of difficulty. Items should be relevant to the profession and should be effective in evaluating whether the person taking the exam possesses the knowledge, skills and abilities critical to competently performing the job and safely practicing in the profession. To create this balance, most of the states use a combination of local subject matter experts (SMEs) and content/test development professionals. The local panel should include new and experienced producers to help establish such a balance.

Using multiple item writers to develop test content is a common practice, but can lead to variation in test item style, format and difficulty. Developing a style guide with templates, development standards and rules can go a long way in improving item consistency, format and variety. Content development training can ensure that writers have the tools they need to develop credible, legally defensible items and templates that can be leveraged to create multiple variations of the same question.
Passing Score vs. Pass Rate

A passing score, sometimes called a “cut score,” is the minimum score one needs to achieve in order to pass the exam. The “pass rate” is the percentage of candidates who actually pass the exam. The test development process will consider data from actual tests and data from reviewers rating the items and exams in evaluating the cut score.

In some of the states, the cut scores are arbitrarily established by rule or regulation. This is not a valid testing practice. Cut scores should be based on data collected through the test-development process. Regulatory licensing exams typically target a level referred to as “minimum” competency rather than “average” competency. Licensing examinations try to determine who has the minimum competency to safely practice in a profession without compromising the health and safety of the public. An arbitrary cut score, which is the practice in some of the states, tends to focus on the average, rather than minimum, competency. Thus, qualified candidates could be cut because they fall below the average, not because their competency is unacceptable.

Exam Scoring

Some of the states administer a one part/one-score exam, while others administer two-part exams. In the one-part exam, general product knowledge and state-specific content are scored together. In the states with a two-part exam, the candidate must separately pass both the general product knowledge exam and the state-specific exam in order to be eligible to apply for a license for the line of authority requested. A third variation is to require the first-time test-taker to pass an exam on state-specific insurance laws and regulations once. All additional lines of authority are tested on general product knowledge only.

Preliminary review of pass rates indicates a tendency for more candidates to fail in the states that require two-part exams. There is no evidence that two-part exams increase consumer protections or that the states that administer one-part exams license producers who do not know applicable state law. The states are encouraged to move to one-part exams to allow for more success among candidates without jeopardizing consumer protections.

Exam Content

As of May 2013, the states have no standard exam curriculum. The NAIC is encouraging more uniform approaches by considering the best practices for testing programs listed at the end of this chapter to be standards for all jurisdictions to work toward. The NAIC Producer Licensing (EX) Task Force has formed a subgroup of five states that are developing a draft national content outline using the life and annuity line of authority as a pilot. The national content outline will provide guidance for entry-level subject matter that the states should test for, as well as information that will assist candidates in identifying relevant knowledge to study in preparation for the exam.

Some experts have recommended that examinations should be constructed with the following considerations in mind:

- The states should not target examinations to an artificially set passing score. A state should determine whether its test is focused on assessing the knowledge needed by potential new producers, and only applicants who lack that level of knowledge should fail. The states should use legally defensible, recognized methodology when establishing a cut score.
- Prior to releasing items into an exam form, the editing and review process employed is critical. This editing process should include the psychometric evaluation of the cognitive level of the items and the reading level of the items, as well as such editorial issues as grammar, sensitivity and style. Psychometric editing is best performed by test development professionals, not state subject-matter experts or item writers. Individuals trained in the complexity of psychometric editing evaluate items in a different, critical light than subject-matter experts or item writers. It is critical, however, to have all final items reviewed and approved by state and national subject-matter experts in the given field for accuracy and relevancy.
• Each examination should consist of pre-test questions that are being evaluated for performance, and questions that previously have been evaluated (pre-tested) and determined to be statistically effective. Each candidate’s score should be based only on the previously pre-tested and approved questions. Any time used to respond to pre-test items should not be counted against the test-takers, and responses to pre-test items should not be calculated in the test-taker’s score. Pre-test items should not be used as scored items until they have been statistically proven to be effective. The test questions for any new examination should be chosen from the pool of test questions to properly represent the subject matter outline of the examination.

• Reports regarding exam pass rates, candidate demographics when collected and number of exams administered should be made available to the public. Reports should include first-time pass success by subject area. Whenever possible, this information should be tracked by, and be made available to, each education provider so they may evaluate their programs and instructors, and be provided with data needed for course development. The states may ask for, but generally cannot require, information on candidate population, gender, ethnicity, education level and income level. When candidate demographics are collected, reports should include the percentage and number of examinees who passed the examination by race, ethnicity, gender, education level and native language. This information is necessary for the selection of future test questions, and will aid in making testing transparent and assessing whether differences in test scores are correlated with relevant demographic factors.

• A state advisory committee consisting of regulators and the industry, including, where possible, recently licensed producers, should annually (or, if changes are not needed every year, at least biannually) work with the testing vendor to review the questions on each examination form or bank of items for substantive and psychometric requirements. Adjustments should be made to the examination to eliminate any questions that might be inaccurate or unclear, that might test subject matter that is beyond what a new producer should know, or that exhibit unsatisfactory psychometric properties.

• Licensing examinations should be reviewed at least annually, but if, during any rolling 12-month period, a licensing examination exhibits uncharacteristically high or low pass rates (such as less than 60% or more than 80%), unexplained fluctuations in testing volume or other significant deviations, that examination should immediately be reviewed.

A state testing program should include statistical analysis of test items in the field and gather feedback on the candidate performance on the individual items. The most obvious and critical use of this information is to ensure that exams are equivalent, and to evaluate the accuracy, with which items differentiate between candidates who are minimally qualified and candidates who are not. The psychometric review can result in the continued use of items, the modification of items or the deletion of items from the bank.

A professional test vendor should utilize a comprehensive strategy for developing test items and ensuring measurement of the knowledge, skills and abilities necessary for initial insurance licensees to perform their jobs effectively. The steps may include:

1) Conducting a committee-based job analysis.
2) Developing content specifications and weightings.
3) Developing items.
4) Editing and reviewing items with subject-matter experts to ensure items meet the required criteria.
5) Obtaining item difficulty (e.g., Angoff method) estimates to establish a passing score.
6) Developing item sampling groups to structure each examination.
7) Creating equivalent forms.
Test Development Deliverables

A state licensing director should expect to receive the following items to ensure that the testing vendor has provided all items necessary to administer a successful testing program:

- Finalized task and knowledge statements reflecting the requirements of each licensed insurance position.
- Content specifications for each licensing examination.
- A set of approved, relevant and important items for use on each licensing examination.
- A list of references used to develop the test items.
- Candidate Information Bulletins (CIBs).
- A technical report describing the procedures used and results obtained from the test development process for each licensing examination.

Candidate Information Bulletin (CIB)

A candidate information bulletin should describe the examinations and examination policies and procedures, and the consequences of violating security procedures. A testing vendor should be capable of making changes to the information contained within the CIB, during any contract year, at the state’s request.

The CIB should be available at no charge to candidates, trainers and insurers in hard copy or in electronic format via the Internet. The state licensing director should consider including the following topics in the CIB:

- How to contact the testing vendor
- Requirements for taking an examination
- How to apply for an examination, including receiving authorization of eligibility from the state, prelicensing education and background checks
- Links to current application forms
- How to obtain current forms in hard copy (if available in hard copy)
- Examination fees
- Scheduling procedures
- The content outline and format of the examination
- Supplies provided at the test center
- The time limit for the examination
- The scoring system
- Security procedures
- Examination process and procedures
- Appropriate examination-taking strategies (e.g., “there is no penalty for incorrect answers, so be sure to answer every question”)
- Appropriate use of scratch paper, calculators and/or other support material
- Sample questions
- Specific information about taking the test on the computer
- List of approved reference materials
- List of test centers, alternative test centers and driving directions to each
- Procedures for requesting special accommodation
- Examination registration forms
- Licensing requirements and procedures
- Refund policies
- Holiday or weather-related test center closures
- Instructions about how to contact the state insurance department
A state should approve each CIB before it is published. The licensing director should work with the vendor to set a timeline that will allow for final publication of an updated CIB in advance of the expiration of the prior edition of the CIB. The new edition should be provided to test preparation trainers at least six weeks in advance of implementation so that training materials can be updated.

**Technology Issues**

A state licensing director should consult with the state’s information technology (IT) staff to ensure that the testing vendor can deliver data to the department. This is critical when a state changes testing vendors. This is also critical if the state directs a vendor to send data to a different location than the state insurance department. Any transition should include a testing phase for hardware, software and department staff.

The state and the testing vendor should jointly agree on a timeline for introducing new or updated examinations. State IT staff should also be consulted.

**Legal Defensibility**

Items developed must also be legally defensible to protect the state in the event of a legal challenge. To protect the state from liability, each exam should be critically reviewed from a content and psychometric perspective to ensure that the exam was developed according to recognized standards. Validation procedures for licensing examinations should be designed to comply with content validation requirements of the EEOC’s Uniform Guidelines on Employee Selection Procedures (29 CFR 1607).

The states should require testing vendors to follow and document standardized methods. This should include appropriate test development personnel in the process. Utilizing the appropriate, credentialed professionals is critical, as there are multiple steps involved in test development process and various methodologies that can be used for each step. State licensing directors should discuss all options with qualified professionals.

**Vendor Responsibilities**

Test vendors should be able to meet minimum guidelines for sufficient availability, facilities, personnel and openness in terms of providing information related to their operations.

The states, and not the test vendors, must be responsible for all examination content and content outlines. The vendor should provide accessible information regarding the registration system through the Internet, toll-free telephone numbers, interactive voice response, fax and other available technologies. The available information should include permitting candidates to view exam test dates and to access forms and content guidelines without requiring prior payment and scheduling of an exam.

The vendor should promptly provide the state with all pertinent information, including prompt notification of any candidate complaints, changes to test administration, conflicts at examination test sites or other information requested or required by the state.

The vendor should provide quality, accessible facilities, with an established system of examination site supervision that ensures that competent site administrators consistently provide accurate information to applicants.

Where a vendor operates test sites in multiple states, the vendor should permit any applicant to take a state’s examination in another state, under the same conditions that would apply if the exam were taken at an in-state location.
Vendors should be required, on an ongoing basis, to collect the data on customer satisfaction and, if directed by the state, to make those data available to regulators, the industry and the public.

**Test Administration**

The testing process should be fair and accessible for all candidates. A state should consider including the following elements in its licensing process to ensure applicants have equal access to examinations.

*Secure Administration*

The security of the test center network is important in maintaining the integrity of a test. A vendor should be equipped with adequate security features and qualified test center administrators. Each proctor should be trained and tested on their ability to supervise exams. A vendor should have systems in place to ensure the fair, consistent and even administration of the exam in every location. A vendor should also have a method to detect attempts to record questions. For example, a vendor should track multiple examination attempts by individuals to assess if the candidate is intentionally failing the exam so it can be repeated. A vendor should be required to immediately notify the state if the vendor suspects that the integrity of an examination has been compromised.

*Test Locations and Registration*

Test locations should be set up to provide flexibility and convenience. Realizing that the states have different geographic challenges and diverse population density, a state should consider, where possible, requiring the following elements:

1) Testing should be made available at locations convenient to residents of all areas of the state.

2) Test locations should provide enough testing capacity so a candidate can test at the desired location within two to five business days of registration.

3) Exam site hours should include evening and weekend hours.

4) Test vendors should provide regular reports as required by the state detailing site usage and availability data.

5) Test registration should be available online or by telephone and allow for next day testing when space is available. A state should consider tracking telephone hold and wait times to monitor how long callers wait.

6) State guidelines should provide for flexible means for payment of fees for testing, fingerprinting and other licensing. The states should consider methods which facilitate payment by companies.

*Disabilities*

A state should require a vendor to develop a system that accommodates the physically impaired that is not related to a testing candidate’s knowledge of insurance. Visually impaired and hearing-impaired persons should be accommodated through all steps of the licensing process, pursuant to national standards set by the Americans with Disabilities Act.

*Examinations in Languages Other Than English*

Some industry experts suggest caution about using translated or interpreted exams. The material may not directly translate into equivalent terms or meaning. Cultural biases might cause incorrect interpretation of a meaning. Some experts recommend that tests should be developed and administered in English, especially if other materials
necessary to perform job duties for the profession (such as contracts) are in English. State licensing directors should review state law and consult with legal counsel about the appropriateness of offering examinations in a foreign language.

**Reporting Examination Results**

State licensing procedures should include guidelines that facilitate the prompt issuance of licenses once an applicant passes a test. Elements might include:

- Pass/fail notices should be issued at exam sites upon completion of the exam. If an applicant has not achieved a passing score, the applicant should receive immediate notification of failure. The states vary as to whether successful completion is reported with a precise score or merely an indication that the candidate passed the exam. When a candidate does not pass the exam, the state should provide the precise score and the percentage of questions in each subject area that the applicant answered incorrectly.

- If a state issues a paper license, and if it has been predetermined that an applicant has met all requirements necessary for licensure, including any required fingerprint report, a license should be issued at the exam site, or within 48 hours of completing all necessary requirements.

- The state should send an email or other timely communication to a candidate to whom a license has been issued outside the test site or provide information to applicants as to how to check online.

- Within 24 hours of license issuance, the new licensee’s information should be added to the state’s database, and the updated status should be sent to the NIPR.

- The states should work with their vendors to report aggregate results in a way that is more uniform with other states.

- First-time pass rates should be maintained and made available to the public. First-time pass rates are defined as the percentage of candidates who pass the whole test the first time.

- In performing background checks, the use of an electronic process should be required whenever possible.

- In those states requiring fingerprints, where possible, exam sites should have the capability to collect electronic fingerprints.

**Retesting/Notice of Failure**

A state licensing plan should include a method to facilitate prompt retesting of applicants who have failed a test. The “non-passing” notice should break scores out by each subject area. If the candidate requests to make another attempt, an examination should be made available within a reasonable time period.

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<tr>
<th>Producer Exam Content and Testing Administration Recommended Best Practices for Regulators</th>
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<tbody>
<tr>
<td>• The states should use accepted psychometric methods including job analysis to determine if the examination content falls within the content domain that a minimally competent candidate of that specific line of authority tested would be expected to know.</td>
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• The states should set passing scores (cut scores) and difficulty level using psychometric methods and appropriate subject-matter experts and based on what an entry-level producer needs to know.
• The states are encouraged to move to one-part exams to allow for more success among candidates without jeopardizing consumer protections.
• The states should require the test vendor (or other entity responsible for test development) to document the process for ensuring quality control and validity of the examination, including psychometric review and editing and analysis of item bias or cultural and gender sensitivity.
• To allow for meaningful comparison, all jurisdictions should define first-time pass rate as the percentage of candidates who pass the whole test the first time.
• At least annually, reports regarding exam pass rates, candidate demographics when collected and number of exams administered should be made available to the public. Reports should include first-time pass success and average scoring by subject area. Whenever possible, the reports should be available by education provider and provided to them.
• A state advisory committee consisting of regulators and the industry, including, where possible, recently licensed producers, should annually work with the testing vendor to review the questions on each examination form for substantive and psychometric requirements. If, during any other time, any examination results exhibit significant unexplained deviations, the examination should be reviewed.
• The states should work with testing vendors and approve Candidate Information Bulletins (CIBs) that describe the examinations and examination policies and procedures, and provide sufficient examination content outline and study references for the candidate to prepare for the examination. Updated editions of the CIB/content outline should be provided to prelicensing education providers at least six weeks in advance of implementation so that training materials can be updated.
• Testing should be made available at locations reasonably convenient to residents of all areas of the state, with registration available online or by telephone and the ability for a candidate to schedule testing within two to five business days of registration.
• Pass/fail notices should be issued at exam sites upon completion of the exam. The fail notice should break out scores by subject area. The state should provide a method to facilitate prompt retesting, while allowing a reasonable time for candidates to review and prepare for retest.
• The states should deliver exams in a secure test center network that employs qualified test proctors.
• The states should set clear performance standards for test vendors and require accountability.
Chapter 9

Lines of Insurance

The Major Lines

A line of authority is a general subject area of insurance that a producer can be licensed to sell. The PLMA identifies and defines seven lines of authority; however, the ULS set forth six lines that are considered major lines of authority, as well as certain core limited lines. Additionally, the ULS set forth standards for non-core limited lines. The states should review all other lines of insurance and consider eliminating them in an effort to become compliant with the ULS. Uniform adoption of the major lines is essential to fully implement NAIC licensing reforms.

The six major lines of authority are defined in the PLMA as follows:

1) Life – insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.

2) Accident and health or sickness – insurance coverage for sickness, bodily injury or accidental death and may include benefits for disability income.

3) Property – insurance coverage for the direct or consequential loss or damage to property of every kind.

4) Casualty – insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property.

5) Variable life and variable annuity – insurance coverage provided under variable life insurance contracts and variable annuities.

6) Personal lines – property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.

Because the ULS also require that each major line be available individually, the states should provide individual examinations for each of the major lines except variable life and variable annuity. It is acceptable for a state to also offer combined exams. The ULS contemplate that each state will require an examination for residents to qualify for all major lines. The states should give examinations only to residents, not nonresidents.

While the ULS do not specifically prohibit an examination for variable life and variable annuity products, most states do not require an examination. This line of authority is usually granted if the applicant holds a life line of authority and has successfully completed the Financial Industry Regulatory Authority (FINRA), formerly known as the NASD, examinations necessary to obtain a state securities license in that state. In most cases this means successful completion of the FINRA Series 6 and/or Series 7 (according to the specific state’s requirements) and/or Series 63 exams.

The PLWG has not specifically stated that states should not require an active state securities license of residents or nonresidents as a condition of granting the variable life and variable annuity products line of authority. The ULS do contemplate that no such requirement shall be imposed. For nonresident applicants, it is not appropriate to pend a request for the variable life/annuity products line of authority to verify existence of the underlying life line of authority in the home state. If a proper request for licensure is received and the applicant is in good standing in the home state with the variable life and variable annuity line of authority, the nonresident license should be granted. If a state cannot verify through the SPLD that the applicant holds a variable authority, it is permissible to pend the

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1 The PLMA does not address title insurance, which is considered a major line by some of the states and a limited line by others.
application and contact the applicant’s home state to verify the variable authority.

Information regarding an applicant’s status as to securities registration and securities examinations passed currently are easily accessible on FINRA’s public Web site (under “Check Out Brokers & Advisors” at http://www.finra.org/InvestorInformation/index.htm). Information available includes: employment history; states where the individual is securities licensed; securities examinations passed; and formal and final disciplinary history. To obtain CRD information regarding pending complaints and unresolved cases, a state insurance department must contact its state’s securities regulator.

Recommended Best Practices for Regulators

- Adopt the major lines and the definitions exactly as stated in the PLMA and provide separate testing for each line, except variable.
- Allow combined examinations as appropriate.

The Limited Lines

A limited line of insurance is a line of insurance that covers only a specific subject matter. Limited line licenses generally have simpler licensing requirements than required by the major lines. Some states require an examination for credit insurance. For the other limited lines, some states require an examination while some require only a simplified application process. In some states, a business entity is permitted to maintain a limited lines license on behalf of individuals who make the limited line of insurance available to its customers. Often, a limited line is adopted by regulation and not by statute.

The PLMA contains a specific definition for credit insurance and allows states to define other limited lines. The PLWG adopted definitions for specific “core” limited lines of insurance for producers, which have become part of the ULS. States are encouraged to adopt the definitions of those limited lines and to review and eliminate as many non-uniform limited lines as possible. GLBA and the PLMA require states to grant to a nonresident a nonresident limited line producer license with the same limited line of authority as the license issued by the home state. Many states have adopted a special licensing category to accommodate this type of situation.

The core limited lines are:

- Car Rental Insurance
- Credit Insurance
- Crop Insurance
- Travel Insurance

The ULS provide that examinations are not generally required for limited lines, but that it is acceptable for examinations for areas such as crop and surety. The states should give examinations only to residents, not nonresidents. The ULS specifically state that continuing education is required for only the major lines of insurance. (See specifics for crop insurance.)

In 2009, the PLWG was charged with reviewing limited line licensing issues, with particular focus on: 1) the establishment of a limited lines that encompasses several insurance products where the business of insurance is ancillary to the business of the person offering the product; 2) the licensing requirements of individuals selling limited line products; and 3) the fingerprinting of individuals selling limited line insurance products. Throughout the year, the working group had discussions; however no consensus was achieved. As a result, the working group reported to the Producer Licensing Task Force and requested further guidance on its charge. For 2010, the PLWG was asked to:

Finalize the review of limited-line licensing issues, with particular focus on the following: 1) individually review the licensing requirements for each core limited line; 2) review other limited lines and determine
what licensing requirements should apply to them; and 3) determine if another “catch all” limited line is needed to address licensing requirements for insurance products not already encompassed within the list of limited lines. Updates to the limited line charge may be obtained on the PLWG page on the NAIC website.

The NAIC has adopted a specific resolution rejecting a prior request by industry to adopt a new limited line for term life insurance. The full text of the resolution is in the appendices.

As part of its 2010 charges, the PLWG conducted a review of the ULS and adopted several amendments. Specifically related to this chapter, revisions were made to Standard 16 (Lines of Authority), Standard 33 (Definition of Core Limited Lines, Standard 34 (Travel) and Standard 37 for non-core limited lines.

**Recommended Best Practice for Regulators**

- Allow resident and nonresident limited lines license applications to be filed electronically.
- Eliminate state-specific applications.
- To further reciprocity, report all limited lines licensees to the SPLD.
- Adopt the applicable revisions to the ULS related to limited lines.

**A. Limited Line of Car Rental Insurance**

Under the ULS, car rental insurance is defined as:

[I]nsurance offered, sold, or solicited in connection with and incidental to the rental of rental cars for a period of [per state law], whether at the rental office or by pre-selection of coverage in master, corporate, group or individual agreements that (i) is non-transferable; (ii) applies only to the rental car that is the subject of the rental agreement; and (iii) is limited to the following kinds of insurance:

(a) personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs with the rental car during the rental period;

(b) liability insurance that provides protection to the renters and other authorized drivers of a rental car for liability arising from the operation or use of the rental car during the rental period;

(c) personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period;

(d) roadside assistance and emergency sickness protection insurance; or

(e) any other coverage designated by the insurance commissioner.

The states vary in their methods of supervising the sale of car rental insurance. In the states that require a license, there are generally three methods in use. The first is a registration requirement through submission of an application. The second is the successful completion of an exam and submission of an application. The states should give examinations only to residents, not nonresidents. Under the third method, a car rental company registers with the state insurance department. The company holds the license and is responsible for supervising the training and testing of its counter agents. The company reports to the department and pays all fees.

**B. Limited Line of Credit Insurance**

The PLMA defines limited lines credit insurance as:

Credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage
life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, or any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation and that is designated by the insurance commissioner as limited line credit insurance.

Credit insurance products are designed to protect the borrower against the risk of not being able to pay a debt. Credit life, disability and involuntary unemployment insurance are typical lines of coverage. These products are generally made available by the creditor at the time the loan transaction occurs. Because the insurance is purchased at the time the borrower completes the loan, policy and certificate forms, premium structures and underwriting conditions are generally simpler than other limited lines of insurance.

Credit insurance is issued under individual and group policies. This allows market flexibility for different distribution systems and variations in product design to insure the different types of credit risks. If an individual enrolls customers under a group insurance policy, the individual must obtain a limited lines license if a commission is paid. Section 4(B)(2) of the PLMA provides an exception from licensing if no commission is paid to the enroller and the enroller does not engage in selling, soliciting or negotiating.

Section 6(D) of the PLMA provides that each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide its producers a program of instruction that may be approved by the insurance commissioner.

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<th>Recommended Best Practice for Regulators</th>
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<td>• A state should establish a method to verify that each credit insurer has established a program of instruction.</td>
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C. Limited Line of Crop Insurance

Under the ULS, crop insurance is defined as:

Insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease or other yield-reducing conditions or perils provided by the private insurance market, or that is subsidized by the Federal Crop Insurance Corporation, including multi-peril crop insurance.

There are two types of crop insurance: multiple peril crop insurance (MPCI) and crop hail insurance.

The federal government is involved with crop insurance because a single event (such as drought) often results in multiple losses. Automobile accidents or health problems generally are independent, random events that do not trigger multiple insurance losses. For crop insurance, multiple losses are the norm rather than the exception. For many years, capital requirements to maintain adequate reserves to cover wide-spread losses were so high that commercial development of MPCI policies by companies was unrealistic. As a result, the federal government created a federally subsidized risk management program.

*MPCI*

An MPCI policy provides protection against crop losses from nearly all natural disasters including: adverse weather conditions; fire; insects, but not damage due to insufficient or improper application of pest control measures; plant disease, but not damage due to insufficient or improper application of disease control measures; wildlife; earthquake; volcanic eruption; or failure of the irrigation water supply if due to an unavoidable cause of loss occurring within the insurance period.

MPCI is subsidized by the federal government and delivered by private insurance companies. The insurer’s functions include hiring and training producers; paying for marketing and advertising; hiring and training loss adjusters; and carrying out loss adjustment activity, billing and collecting premiums, processing and verifying...
applications, conducting actual production history reviews, processing and verifying acreage reports, paying claims, auditing and verifying claims data, paying uncollected premiums, and maintaining the necessary automated data processing infrastructure to communicate data with the Risk Management Agency (RMA) on a routine basis for all MPCI policies.

The MPCI policy is a contract between the producer and the insurance company and not with the federal government. However, a farmer cannot receive the federal subsidy attached to the program unless the insurance policy followed the federal standards and rates. Like many insurance companies, crop insurance companies have reinsurance agreements to transfer risk to other private companies known as reinsurers. Unlike most other insurance lines, the private insurance companies also transfer some of the risk associated with the crop insurance program directly to the federal government.

There are many MPCI plan options available: yield-based, revenue-based or a combination of both. The basic policy provisions for all these plans, as well as the rates, are set by the Federal Crop Insurance Corporation. A combination of commodity markets results and the U.S. Department of Agriculture establish the maximum price for each crop each year for insurance purposes (i.e., the value of each bushel in the event of loss).

While the RMA controls pricing and policy forms, producer licensing and enforcement of proper sales practices are left to the states.

**Crop/Hail Insurance**

Crop/hail insurance is offered through companies licensed by state insurance departments. A private market has existed for crop/hail insurance for more than a century. Companies have developed stand-alone full coverage and deductible crop hail policies, as well as companion policies that function very well in conjunction with the different MPCI plans that are offered at varying coverage levels. The premium rates for these crop/hail policies are determined by historical loss experience, and are set by the companies.

**Continuing Education**

Subsequent to the adoption of the ULS, the PLWG has considered and agreed that a continuing education requirement for crop insurance shall not be a violation of the uniform standards. Under federal law, insurance producers selling MPCI are required to attend continuing education classes each year.

**D. Limited Line of Surety**

As part of the discussion of limited lines, the PLWG made the determination to remove surety as a limited line. Although this determination has been made, it is understood that surety is considered a major line by some of the states and a limited line by others.

**E. Limited Line of Travel Insurance**

Under the ULS (as revised Aug. 6, 2010), travel insurance:

Means insurance coverage for personal risks incident to planned travel, including, but not limited to:

a. Interruption or cancellation of trip or event;
b. Loss of baggage or personal effects;
c. Damages to accommodations or rental vehicles; and
d. Sickness, accident, disability or death occurring during travel.

Travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting six months or longer, including, for example, those working overseas as an ex-patriot or military personnel being deployed.

Standard 34 recognizes and sets the guidelines for the creation of an additional business entity licensing model.
under the travel limited line licensing structure. This structure creates the concept of a “travel retailer” which entity and certain of its employees may disseminate travel insurance under the direction of a responsible licensed producer. Said producer maintains responsibility for the training and conduct of any and all associated travel retailer(s).

**Recommended Best Practice for Regulators**

- A state adding the travel limited line should do so in accordance with applicable uniform standards.

**F. Non-Core Limited Lines**

After much discussion about the concept of “auxiliary” or “miscellaneous” lines, the PLWG formally adopted Standard 37 as a basis for any future addition of other non-core limited line. The standard states, in part, that:

A state is not required to implement any non-core limited line of authority for which a state does not already require a license or which is already encompassed within a major line of authority; however, the states should consider products where the nature of the insurance offered is incidental to the product being sold to be limited line insurance products. If a state offers non-core limited lines (such as pet insurance or legal expense insurance), it shall do so in accordance with the following licensing requirements. Individuals who sell, solicit or negotiate insurance, or who receive commission or compensation that is dependent on the placement of the insurance product, must obtain a limited line insurance producer license. The individual applicant must: 1) obtain the limited lines insurance producer license by submitting the appropriate application form and paying all applicable fees as set forth in applicable state law; and 2) receive a program of instruction or training subject to review by the insurance department.

No prelicensing or testing shall be required for the identified non-core limited lines insurance.
Chapter 10

Surplus Lines Producer Licenses

In order to operate in a state, property and casualty insurance companies are generally categorized in one of two ways. An admitted company obtains a certificate of authority to operate in a given state, and is fully subject to and regulated by the laws of the state. Its policyholders are protected, at least to some extent, by the state’s guaranty fund.

A nonadmitted company, otherwise known as a surplus lines company, has limited authority to operate in a state. These companies may be required to be eligible in a state, but are subject to significantly less regulation. States allow surplus lines companies to operate because they recognize that certain types of insurance, or insurance at certain amounts, are not available from admitted companies. Generally, surplus lines companies are not subject to rate and policy form regulation, and their policyholders are not covered by state guaranty funds.

Under the ULS, a producer who wishes to engage in the sale of surplus lines insurance (SLI) must first obtain a surplus lines producer license. Under the ULS, this is considered a license type and not a line of authority; however, in some of the states it is treated as a line of authority. The ULS require that a resident producer hold both property and casualty lines of authority before an SLI producer license can be issued. Under the reciprocity provisions of GLBA, surplus lines producers are entitled to reciprocal licensing if they are licensed for surplus lines and in good standing in the producer’s home state. The NAIC uniform application is to be used for application as a surplus lines producer.

Some of the states also require a resident producer placing SLI to complete an examination or post a bond. However, to comply with the reciprocity provisions of GLBA and Section 8 of the PLMA, these requirements cannot be imposed on nonresidents. That states cannot impose an additional CE requirement on nonresident SLI producers.

The Nonadmitted and Reinsurance Reform Act

The Nonadmitted and Reinsurance Reform Act (NRRA) was signed into law by President Barack Obama on July 21, 2010, as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. The NRRA set federal standards for the collection of surplus lines premium taxes, insurer eligibility, producer licensing and commercial purchaser exemptions. Most of the provisions of the NRRA went into effect on July 21, 2011.

For licensing of surplus lines brokers, the most significant change was to limit the licensing requirements to only the home state of the insured. Specifically, to place a surplus lines multi-state risk policy, the broker needs only to be licensed as a surplus line broker in the insured’s home state, not in all of the states where the policy risk is located. The NRRA defines the home state of the insured as “(i) the state in which an insured maintains its principal place of business or, in the case of an individual, the individual’s principal residence; or (ii) if 100 percent of the premium of the insured risk is located out of the state referred to in clause (i), the State to which the greatest percentage of the insured’s taxable premium for that insurance contract is located.” The definition goes on to clarify that, with respect to affiliated groups, “[i]f more than one insured from an affiliated group are named insureds on a single non-admitted insurance contract, the term ‘home State’ means the home State, as determined pursuant to [clauses (i) and (ii) above], of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.”

The NRRA also prohibits a state from collecting fees relating to the licensing of a surplus lines broker unless the state participates in the NAIC’s national insurance producer database for surplus lines broker licensure by July 21, 2012. Currently, all but one state accept applications and renewals for surplus lines broker licenses through the National Insurance Producer Registry (NIPR).
Surplus Lines Distribution Systems

Surplus lines insurance is generally produced through one of two distribution systems. One, generally referred to as a retail distribution system, involves a single broker accessing the surplus lines company directly to place insurance. The second, generally referred to as a wholesale distribution system, involves a surplus lines broker that operates as an intermediary between a “retail agent” and a surplus lines company. In the retail distribution system, there is only one producer in a transaction, so that producer would need to conduct the diligent search of the admitted markets prior to accessing the surplus lines markets (unless there is some exception such as a large commercial purchaser or an export list). In the wholesale distribution system, the diligent search is often conducted by the retail broker, who determines there is no admitted market prior to contacting the surplus lines wholesale broker; however, some of the states have different requirements.

The vast majority of the states take the position that a broker conducting a diligent search would need a property/casualty agent’s license because it is necessary to solicit insurance, take an application and make a submission to an admitted company. Many states do not require a retail producer to obtain a surplus lines broker’s license unless the broker is going to access the surplus lines companies directly. There are a couple of states that require a retailer to have a surplus lines license before utilizing the services of a surplus lines wholesale broker.

Diligent Search Requirements

The vast majority of the states require a “diligent search” of the admitted market to determine if there is an admitted carrier willing to write the risk, prior to accessing the surplus lines markets. A couple of states have abolished the diligent search requirement. Many of the states require that brokers search those admitted companies that are actually writing the coverages sought. If there is no admitted carrier willing to write the risk, the risk can be placed in the surplus lines markets. Many of the states require an affidavit to be completed documenting that the diligent effort was completed. Recently a number of the states have replaced the affidavit, which was sworn under penalty of perjury, with a report from the surplus lines licensee that the diligent search was conducted. Some of the states have also replaced the requirement that the affidavit (or report) be filed with the insurance department or Surplus Line Association with a requirement that the report of the diligent search be maintained in the office of the broker and available for audit by the insurance department.

Many of the states specify that the diligent search can be conducted by the retail broker (commonly called producing broker), when a surplus lines wholesaler accesses the surplus lines markets. The retail broker has access to admitted markets. The retailer utilizes the services of a surplus lines wholesale broker only after the retail broker has determined that the admitted markets are not willing to underwrite the risk.

The most common diligent search standard requires declinations from three admitted carriers, but as many as five are required. Other states simply require the producing broker to make an effort, a reasonable effort or a good faith effort to place the coverage in the admitted markets. A couple of states require that the insurance not be procurable after a diligent effort has been made to place the coverage among a majority of insurers, but this standard has been called into question as unclear and impractical. A number of exceptions to the diligent search requirement exist in state law and the NRRA implemented a national exception to the diligent search rules for insureds that qualify as exempt commercial purchasers. Twenty-two states have laws authorizing an “export list” of coverages that the commissioner has determined are not generally available in the admitted markets. Coverages on the export list can be placed in the surplus lines market without a diligent search. In some of the states, the state insurance department is required to conduct an annual public hearing regarding the export list. The purpose of the hearing is to take testimony on the export list to determine whether any items should be added or removed.

The former NARAB (EX) Working Group updated the NAIC’s standard for determining compliance with GLBA’s reciprocity provisions. In a report that was adopted by the NAIC in September 2009, the Working Group refined its approach to reciprocity relating to any underlying property/casualty licensing requirements for non-resident surplus lines producers. The Working Group determined that, if a state requires the surplus lines producer to perform the diligent search of the admitted market, then the state may require the nonresident surplus lines producer to obtain an underlying nonresident property/casualty license in addition to a nonresident surplus lines license. However, the Working Group determined that a state may not require a nonresident surplus lines producer also to obtain a nonresident property/casualty license if they do not perform the diligent search. Many surplus lines producers do not perform diligent searches because the retailer has already conducted the diligent search and the law does not require a second diligent search. In such instances, the surplus lines producer is not accessing the admitted market.
Consequently, the Working Group determined that it is inconsistent with GLBA reciprocity requirements to require an underlying property/casualty license for a surplus lines wholesale broker unless they are required by law to conduct a diligent search or conduct diligent searches in their agency.

The NRRA established a single “exempt commercial purchaser” exemption from state diligent search requirements that is applicable in every state. As of July 21, 2011, a diligent search in the admitted market is not required to place a policy for an exempt commercial purchaser if (i) the broker has disclosed to the exempt commercial purchaser that coverage may be available from the admitted market, which may provide greater protection with more regulatory oversight; and (ii) the exempt commercial purchaser has requested in writing that the broker procure/place such coverage with a surplus lines insurer.

An “exempt commercial purchaser” is defined in the NRRA as a purchaser of commercial insurance that: 1) employs or retains a qualified risk manager to negotiate insurance coverage; 2) has paid aggregate nationwide commercial property and casualty insurance premiums in excess of $100,000 in the immediately preceding 12 months; and 3) meets at least one of the following criteria: (i) possesses a net worth in excess of $20 million (as adjusted for inflation); (ii) generates annual revenues in excess of $50 million (as adjusted for inflation); (iii) employs more than 500 full-time employees per individual insured or is a member of an affiliated group employing more than 1,000 employees in the aggregate; (iv) is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30 million (as adjusted for inflation); or (v) is a municipality with a population of more than 50,000.

A number of the states elected to maintain their statutory exemptions from diligent search requirements, which were sometimes known as industrial insured exemptions. If the state’s industrial insured exemption was more liberal than the NRRA exempt commercial purchaser (ECP) exemption, then the state’s requirements were not in conflict with the NRRA and the exemption in the NRRA would not apply.

SLI producers are routinely subject to additional state administrative requirements that are considered to be outside the scope of licensing reciprocity considerations or the ULS. The regulations regarding the administration of surplus lines are different than other types of insurance because the states typically require the licensed surplus lines producers to perform certain compliance activities that would usually be the responsibility of the licensed insurance company in a transaction in the admitted market. In a surplus lines transaction, the compliance obligations are imposed upon the producer because the producer is the licensed party. The surplus lines insurer is unlicensed and often referred to as a “nonadmitted insurer” in some of the states or “unauthorized insurers” in other states.

There are additional administrative requirements in some of the states for licensed surplus lines producers that apply once the coverage is placed. These may include:

- Filing reports with state insurance departments or state stamping offices of placements made.
- Collecting and paying surplus lines premium taxes.
- Maintaining a record of all surplus lines placements made.
- Providing the insured with a disclosure stating that the policy they have purchased is being issued by an insurer that is not licensed in the state is not subject to the financial solvency regulation and enforcement that apply to the state’s licensed insurers and does not participate in any of the insurance guarantee funds created by the state’s law.
- Using a designated stamping office.
- Including declaration or binder pages with the surplus lines tax filings.
- Filing a report stating that no policies were written that are known as “zero reports” (as discussed later in this section).

In order for a producer to place business in the surplus lines market, the producer must first determine that the company is an eligible surplus lines company in a given state. Most of the states require that a surplus lines company be deemed “eligible” by meeting certain financial criteria or by having been designated as “eligible” on a state-maintained list. Prior to the enactment of the NRRA, state eligibility standards varied widely from state to state.
As of July 21, 2011, a surplus lines transaction is subject only to the eligibility requirements of the NRRA. The NRRA eligibility requirements are based on two provisions from the NAIC Nonadmitted Insurance Model Act (#870).

Specifically, the NRRA requires surplus lines carriers to comply with the section 5A(2) and 5C(2)(a) from Model #870, which require an insurer to be authorized in its domiciliary state to write the type of insurance that it writes as surplus lines coverage in the state where it is eligible and to have capital and surplus, or its equivalent, under the laws of its domiciliary jurisdiction, equaling the greater of 1) the minimum capital and surplus requirements under the law of the home state of the insured; or 2) $15 million. The commissioner in the insured’s home state may reduce or waive the capital and surplus requirements (down to a minimum of $4.5 million) after the commissioner makes a finding of eligibility based on several factors set out in Model #870, such as the quality of management, the surplus of a parent company and reputation within the industry.

In addition to eligibility requirements for U.S. domiciled insurers, the NRRA requires the states to permit the placement of surplus lines coverage with surplus lines companies organized in a foreign country (alien insurers) that are listed on the NAIC Quarterly Listing of Alien Insurers. The states cannot prohibit a broker from making a placement with an NAIC-listed alien insurer. A state may also allow placement of coverage with alien insurers not on the NAIC list. A number of the states have authority to individually approve an alien carrier that is not listed on the NAIC Quarterly Listing of Alien Insurers.

The NAIC Quarterly Listing of Alien Insurers is available for reference and download on the NAIC website at www.naic.org/documents/committees_e_surplus_lines_fawg_quarterly_listing_alien_insurers.pdf.

**Premium Taxes**

Surplus lines premium tax generally is the obligation of either the policyholder or the surplus lines producer, depending on the applicable state law. In all states the producer or the insured, rather than the insurance company remits the surplus lines tax. If the policy covers risks that are located entirely in one state, the tax is assessed at that state’s tax rate.

Under the NRRA, the home state of the insured has sole regulatory authority over the collection of surplus lines premium taxes. The NRRA prohibits any state other than the home state of the insured from requiring any premium tax payment for surplus lines insurance.

The NRRA permitted, but did not require, allocation of the surplus lines taxes among the states where the exposure was located. The states took three different approaches to allocation of taxes following the adoption of the NRRA: 1) the Nonadmitted Insurance Multi-State Agreement (NIMA); (2) the Surplus Lines Insurance Multi-State Compliance Compact (SLIMPACT); and 3) taxing and keeping 100% of surplus lines premium tax on policies in the home state of insureds. NIMA and SLIMPACT adopted allocation formulas that allocated property premium based on the location of the exposure and allocated some casualty premium when the rating basis provided readily available data to calculate the allocated premium. As of May 2013, SLIMPACT is not operational, NIMA has five states participating and the vast majority of the states are taxing and keeping 100% of the premium. SLIMPACT is not operational because it requires a minimum of 10 participating states to begin operations and only nine states have elected to join SLIMPACT as of May 2013.

The NRRA requires surplus lines brokers to adhere to the law of the home state of the insured to determine the amount of premium tax owed on a surplus lines transaction and for any other regulatory requirements the state may require in connection with the payment of the premium tax, such as the timing of tax payments and whether the state requires the submission of risk allocation information for multi-state transactions. The NRRA requires surplus lines brokers to submit the premium tax payment on a surplus lines transaction only to the insured’s home state. In the case of a state that has joined NIMA, the payment will be made to the clearinghouse in accordance with the home state’s law. Should SLIMPACT become operational, it could also elect to require multi-state payments to be made to the clearinghouse.
Many of the states require brokers to submit documentation regarding allocation by state of the risks covered by a surplus lines transaction. If the home state of the insured is a state that has joined NIMA, the broker will be required to use the NIMA risk-allocation formula. If the home state is a state that has joined SLIMPACT, the broker will be required to use the SLIMPACT risk-allocation formula. As of May 2013, both NIMA and SLIMPACT have adopted the same allocation formula. Other states require the broker to submit allocation data in accordance with individual state laws and regulations, but the vast majority of states do not require allocation data because there are very few states allocating premium at this time. In some of the states, taxes are paid to a state agency other than the insurance department, such as the department of revenue.

**Guaranty Fund Warning**

Nearly all of the states require a disclosure regarding the unavailability of guaranty fund coverage for a surplus lines policyholder, even if the state represents a small portion of the risk. Prior to the NRRA, when a multi-state risk was involved, the company would be required to include several pages of guaranty fund notices, many of which had nearly the same language with minor variations. Brokers may choose to continue to use this approach following the enactment of the NRRA, but the NRRA initiated a compliance system that requires compliance only with laws of the home state of the insured.

As an example, a typical disclosure statement is as follows:

**NOTICE TO POLICYHOLDER**

This contract is issued, pursuant to Section ___ of the (State) Insurance Code, by a company not authorized and licensed to transact business in (State), and as such, is not covered by the (State) Insurance Guaranty Fund.

After review of this and other issues by a special NAIC subgroup in 2006, the PLWG adopted its recommendation that, on a multi-state risk, the home state’s disclosure should fulfill all other states’ disclosure requirements.

**Stamping Offices**

Stamping offices are entities that are not governmental agencies but whose existence is authorized by law. These offices act as the liaison between the surplus lines producer and the state insurance departments. The stamping offices have varied responsibilities, which may include evaluation of insurance companies for inclusion on a white list, review of surplus lines policies and education. Stamping offices also provide reports of premiums and taxes to the state insurance department.

Stamping offices are nonprofit and are funded by stamping fees assessed on each policy of surplus lines insurance written in the state. As of May 2013, there are stamping offices in 14 states.

**Zero Reports**

In some of the states, a producer is required to file a report, known as a “zero report,” stating that the producer has not placed any SLI business during a specified time period.

In 2006, a special NAIC study group documented that five states require this report monthly, 12 quarterly, seven semi-annually and 27 states annually. The states also use the reports for different recording purposes, so it was not determined if it would be possible to eliminate these reports altogether. However, the study group concluded and recommended to the PLWG that zero reports be eliminated. The group also recommended further study to determine feasibility of any other use of a zero report. As of May 2013, the PLWG has not taken any formal action on this issue.
Chapter 11

Appointments

An appointment is a registration with the state insurance department that a producer is acting on behalf of an insurer. The PLMA contains several sections related to appointments. Section 14 of the PLMA establishes the requirement that a producer acting as an agent of an insurer must have an appointment. This is an optional provision and only applies in those states that require appointments. Section 15 of the PLMA establishes a procedure for the reporting of appointment terminations. There is no specific language in GLBA related to appointments.

In 2002 the PLWG adopted a uniform appointment process. The full text is included in the Appendices and is available on the PLWG’s Web page. This process is referred to in the ULS. The key elements include:

1) States should allow electronic filing of appointments and appointment terminations. Paper filings are discouraged.

2) States should establish a billing system for payment by insurers of initial appointments.

3) States shall allow insurers to select the effective date of the initial appointment.

4) States shall require insurers to follow a prescribed timeline to file appointments.

5) States shall require only one appointment or termination form or transaction per producer per company. (At this writing, appointments by company group are not available.)

6) States shall require insurance companies to submit terminations to the insurance department in accordance with the requirements of Section 15 of the PLMA.

7) States shall require that, if a producer is terminated for cause, the insurer must submit supporting documentation. Any information received by the insurance department must remain confidential in accordance with Section 15 of the PLMA.

In states that renew appointments, the key elements include:

1) States shall provide or publish a pre-renewal notice to insurers informing them that appointment renewals are imminent.

2) At the time for renewal, a state will deliver an invoice. The invoice may not be altered, amended or used for appointing or terminating producers.

3) Insurers shall return the invoice and the payment to the department or its designee.

4) States shall establish a dispute resolution process to accommodate errors after the fact.

Appointment Terminations

Section 15 of the PLMA imposes a requirement on insurers to report terminations of producer appointments. Section 15 requires that the insurer report a termination within 30 days of its occurrence. If a termination is for any of the reasons listed in Section 12 (License Denial, Nonrenewal or Revocation) of the PLMA, insurers are required to submit a detailed report to the state and a copy of the report to the producer. Section 15 (E) grants immunity from civil liability for good-faith reporting to insurers and regulators. Reports filed under Section 15 are considered confidential.
Recommended Best Practices for Regulators

- Automatically terminate appointments if a license goes inactive for any reason.
- Eliminate fees for appointment terminations and instead assess all charges at the time of an appointment. This will eliminate delays in cancellations.
- Do not require an appointment as a condition of licensure. The PLMA and the ULS provide that a producer can hold a license without holding an active appointment.
- Require only one appointment or termination form or transaction for each company for each producer per state.
- Sub-appointments and Business Entity appointments are discouraged.
- Immediately accept terminations for cause and refer them for investigation. States should follow the procedures as outlined in the PLMA. No advance notice should be required to the producer or the state insurance department.
- Use electronic filing for appointments, terminations and renewals, to the extent possible, to eliminate delays and increase efficiency.
Chapter 12

Business Entities

Prior to the PLMA, most states used the term “insurance agency” to refer to the business structure used by insurance producers. Under the PLMA, the term “business entity” is used. This term is intended to cover a broad range of legal business operating structures. Business entities (BE) are considered to be producers under the PLMA.

Section 2(A) of the PLMA defines “business entity” as a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

The PLWG has adopted a uniform application form that is the standard for all states for resident and nonresident BE applications. Section 6(B) of the PLMA provides further guidance about the licensing of business entities:

A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the Uniform Business Entity Application. Before approving the application, the insurance commissioner shall find that:

1) The business entity has paid the fees set forth in [insert appropriate reference to state law]; and

2) The business entity has designated a licensed producer responsible for the business entity’s compliance with the insurance laws, rules and regulations of this state.

Since BEs are considered producers, the reciprocity issues discussed in other sections also apply to BEs. States should not require additional attachments to the application that might interfere with reciprocity.

A common issue that arises with resident and nonresident BE licensing is the role of the Secretary of State (SOS) and the state corporation statutory requirements. Most states have adopted a Model Corporation Law that requires resident and nonresident businesses to register with the state corporation department. The issue for state licensing directors is whether the state insurance department should require some proof of registration with the SOS as a precondition to licensing. The NAIC legal department has studied this issue extensively and advised the PLWG that states should not require items such as articles of incorporation or proof of registration with the SOS as a precondition to licensing for nonresident BEs.

The PLMA does require that all producers, including BEs, notify the commissioner prior to using an assumed name. Section 10 of the PLMA states:

An insurance producer doing business under any name other than the producer’s legal name is required to notify the insurance commissioner prior to using the assumed name.

The uniform appointment process as adopted by the PLWG does not specifically address BEs. Section 14 of the PLMA states that a producer acting as an agent of an insurance company must be appointed. States vary in the interpretation of these guidelines. This issue is one that the Producer Licensing Task Force is considering in 2010 as part of its efforts to streamline business entity licensing. In the absence of specific guidance from the PLWG, the following guidelines are suggested.

Regulators should balance the cost of a regulatory requirement with the benefit that requirement adds to consumer protection. If detailed information is collected, such as several levels of appointments, that information should be a meaningful part of the insurance department’s consumer protection plan. If information is only rarely used in support of investigations, it may not be cost-effective to collect that information and require staff to compile it and process it. During a recent assessment of state insurance department licensing units, it was often found that information about affiliations and branch offices often required at the time of application was rarely used. Sub-appointments and business entity appointments are discouraged.
Just as the uniform appointment process contemplates that only one appointment will be required for an individual producer no matter how many types of products that producer sells for a given company, if a state requires appointments for a BE, the state should require only one appointment per BE per company, no matter how many types of products that BE sells for a given company.

Section 6(B)(2) of the PLMA requires a BE to designate a licensed producer as responsible for compliance. This is commonly referred to as the designated responsible producer (DRP). There is no provision in the PLMA to require multiple DRPs if the BE chooses to write multiple lines of insurance. For example, if a DRP holds a life LOA only, and an affiliated producer is authorized to sell property/casualty products, it is not necessary for a DRP with a property and casualty LOA to be named as a second DRP.

The PLMA does not give specific guidance on appropriate action to take when a notification is received that the DRP has lost the home state license. A recommended practice is to send a notification to the BE and inform it that the BE license will go inactive unless a new DRP is named and approved within a reasonable number of days.

A BE has an ongoing responsibility to report misconduct of the BE or any of its affiliated producers. Section 12(c) of the PLMA states:

The license of a business entity may be suspended, revoked or refused if the insurance commissioner finds, after hearing, that an individual licensee’s violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation and the violation was neither reported to the insurance commissioner nor corrective action taken.

### Recommended Best Practices for Regulators

- Use the NAIC uniform application for business entities and eliminate all other state-specific forms.
- Review all state insurance laws and regulations and amend any that require attachments that might violate reciprocity.
- Review the practical consumer protection value of all information collected and only collect information that adds value.
- Require only one DRP per business entity.
- If appointments are required for a BE, require only one appointment per state and require no sub-appointments.
- Use electronic filings for more efficiency.
Chapter 13
Temporary Licenses

Section 11 of the PLMA contains a provision that allows a state insurance director to issue a temporary license to the survivor of a producer if the commissioner deems it necessary for servicing the deceased producer’s customers.

The license is limited to 180 days and may also be limited in scope by the commissioner. The intent of this section is to wind up the business affairs of the producer and not to indefinitely continue the decedent’s insurance business.

The PLMA gives three examples of persons eligible for a temporary license:

1) The surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the producer, or for the recovery or return of the producer to the business, or to provide for the training and licensing of new personnel to operate the producer’s business.

2) A member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license.

3) The designee of a licensed insurance producer entering active service in the armed forces of the United States of America.

The commissioner is also given discretion to grant a temporary license in any other circumstance where the commissioner deems that the public interest will best be served by the issuance of this license. The commissioner may also require the temporary licensee to have a licensed producer as a sponsor.
Section C

License Continuation

Chapter 14    Continuing Education
Chapter 15    Reporting of Actions and Compensation Disclosure
Chapter 16    License Renewal and Reinstatement
Chapter 17    Post Licensing Producer Conduct Reviews
Chapter 14
Continuing Education

The completion of continuing education (CE) is the method used by state insurance regulators to ensure continued competence of producers. Under GLBA reciprocity requirements, a state must recognize a producer’s completion of a CE requirement in the producer’s home state as satisfying the other state’s CE requirement for license renewal. The only exception would be if the producer’s home state refuses to provide reciprocity to another state.

Some states have adopted special training requirements for specific lines of insurance. When such a requirement exists, it is typically imposed on resident and nonresident producers selling a specific insurance product. A specific CE standard, which are derived from federal mandates may be imposed on nonresidents such as for long-term care insurance, flood or crop insurance and would not violate the ULS.

Section 16(B) of the PLMA specifically states:

A nonresident producer’s satisfaction of his or her home state’s continuing education requirements for licensed insurance producers shall constitute satisfaction of this state’s continuing education requirements if the nonresident producer’s home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

Under the ULS, producers are to complete 24 credits of CE for each biennial compliance period. Thirty of the 24 credits must be in ethics. Fifty minutes is equal to one credit hour of CE. The CE compliance period should coincide with the license renewal. The ULS state that license term should be tied to birth date or birth month.

CE is required if the producer holds one of the six major lines of authority contained in the PLMA, but is not to be required for each line of authority. For example, if a producer holds a life and a property line of authority, the requirement for renewal is 24 credits. If a producer holds only the life line of authority, the requirement for renewal is 24 credits. States may limit the subject area requirements for CE. Some states prohibit CE credit for training on sales techniques. Generally, CE is not required for limited lines. Under the ULS, producers may repeat CE courses for credit in successive renewal terms but are not permitted to take a course for credit more than once in the same license continuation period. States must accept both classroom study and verifiable self-study. States should not impose a limit on the use of self-study courses. During 2008 the PLWG had a charge to review and clarify the ULS regarding the use of self-study credits. Check the PLWG’s page on the NAIC Web site for the most current information.

Producers and CE providers must submit evidence of course completion in the method specified by the commissioner. Some states require the producer to present a certificate of completion at the time of license renewal. Many states require the CE provider to report attendance. Under this system, a producer is only required to present the attendance certificates if there is a discrepancy. Another option is to require producers to self-certify completion and then verify compliance by random desk audits.

The PLMA and the ULS contain only three exemptions from CE requirements. The two exemptions are an inability to comply due to military service and/or a demonstration of an extenuating circumstance such as medical disability. The third exemption addresses states that have a grandfather provision for a particular group of licensees that meet specific criteria. The ULS were updated to permit states to continue allowing for grandfather provisions, however, the state must, on a prospective basis, eliminate CE waivers based on age or years in the business. Producers currently licensed and exempt or eligible for waiver prior to the elimination of the exemption would remain exempt. States with waivers for professional designations should consider allowing CE credits for filed and approved courses used to obtain and maintain professional designations.

Some states grant an extension instead of an exemption. This decision is left to each state to decide.
Course Approvals

The PLWG has adopted standards for course approval and reciprocity in filing of courses. States are to follow the standards set forth in the Continuing Education Reciprocity (CER) process as adopted by the PLWG. Under a reciprocity filing, states are to accept the number of credits awarded by another state and treat a request for reciprocity as a registration. Only the home state of the CE provider is to perform a content review of the course filing. The Appendix contains information on CER and the current filing forms. The most current information on CER can be found on the PLWG Web page.

States vary in their method for course content approval. Some states use outside vendors, and others do the course reviews internally. The PLWG has not adopted any guidelines on methods for approving classroom courses.

The PLWG has adopted guidelines for approval of online and self-study courses. The goal of these standards is to deliver functional computer-based Internet courses that offer quality insurance and/or risk management material in a password-protected online environment.

The key elements are:

- Material that is current, relevant, accurate and that includes valid reference materials, graphics and interactivity.
- Clearly defined objectives and course completion criteria.
- Specific instructions to register, navigate and complete the coursework.
- Technical support/provider representative available during business hours.
- A process to authenticate student identity.
- A method for measuring the student’s successful completion of course material and for evaluating the learning experience.
- A process for requesting and receiving CE course-completion certificates.

The standards call for an examination that is proctored by a disinterested third party. The standards also provide several methods to compute the number of credits that should be awarded. The standards also recommend acceptance of courses that are part of a program that is part of a nationally recognized professional designation. For designation courses, the course should receive credit hours equivalent to hours assigned to the same classroom course material.

These standards were adopted by the D Committee in November 2008. The full text as of the date this Handbook goes to print is in the Appendices, and any updates to the standards can be found on the PLWG page on the NAIC Web site.

The ULS prohibit CE providers from advertising CE programs until state course approval is received.

The Appendices contain a sample list of questions/answers frequently asked by insurance producers about CE requirements.

CE Providers

A state should have a process for registering and qualifying persons who wish to be recognized as CE providers. The process should include duties, responsibilities and performance standards for CE providers. An aspiring CE provider should demonstrate an ability to deliver quality instruction and to comply with all reporting and course supervision requirements. These standards should also contain the conditions under which a CE provider may be removed from the state’s approved provider list.

The Appendices contain a sample outline of instructions to CE providers.
Recommended Best Practices for Regulators

- Require CE providers to electronically report class attendance to the insurance department or its designated vendor.
- Set a reasonable deadline for CE providers to deliver electronic reports.
- Require CE providers to promptly issue attendance certificates (or certificate of completion for self-study courses) and require producers to retain them. The certificates should only be sent to the insurance department in the event of a dispute.
- Provide access for producers and insurers to department records to monitor CE credits on file.
- Implement an audit program to observe and evaluate CE providers and instructors.
- Participate in the NAIC Personalized Information Capture System (PICS) to receive alerts or monitor actions against existing licensees.
Chapter 15

Reporting of Actions and Compensation Disclosure

Reporting of Actions

Section 17 of the PLMA requires a producer to report, to all states in which the producer is licensed, any administrative action taken against the producer in another jurisdiction or by another governmental agency in the home state within 30 days of the final disposition of the matter. Producers are also required to report any criminal prosecution of the producer taken in any jurisdiction within 30 days of the initial pretrial hearing date.

The challenge for producers is that it can be difficult to ensure that all relevant states received the report. The NIPR has created an electronic solution, called Reporting of Actions (ROA) to facilitate distribution of one report to multiple states. States should encourage the use of this electronic process to save time and create an electronic record of timely submission.

State licensing directors should have a method to receive these reports and refer them for investigation. The director should consider giving staff limited authority to review and clear reports that include violations such as traffic citations or certain misdemeanors.

Recommended Best Practices for Regulators

- Use the Attachments Warehouse/Reporting of Action system to receive electronic notifications to alert a state when a producer has added information into the Licensing Attachment Warehouse since their initial entry regarding administrative, criminal or civil actions.

Compensation Disclosure

Section 18 of the PLMA was adopted in 2005 and requires greater disclosure of producer compensation information. This section requires disclosure where the producer receives any compensation from the customer for the placement of insurance or represents the customer with respect to that placement. This section contains several specific definitions and exceptions to the disclosure requirement. The PLWG has not developed any formal guidance on the implementation of Section 18, but an NAIC Task Force did issue a Frequently Asked Questions document to give additional guidance. This FAQ is in the Appendices. State licensing directors should confer with their legal counsel as to appropriate methods for implementing this section.
Chapter 16

License Renewal and Reinstatement

License Renewal

Under the PLMA, the general rule is that a producer license remains in effect unless suspended, cancelled or revoked. All states have a procedure for individual producers to verify compliance with continuing education (CE) requirements. In states that renew licenses, the CE compliance period should coincide with the license renewal.

The PLWG has adopted a uniform license renewal form that is recommended for use by states that renew producer licenses. The current version of the form can be found on the PLWG Web page. States should utilize the data elements from the uniform renewal form, whether renewal is done by paper forms or electronic means.

The reciprocity provisions of the GLBA also apply to license renewal of nonresidents. The process should be similar to initial licensing. The proper form and fee are submitted. If the answers to any of the questions on the renewal form indicate conduct prohibited by Section 12 of the PLMA, a state can require additional documentation. No other attachments should be required.

A number of states use the electronic license renewal process available through the NIPR. This process automatically checks the NAIC and NIPR databases to verify the producer’s standing in the home state. The NIPR process utilizes the data elements from the uniform renewal form.

The PLMA contains a special process for producers who cannot comply with state renewal procedures due to military service or other extenuating circumstances.

Reinstatement

The PLMA allows a producer to reinstate a lapsed license within 12 months of expiration. No examination is required so long as the producer was otherwise eligible to renew. The PLMA also provides that a penalty fee can be assessed.
Chapter 17

Post Licensing Producer Conduct Reviews

Section 12 of the PLMA contains a list of 14 reasons a producer may be disciplined. The commissioner is given authority to take administrative action against a producer who commits any of these acts. Disciplinary action may include suspension, revocation or refusal to renew the producer license. Some states have added additional provisions to this list. For example, if a state does not align the CE compliance term with license renewal, it may be necessary to commence an administrative action to suspend the producer’s license for failure to timely complete CE. In some states, insurance departments are required to suspend the license of any individual who fails to timely pay student loans.

States should use caution in adding additional disciplinary reasons and should carefully review the requirements of GLBA reciprocity and the ULS. The full text of the PLMA can be found in the Appendices.

After a license is issued, a regulator may become aware of potential violations of Section 12 in several ways:

1. A licensed producer notifies the regulator of pending criminal charges.
2. The regulator receives a notice from PICS indicating that a nonresident producer failed to disclose criminal charges.
3. A PICS Notice is received of previously unreported administrative action.
4. A letter is received from the producer informing of administrative sanction by another state.
5. The regulator receives subsequent arrest or conviction information from the state’s department of justice.

The following considerations should be taken into account:

a. If the producer is a nonresident, the regulator should consider what, if any, action was taken by the producer’s resident state.

b. Whether the criminal charge or administrative action indicates that the producer is or may be a danger to consumers.

c. Whether the charge involves theft or other financial malfeasance, or involves an activity that threatens the safety of consumers such that action should be taken immediately to revoke or suspend the producer’s license.

d. Whether it is appropriate to contact the producer and request a voluntarily surrender of the license.

e. If the producer failed to report an action, contact the producer and request an explanation from the producer. Technical violations (e.g., bad address, failure to timely report) generally do not merit formal action. However, the failure to report an action in itself can be cause for administrative penalty or a warning letter, depending on the particular state’s statutes and regulations.

f. Whether the individual did not disclose previous criminal or administrative actions taken in response to the answers to the background questions on any application.
License Reinstatement or Reissuance after Disciplinary Action

Reinstatement of a producer license means the producer’s previous license is re-activated and will expire at the end of the license term. Reissuance of a license means the issuance of a new license with a full license term.

Reinstatement or reissuance of a license after disciplinary action usually is not automatic. A producer whose license has been revoked or suspended by order, or who forfeited a license in connection with a disciplinary matter, should be required to make a written request to the commissioner for reinstatement or reissuance in accordance with the terms of the order of revocation or suspension or the order accepting the forfeiture.

When a producer’s license has been suspended for a period of time that extends beyond the producer’s license expiration date, reinstatement is not an option. The producer must request reissuance of a license, and should not be allowed merely to apply for a new license by passing an examination and submitting a new application.

The producer’s request for reinstatement or reissuance must include sufficient information to allow the insurance department to determine whether the basis of the revocation, suspension or forfeiture of the applicant’s license no longer exists and whether it will be in the public interest to grant the request for a new or reinstated license. The burden of proof to establish such facts is on the producer. In most states, the producer will have a right to an administrative hearing if the reinstatement request is denied.

Some states allow a license to be voluntarily forfeited in lieu of compliance with an order of the commissioner. In this scenario, a request for voluntary forfeiture of a license should be made in writing to the commissioner. The written consent of the commissioner usually is required.

Forfeiture of a license is effective upon submission of the request, unless a contested case proceeding is pending at the time the request is submitted. If a contested case proceeding is pending at the time of the request, the forfeiture becomes effective when and upon such conditions as required by order of the commissioner. A forfeiture made during the pendency of a contested case proceeding is usually considered a disciplinary action subject to reporting to RIRS.

Collaboration and Referrals Among Regulators

There are several NAIC tools to facilitate communication about enforcement actions among regulators.

The NAIC’s Market Analysis Working Group (MAWG) identifies and reviews insurance companies that are exhibiting or may exhibit characteristics indicating a current or potential market regulatory issue that may impact multiple jurisdictions. The Working Group determines if regulatory action should be taken and supports collaborative actions in addressing problems identified.

The NAIC has adopted the Market Regulation Handbook to guide state regulators in the conduct of investigations and enforcement activities. The Handbook also gives guidance to market conduct examiners on some licensing issues. The PLWG has advised examiners that insurers should not be required to keep a hard copy of each individual producer license. Under the PLMA and the Market Regulation Handbook, insurers and regulators are directed to rely on the SPLD to verify license status.
## Recommended Best Practices for Regulators

- Report all formal final administrative actions to RIRS regardless of the voluntary forfeiture, fine or penalty amount.
- Use CRD, SPLD, RIRS, SAD, PICS and state court records to verify information submitted by applicants. State court records databases may be available online to analysts.
- Check the producer’s home state’s Web site or other licensing records to verify actions reported or taken by that state. The NAIC Web site has a map with links to each state insurance department Web site.
- Develop form letters/consent order templates pre-approved by legal staff to be used by experienced licensing staff to propose settlement of minor violations without need to involve legal staff.
- Adopt an administrative rule that, if an order of revocation or suspension does not contain terms regarding reissuance or reinstatement, an application for reinstatement or reissuance may not be made until at least one year has elapsed from the date of the order or acceptance of the forfeiture of a license.
- Maintain a record tickler system of all special conditions imposed on any producer licenses so that the compliance with the conditions can be reviewed as the end of any special supervision term nears.
Part II

Miscellaneous Licenses

Chapter 18  Adjusters
Chapter 19  Bail Bond Agents
Chapter 20  Charitable Gift Annuities
Chapter 21  Fraternals and Small Mutuals
Chapter 22  Insurance Consultants
Chapter 23  Managed Care Providers
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Chapter 25  Multiple Employer Welfare Arrangements
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Chapter 27  Risk Retention Groups and Risk Purchasing Groups
Chapter 28  Third-party Administrators
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Chapter 30  Viatical and Life Settlement Brokers
Chapter 18

Adjusters

An adjuster is a person who investigates claims, determines coverage, examines relevant documents and inspects property damage. An adjuster may also determine the amount of a claim, loss or damage payable under an insurance contract or plan. An adjuster often settles or negotiates settlement of the claim. In some states the adjuster’s authority is limited to a specialty area such as auto, homeowner, workers’ compensation or crop insurance.

There are three kinds of adjusters; public, independent and company adjusters (sometimes called staff adjusters). Public adjusters represent the insured Independent and staff adjusters represent the insurer. Over 30 states require licensure of one or more of these types of adjusters.

Public adjusters directly contract with the person who is seeking coverage or benefits under an insurance policy or other kind of insurance plan. The role of a public adjuster is to represent an insured or claimant in the settlement of a claim. The NAIC has adopted a Model act for public adjusters (NAIC Model No. 228).

Under the new model a public adjuster is defined as:

“Public adjuster” means any person who, for compensation or any other thing of value, acts on behalf of an insured by doing any of the following:

1) Acting for or aiding an insured in negotiating for or in effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured.
2) Advertising for employment as a public adjuster of first-party claims or otherwise soliciting business or representing to the public that the person is a public adjuster of first-party claims for loss or damage to real or personal property of an insured.
3) Directly or indirectly soliciting the business of investigating or adjusting losses, or of advising an insured about first-party claims for loss or damage to real or personal property of the insured.

Staff adjusters are typically salaried employees of an insurer or an insurer’s affiliates and do not adjust claims for entities other than their employer or its affiliates. Independent adjusters are self-employed or associated with or employed by an independent firm. Independent adjusters may adjust claims on behalf of many insurers. The NAIC has adopted model guidelines for Independent that states are encouraged to adopt. The Appendices contain the model guideline.

Most states recognize one or more of the following exemptions to adjuster licensing:

A. Attorneys-at-law admitted to practice in this state, when acting in their professional capacity as an attorney;

B. A catastrophe situation officially declared by the commissioner or governor (according to state law). Registration may be required, but, no permanent license should be required of a nonresident adjuster who is sent on behalf of an insurer for the purpose of investigating or adjusting a loss or a series of losses resulting from a catastrophe.

C. A person employed solely to obtain facts surrounding a claim or to furnish technical assistance to a licensed independent adjuster;

D. An individual who is employed to investigate suspected fraudulent insurance claims but who does not adjust losses or determine claims payments;

E. A person who solely performs executive, administrative, managerial or clerical duties or any combination thereof and who does not investigate, negotiate or settle claims with policyholders, claimants or their legal representative;
F. A licensed health care provider or its employee who provides managed care services so long as the services do not include the determination of compensability;

G. A managed care organization or any of its employees or an employee of any organization providing managed care services so long as the services do not include the determination of compensability;

H. A person who settles only reinsurance or subrogation claims;

I. An officer, director, manager, or employee of an authorized insurer, surplus lines insurer, a risk retention group, or an attorney-in-fact of a reciprocal insurer;

J. A U.S. Manager of the United States branch of an alien insurer;

K. A person who investigates, negotiates or settles life, accident and health, annuity, or disability insurance claims;

L. An individual employee, under a self-insured arrangement, who adjust claims on behalf of their employer;

M. A licensed insurance producer, attorney-in-fact of a reciprocal insurer or managing general agent of the insurer to whom claim authority has been granted by the insurer;

N. A person authorized to adjust workers’ compensation or disability claims under the authority of a third party administrator (TPA) license pursuant to [insert applicable licensing statute].

Drafting Note: This Guideline is drafted to eliminate redundant licensure requirements with respect to the activities engaged in by a licensee. If licensed as an independent adjuster, third party administrator or similar business entity, licensees should not be required to obtain separate independent adjuster licenses, provided that the types of claims adjusted do not include life, health, annuity, or disability insurance claims.

Qualifications of an Adjuster

States that do require licensure assess the qualifications of potential adjusters in various ways. States use one or more of the following methods to determine that a person has the requisite knowledge to properly adjust claims:

- Specialized or related education prior to licensure, i.e., prelicensing coursework.
- A specified amount of experience that is relevant to the kind of adjusting work the applicant will be doing (i.e., property and casualty, workers’ compensation or life/health).
- A license examination.
- Relevant professional designation such as the CPCU or Associate in Claims (AIC).
- Prior similar licensure in another state.

For states implementing a new regulatory scheme for adjusters, it is common practice to waive the initial exam for applicants with appropriate credentials and experience.

Fitness and Character Considerations

Like insurance producers, many states also evaluate an applicant’s fitness, character and trustworthiness to engage in this aspect of the insurance business. Regulators typically consider:

- Criminal history.
- Administrative actions taken by other state regulators.
- Civil judgments that may shed light on an applicant’s character or fiscal integrity.

In some states, an adjuster must apply for a license by line of insurance, or line of authority, similar to the manner in which producers are licensed. Other states require adjuster licenses by categories such as: motor vehicle physical damage, workers’ compensation or crop.
States are encouraged to implement a fingerprint requirement for public and independent adjusters, similar to what is required of producers. Additionally, if a state permits a nonresident adjuster to designate that state as its home state, fingerprinting of that nonresident should be required. States are encouraged to adopt the Uniform Criminal and Regulatory Actions Background Review Guidelines when evaluating and considering whether an applicant or licensee has met the character and trustworthiness requirements to obtain, maintain or renew a license.

**Reciprocity**

In almost every jurisdiction where licensure is required, it is the “home state” regulator that assesses the qualifications of its resident adjusters. Based upon securing a license in one’s home state, many states will grant a comparable or similar nonresident license to such an individual. This is not the case in all states, and varying lines of authority, qualification standards and license types have created barriers to nonresident licensure. In addition, an adjuster based in a state that does not license adjusters may be required to take exams in multiple states.

The NAIC Public Adjuster model defines home state as:

“Home state” means the District of Columbia and any state or territory of the United States in which the public adjuster’s principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare another state in which it becomes licensed and acts as a public adjuster to be the “home state.”

The NAIC Independent Adjuster Guidelines defines home state as:

“Home state” means the District of Columbia and any state or territory of the United States in which an independent adjuster maintains his, her or its principal place of residence or business and is licensed to act as a resident independent adjuster. If the resident state does not license independent adjusters for the line of authority sought, the independent adjuster shall designate as his, her or its home state any state in which the independent adjuster is licensed and in good standing.

There are a few states that will not grant nonresident licensure based upon a person having qualified and passed a license exam in the applicant’s home state. Instead, these states require the nonresident applicant to take an exam in the nonresident state even though the person has taken and passed the license exam in the home state. Adjuster licensing processes were modeled on producer licensing processes and in 2011, the NAIC adopted the Independent Adjuster Reciprocity Best Practices Guidelines paper, which provides jurisdictions with a model to meet reciprocity requirements as well as take major steps toward reaching uniformity. The NAIC uniform licensing forms are designed to be used by applicants for adjuster licenses. Producer licensing for nonresidents is predicated on the producer satisfying the requirements for a home state license. Those producer requirements often include prelicensing education and examination. Since, at this writing, 40 states license public adjusters, 33 states license independent adjuster licenses and only 15 states require company adjusters to be licensed, obtaining nonresident adjuster licenses becomes more complex because adjusters often do not have an underlying resident license. Until states adopt the provision that allows an individual to qualify for licensure by designating another state as the person’s home state or to designate the state in which the application is filed as the person’s home state, obtaining a nonresident adjuster license becomes more complex because adjusters often do not have an underlying resident license.

If the resident state of the adjuster does not require an adjuster license, adjusters cannot use the NIPR Adjuster Designated Home State (ADHS) module unless they declare another state to be the home state. All of the NIPR online data transactions (including the Address Change Request) require a resident license. NIPR has recently added a new Non-Resident Adjuster Licensing (NRAL) application which allows an individual to designate a state other than the resident state as the home state NIPR does not yet contain functionality to allow adjusters that have designated another state as the home state to renew online. Due to these issues, few states have been able to fully implement electronic application and renewal processes for adjusters.
Continuing Education

Approximately 18 states have continuing education requirements for their resident adjusters. Reciprocity exists among a majority of these states but not all, in part as a result of the inconsistency among lines of authority granted within each state’s adjuster licensing scheme. It also becomes problematic when the resident adjuster’s home state does not have any continuing education requirements.

The new NAIC Public Adjuster Model and Independent Adjuster Guidelines contain a continuing education requirement that the home state shall require twenty-four (24) hours of CE with three (3) of the twenty-four hours covering ethics. It is recommended that a state accept an adjuster’s satisfaction of its home state’s continuing education requirements as satisfying that state’s continuing education requirements, provided that the home state recognizes continuing education satisfaction on a reciprocal basis. For a state that permits a nonresident adjuster to designate that state as its home state, the home state will require and track continuing education compliance for that adjuster.

Emergency/Catastrophic Adjusters

A state that offers temporary licensure or registration for emergency/catastrophic adjusters are encouraged to follow the Independent Adjuster Guidelines and develop an automated notification or registration procedure that allows for an immediate, streamlined, and efficient filing process for adjusters who are seeking authority to adjust claims in the event an emergency or catastrophe is declared.

Non-U.S. Adjusters for Limited Lines Portable Electronics Insurance Products

Many states license, or are considering licensure for, limited lines portable electronics insurance producers. Because some major portable electronics insurance companies provide claims adjustment services via non-U.S. entities, the issue of licensing adjusters who do not reside in the United States has gained increased prominence. The Independent Adjuster Licensing Guideline and the Public Adjuster Licensing Model Act are silent on the licensing of non-U.S. citizens beyond the requirement to designate a home state. Some states, however, have tax laws or other laws that require licensees and applicants for licenses to submit and maintain a Social Security Number. State license laws that allow for the licensing of non-U.S. adjusters must take this possible barrier to licensure into consideration. States should also require non-U.S. citizens to comply with all necessary qualification requirements, such as passing the resident license examination (if applicable).

Recommended Best Practices for Regulators

- Adopt the NAIC Model Act for Public Adjusters.
- Adopt the NAIC Model Guideline for Independent Adjusters.
- Use the NAIC uniform applications and develop a mechanism for electronic submission and electronic bulk submissions.
- Use the definition of “home state” as defined in the NAIC Public Adjuster Model Act as the basis of reciprocity.
- Provide resident and nonresident adjuster licensing requirements on forms and Web sites and on the SPLD.
- Allow electronic payment for residents and nonresidents for authorized submitters as well as individual adjusters.
- Post applications and license status information on Web sites and on the SPLD.
- Consider elimination of bond requirements for company adjusters.
- Eliminate perpetual licenses, eliminate the word “perpetual” from issued licenses, and adopt a biennial renewal process tied to the uniformity standards.
- Adopt the NAIC Independent Adjuster Reciprocity Best Practices Guidelines
- Use the definition of “home state” as defined in the NAIC Independent Adjuster Guidelines
- Participate in the NIPR Adjuster Designated Home State application
- Participate in the NAIC Personalized Information Capture System (PICS) to receive alerts or monitor actions against existing licensees
Use the Attachments Warehouse/Reporting of Action system to receive electronic notifications to alert a state when an adjuster has added information into the Attachment Warehouse since their initial entry regarding administrative, criminal or civil actions. For nonresidents that designate your state as the “home state”, a nonresident license should be issued.

For nonresidents that designate your state as the “home state”, develop internal data fields that will allow the tracking CE of compliance.

Include a provision in law that prohibits simultaneous licensure as both an Independent Adjuster and a Public Adjuster.

If your state requires a license examination, require applicants for a resident license to pass your own state’s examination, not simply use passing results from another’s state’s examination. However, recognition of an exam taken in another state may be given where a non-resident license is being requested.

Grant an exemption from the license examination requirement to applicants for the crop line of authority who have satisfactorily completed the National Crop Insurance Services Crop Adjuster Proficiency Program or the loss adjustment training curriculum and competency testing required by the Federal Crop Insurance Corporation Standard Reinsurance Agreement.

If your state allows non-U.S. citizens to receive a license, ensure that other laws in your state (such as tax laws) do not require every licensee or applicant for a license to submit a Social Security Number or Individual Taxpayer Identification Number (ITIN).
Chapter 19
Bail Bond Agents

A bail bond is one method used to obtain the release of a defendant awaiting trial upon criminal charges from the custody of law enforcement officials. A bail bond can be based on an insurance product or collateral. The defendant, the defendant’s family and friends, or a professional bail bond agent executes a document that promises to forfeit the sum of money determined by the court to be commensurate with the gravity of the alleged offense if the defendant fails to return for the trial date. A bail bond is considered a three-part contract between the defendant, the government and the insurance company.

Some states regulate bail bonds through the insurance department, and others leave the administration to the discretion of the court system. It is usually required that a bail bond insurer file a power of attorney with the local court authority. This power of attorney is proof to the court that the bail agent is authorized to write bonds for that insurer up to a certain dollar amount.

State insurance departments vary in the manner in which bail bond activities are regulated. There is no NAIC model to guide state licensing directors for bail bond agents. A number of states utilize the surety line of authority to regulate only the bonds that are insurance-based. In other states, a more comprehensive system has been developed that includes examinations, background checks and personal integrity bonds. The majority of bail bond transactions are executed by resident bail bond agents. Some states prohibit nonresident bail bond agents. In many states, the state court system and local county sheriff may also have a process for approval of bail bond agents.

States who regulate bail bond agents should consider including the following elements in their regulatory scheme:

1) Establish minimum content and disclosure requirements for the bail bond contract.
2) Detailed record-keeping.
3) Require bail funds to be segregated in a trust account.
4) Appointments for all bail bond agents.
5) Written examination.
6) Background check, including fingerprints.
7) Prelicensing education on state laws and bond procedures.
8) Completion of continuing education.
9) Enact laws that clearly place liability on insurers appointed bail bond agents who fail to comply with state law on bail bonds and return of collateral.
10) Cross reference the PLMA and the state’s unfair trade practices act to apply penalties for misconduct.
11) Enact laws that create a fiduciary relationship between the bail bond agent and the criminal defendant.
12) Engage in dialogue with the appropriate state court and law enforcement officials to coordinate efforts at regulating bail bond agents.
13) Adopt a specific list of prohibited activities by bail bond agents.
**Bond Forfeiture**

Forfeiture enforcement may or may not be the responsibility of the state insurance department. In some states enforcement is left to the court system. This may result in a bail agent’s bond privileges being revoked in a particular county. If enforcement is the responsibility of the state insurance department, the state will likely have authority to suspend or revoke the license of a bail agent.

**Prohibited Activities**

The following list contains excerpts from several states’ laws and regulations regarding bail bond agent licenses. This is a suggested starting point for states to draft a list of prohibited activities for bail bond agents and insurers:

1. Pay, rebate, give or promise anything of value to a jailer, peace officer, magistrate or any other person who has power to arrest or hold a person in custody, or to any public official or public employee for the purpose of securing a settlement, compromise, remission or reduction of the amount of bail bond, or to secure delay or other advantage; this section does not prohibit public reward paid for the return of a fugitive.

2. Pay, rebate, give or promise anything of value to an attorney in a bail bond matter, except in defense of an action on a bail bond, collateral or indemnification agreement.

3. Pay, rebate, give, or promise anything of value to a defendant or anyone acting on the defendant’s behalf in exchange for a referral of bail bond business.

4. Recommend a particular attorney to represent a defendant.

5. Solicit business where a prisoner is confined in or near a courtroom if otherwise prohibited by court order or law.

6. Sign or countersign a bail bond that the licensee did not execute.

**Immigration Bonds**

An immigration bond guarantees the INS that an alien will comply with one of several obligations under U.S. immigration laws. Most often, an immigration bond guarantees the alien while released from U.S. custody during the pendency of the government’s case for unlawful entry into the country. An immigration bond can be in the form of a surety product or collateral. See INS Form I-352. With respect to surety products, the underlying guarantee is an insurance product permitted to be issued solely by a licensed insurer. Consequently, an individual selling, soliciting or negotiating an immigration bond must maintain a resident or non-resident producer license in order to legally sell the bond in a state.

States should recognize that immigration bonds are a form of insurance required to be issued by a licensed insurer, and that the sale, solicitation and negotiation of immigration bonds constitute activities for which an individual must maintain a license as a resident or non-resident producer under the respective states’ licensing laws. New Jersey Bulletin No. 09-09 contains an example of notification regarding appropriate treatment of immigration bonds.
Chapter 20

Charitable Gift Annuities (CGA)

A CGA is a transfer by a donor to a charitable organization. In return, the donor receives an annuity payable over one or two lives. If the actuarial value of the annuity is less than the value of the property transferred, then the difference in value constitutes a charitable deduction for federal tax purposes. CGAs are not investments. Annuity payments are tax-free partial returns of the donor’s gift based on actuarial tables of life expectancy.

To qualify as a charitable organization under the federal law, the entity must be one described in either Section 501(c)(3) or Section 170(c) of the Internal Revenue Code.

The maximum rates of return that are typically paid on these uninsured annuities are established by the American Council on Gift Annuities.

Gift annuity payments are fixed. They never go down or up. CGAs are not insured. A charity could become insolvent and be unable to make annuity payments. Most gift annuities are not protected by any state guaranty fund.

The NAIC has adopted two models to regulate CGAs. Model #240, the Charitable Annuities Model Act, contains a detailed licensing scheme for CGAs. Model #241, the Charitable Gift Annuities Exemption Model Act, calls for a simplified registration mechanism.
Chapter 21

Fraternals and Small Mutuals

Fraternal Benefit Societies

A fraternal benefit society is a membership organization that is legally required to offer life, health and related insurance products to its members, be not-for-profit and carry out charitable and other programs for the benefit of its members and the public. It must be composed of members having a common bond and be organized into lodges or chapters (local membership groups). A fraternal benefit society exists solely for the benefit of its members and their beneficiaries. Fraternal benefit societies must have a representative form of governance.

Federal law allows a fraternal to offer life and health insurance products. Section 501(c)(8) of the Internal Revenue Code defines a fraternal beneficiary society as:

a nonprofit mutual aid organization:

(a) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

(b) providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents.

Fraternal benefit societies offer insurance products, are chartered and licensed according to state insurance laws and are regulated and examined by state insurance departments. Individuals who sell, solicit or negotiate insurance products for a fraternal benefit society are required to obtain a state insurance producer license.

The NAIC has adopted the Uniform Fraternal Code (NAIC Model #675). However, this model is not widely in use. At this writing, 45 states had adopted a version of the Model Fraternal Code as drafted by the National Fraternal Congress of America (NFCA). Both the NAIC model and the NFCA model contain a section about producer licensing that pre-dates the PLMA. States should check the fraternal law that has been adopted in their state and update it to reference the new PLMA.

Small Mutual Insurers

Small mutual insurers are risk-bearing entities that historically formed around common interests of farmers, householders, and ethnic and religious groups. Small mutuals commonly known as farm mutuals may also be called “town” or “county” or “state” mutuals.

Small mutuals provide, with only a few exceptions, property insurance for homes, farmsteads, crops and some small businesses. They do not, except for the legal liability associated with those risks, write casualty insurance. In some states small mutuals are allowed to offer liability coverage through an affiliation with an insurer. State laws usually limit small mutuals to either a certain premium volume or geographic area or both. Most states also impose a lighter regulatory burden than that applied to larger mutual and investor-owned insurers.

Mutual insurers are owned and operated by the policyholders. Unlike a stock company, a mutual policyholder has an indivisible interest in the enterprise that, in general, can not be bought or sold like a share of stock. Policyholders are often referred to as “members.” In some cases a dividend or return of premium is paid when the mutual’s board of directors judges it has sufficient capital. Members of the board are also policyholders.

Individuals who sell products for small mutuals should be licensed as producers as outlined in the PLMA and the ULS.
Chapter 22

Insurance Consultants

An insurance consultant is a person who charges a fee for giving advice about insurance products. Not all states require a separate consultant license. In those states, the individual can obtain a producer license and abide by the disclosure provisions for insurance consultants. In states that do require a special license, the applicant is usually required to pass an examination. The exam may be either one of the same subject matter examinations that insurance producers must pass or an examination specific to consultants. In states that require an examination, a waiver may be granted if the applicant can demonstrate a specified amount of insurance experience.

States usually adopt exemptions from the consultant licensing requirement. The exemptions are available so long as the person is acting in their professional capacity or in the normal course of business. Common exemptions are:

1) A licensed attorney.
2) A trust officer of a bank.
3) An actuary or certified public accountant.
4) A risk manager and who consults for his/her employer only.

If a state requires appointments for insurance producers, appointments should not be required of insurance consultants. The consultant represents the insured and is not an agent of the insurance company. Some states prohibit an individual from holding both an insurance producer license and an insurance consultant license. Other states allow an insurance producer to function in either capacity with full disclosure. In all cases where an individual is acting as an insurance consultant, a written contract should be used to clearly explain the terms of the consultant arrangement.

In states that have a separate insurance consultant license, it is a common practice to have a continuing education requirement that mirrors the CE requirement for insurance producers.
Chapter 23

Managed Care Providers

Health Maintenance Organizations

A health maintenance organization (HMO) is a type of managed care organization that provides a form of health care coverage that is fulfilled through hospitals, doctors and other providers with which the HMO has a contract. Unlike traditional health insurance, an HMO sets out guidelines under which doctors can operate. On average, an HMO costs less than comparable traditional health insurance, with a trade-off of limitations on the range of treatments available. Unlike many traditional insurers, HMOs do not merely provide financing for medical care. The HMO actually delivers the treatment as well. Doctors, hospitals and insurers all participate in the HMO business arrangement.

The NAIC has adopted a model law and regulation that governs the licensure of HMOs. (NAIC Models #430 and #432) In most cases, access to an HMO is only available to employer group plans.

Preferred Provider Organizations (PPO)

A PPO is a group of doctors and/or hospitals that provides medical service only to a specific group or association. The PPO may be sponsored by a particular insurance company, by one or more employers, or by some other type of organization. PPO physicians provide medical services to the policyholders, employees or members of the sponsor(s) at discounted rates and may set up utilization review programs to help control the cost of medical care.

In some states, managed care providers may be licensed by an agency outside the insurance department.
Chapter 24

Managing General Agents

A managing general agent (MGA) is an insurance producer authorized by an insurance company to manage all or part of the insurer’s business in a specific geographic territory. Activities on behalf of the insurer may include marketing, underwriting, issuing policies, collecting premiums, appointing and supervising other agents, paying claims, and negotiating reinsurance. Many states regulate the activities and contracts of managing general agents.

The NAIC has adopted the Managing General Agents Act (Model #225) to guide states in regulating MGAs. Under the model, an MGA is defined as any person who engages in all of the following:

1) Negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department or underwriting office, and who acts as an agent for such insurer whether known as a managing general agent, manager or other similar term or title.

2) With or without authority and either separately or together with affiliates, directly or indirectly produces and underwrites an amount of gross direct written premium equal to or greater than 5 percent of the policyholder surplus in any one quarter or year, as reported in the last annual statement of the insurer.

3) Engages in either or both of the following:

   (a) Adjusts or pays claims in excess of an amount determined by the commissioner.

   (b) Negotiates reinsurance on behalf of the insurer.

Under the model, an MGA does not include any of the following:

1) An employee of the insurer.

2) A manager of a United States branch of an alien insurer who resides in this country.

3) An underwriting manager who, pursuant to contract, manages all insurance operations of the insurer, who is under common control with the insurer, subject to [cite to state law] relating to the regulation of insurance holding company systems, and who is not compensated based upon the volume of premiums written.

4) An insurance company, in connection with the acceptance or rejection of reinsurance on a block of business.

5) The attorney-in-fact authorized by or acting for the subscribers of a reciprocal insurer or interinsurance exchange under a power of attorney.

In most states MGAs must be licensed as producers and are not allowed to place business until a written contract exists among all parties. Under the Model, insurers are required to monitor the financial stability of MGAs under contract.
Chapter 25

Multiple Employer Welfare Arrangements

Multiple employer welfare arrangements (MEWAs) are arrangements that allow a group of employers collectively to offer health insurance coverage to their employees. MEWAs are most often found among employer groups belonging to a common trade, industry or professional association.

MEWA plans are generally available to the employees (and sometimes their dependents) of the employers who are part of the arrangement. People who do not have an employment connection to the group cannot obtain coverage through the MEWA plan. MEWA plans cannot be sold to the public.

To qualify as a MEWA, the organization must be nonprofit, in existence for at least five years, and created for purposes other than that of obtaining health insurance coverage. In other words, employers cannot group together solely for the purpose of offering health insurance. However, employers that have already grouped together for another common purpose (for example, a trade association) may also offer health insurance coverage to their member employers.

States and the federal government coordinate the regulation of MEWAs pursuant to a 1982 amendment to the Employee Retirement Income Security Act (ERISA). This dual jurisdiction gives states primary responsibility for overseeing the financial soundness of MEWAs and the licensing of MEWA operators. The Department of Labor enforces the fiduciary provisions of ERISA against MEWA operators to the extent a MEWA is an ERISA plan or is holding plan assets. State insurance laws that set standards requiring specified levels of reserves or contributions are applicable to MEWAs even if they also are covered by ERISA.

The NAIC has adopted a model regulation, NAIC Model #220, to give guidance to states in the supervision of MEWAs.
Chapter 26

Reinsurance Intermediaries

A reinsurance intermediary acts as a broker in soliciting, negotiating or procuring the writing of any reinsurance contract or binder. Reinsurance intermediaries act as insurance producers in accepting any reinsurance contract or binder on behalf of an insurer.

The NAIC has adopted a Model Act for Reinsurance Intermediaries (NAIC Model # 790) The Act contains a simplified registration process for nonresident reinsurance intermediaries. Nonresident reinsurance intermediaries verify that they are licensed in their home states under similar laws as in the nonresident states, i.e., the NAIC Model, and the nonresident reinsurance intermediaries are granted reciprocity.
Chapter 27

Risk Retention Groups and Risk Purchasing Groups

Risk Retention Groups

Congress enacted the Risk Retention Act in 1981. This federal law enabled product sellers to form “risk retention groups (RRGs)” to provide group self-insurance. RRGs are insurers licensed and fully regulated in one state pursuant to that state’s laws. In the mid-1980s, general liability insurance premiums skyrocketed and certain lines were unavailable. Coverage for some classes of businesses was typically either unavailable or extremely expensive for the desired limits and coverages. Congress intervened again, in 1986, this time expanding the 1981 Act to permit RRGs to cover broader liability risks. The Act is now referred to as the Liability Risk Retention Act.

Under the NAIC Model Risk Retention Act, NAIC Model #705, an RRG “registers” in non-domicile states and is then exempt from most insurance laws in non-domicile states. RRGs are limited to providing non-workers’ compensation commercial lines liability insurance to its members. All owners of an RRG must be insureds, and all insureds must be owners.

RRGs can be required by states to:

- Comply with the unfair claim settlement practices law.
- Pay applicable premium and other taxes that are levied on admitted insurers and surplus lines insurers, brokers or policyholders.
- Participate in residual market mechanisms.
- Register and designate the commissioner as agent for service.
- Submit to a financial examination in any state in which the group is doing business if:
  - The domiciliary commissioner has not begun or refused to initiate an examination.
  - Any examination shall be coordinated to avoid unjustified duplication and repetition.
- Comply with a lawful order issued in a delinquency proceeding commenced by the commissioner if there has been a finding of financial impairment or in a voluntary dissolution proceeding.
- Comply with deceptive, false or fraudulent acts or practices laws, except that if the state seeks an injunction regarding the conduct, it must be from a court of competent jurisdiction.
- Comply with an injunction issued by a court of competent jurisdiction, upon a petition by the state insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired.
- Provide notice, in 10-point type, in any insurance policy:

  NOTICE
  This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

A state may require that a person acting, or offering to act, as a producer or broker for a risk retention group obtain a license from that state, except that a state may not impose any qualification or requirement that discriminates against a nonresident producer or broker.
Risk Purchasing Groups

The second type of entity allowed to operate under federal law is a Risk Purchasing Group (RPG). RPGs are vehicles for any insurer to market on a group basis, with the ability to discriminate as to rates for those groups. But as with RRGs, RPGS are only allowed to place liability coverage. RPGs are formed so that similar risks may pool purchasing power. RPGs are purchasing entities, not insurers, and are not generally subject to state insurance laws.

Insurance departments generally do not actively regulate the RPG. The insurer writing for an RPG is subject to all insurance laws with few exceptions. The transaction of insurance for an RPG in a state generally follows a traditional transaction based on the form of the insurer in relation to that state. Hence, if the insurer is licensed in the state, then producer licensing—and if applicable, appointment—procedures apply. If the insurer is a writer of surplus lines, then the traditional surplus lines producer licensing rules apply. As with RRGs, a state may require that a person acting, or offering to act, as a producer or broker for a purchasing group obtain a license from that state. A state may not impose any qualification or requirement that discriminates against a nonresident producer or broker.
Chapter 28

Third-Party Administrators

A third-party administrator (TPA) is an entity that directly or indirectly underwrites, collects charges or premium from, or adjusts or settles claims on residents of a state, in connection with life, annuity or health coverage offered or provided by an insurer, unless accepted by statute.

When an employer offers its employees a self-funded health care plan (the employer helps finance the health care costs of its employees), the employer often contracts with a TPA to administer the plan. The employer may also contract with a reinsurer to pay amounts in excess of a certain threshold, in order to share the risk for potential catastrophic claims experience.

In most states a TPA is required to register with the state. Some states require a bond. The TPA is required to answer inquiries from the state insurance department, but, if the TPA is working for a self-funded ERISA plan, a state has limited authority to take enforcement action against the TPA. An insurer also may act as a TPA for certain customers. This can be confusing to a consumer who has an identification card that has a name similar to a well-known health insurance company. The consumer often thinks coverage is provided by that insurance company instead of the employer plan.

The Large Deductible Study Implementation (C) Working Group is currently revising the model law. The latest information can be found on under Committees and Activities, Property and Casualty (C) Committee, Workers’ Compensation Task Force, Large Deductible Study Implementation Working Group page of the NAIC web site.
Chapter 29

Title Insurance Agents

Title insurance is insurance indemnifying against financial loss from defects in title of real property arising from conditions of title that exist on the date of issuance of the policy. While most insurance coverage indemnifies insureds against loss caused by future events, title insurance is unique as it focuses on the elimination of risk before the policy is issued. Title insurance policies are typically purchased when real property is conveyed or financed. Insureds pay one premium for coverage that has no expiration. In many states, title insurance has essentially replaced abstracts of title, and it is often required as a condition for obtaining a loan secured by a lien on real property.

Title insurance policies commonly guarantee or indemnify the fee title of owners or the lien priority of a lender from losses or damages from liens, encumbrances, defects or unmarketability of title, or adverse claims to title in the real property, and defects in the authorization, execution or delivery of an encumbrance on the real estate. Coverage is subject to standard exceptions, as well as specific exclusions listed on a schedule attached to the policy limiting the extent of the insurer’s liability. Coverage is often expanded or amended through endorsements attached to the policy.

Two types of title insurance policies are commonly issued: the owner’s policy and the lender’s policy. The owner’s policy ensures that the title to the real property is vested as described in the policy, that the title is marketable, that there is a right of access to the property, and against defects in or lien or encumbrances on the title. Title insurance does not require a written application. Policies are often ordered by real estate agents or lenders. The title insurance agent issues a commitment or binder basically revealing the current state of title to the property, and agreeing to insure the property, provided that the requirements in the commitment are met to the satisfaction of the title insurer.

The effective date of the policy is typically the date that transactional documents (deed, deed of trust, etc.) are recorded in the public real estate records. Losses under the policy are subject to the limits listed on the title page, plus any costs of defense. The policy limit of an owner’s policy is generally the purchase price of the real property, and the policy limit of a lender’s policy is generally the original amount of the loan. Losses from title defects are rare, and loss ratios for insurers are relatively low. The goal of a title insurer is to find defects in title prior to issuing a policy; consequently, expense ratios are fairly high due to the cost of title research.

Most states place monoline restrictions on title insurers. Monoline restrictions prohibit title insurers from issuing any line of insurance other than title insurance. Rates and rate setting processes vary by state. Some states regulate only the risk premium, while other states regulate an all-inclusive premium, which generally includes all costs of issuing the policy, search expenses and the risk premium.

Functions of title insurance agents include conducting title searches, performing underwriting functions, preparing and issuing title insurance commitments and policies, maintaining policy records, and receiving premiums. In addition, many title agents perform real estate closings, and provide settlement and escrow services.

Many activities of state licensing divisions with regard to title insurance are the same as in other lines of insurance. In most states, agents are required to pass a licensing exam and fulfill ongoing continuing education requirements. In some states, the licensing division will also be responsible for receiving and filing agency appointments with insurers, bonds or letters of credit, proof of E&O coverage, and forms disclosing controlled and affiliated business relationships. The NAIC has adopted a Model Act, NAIC Model #230, to give guidance to state licensing directors.

Title insurance creates some unique regulatory issues, primarily due to the risk elimination nature of the insurance coverage, and the business relationships between title insurance agents and those who refer title insurance business. The entity referring the title insurance business is often viewed as the customer rather than the insured due to the nature of real estate transactions. Entities that regularly refer title insurance business—such as mortgage brokers, lenders, realtors and attorneys—are referred to as producers of title insurance business. Note that “producer of title insurance” as used in this context carries a very different meaning than “insurance producer.”
Controlled and affiliated business relationships refer to business relationships between title insurance agents and producers of title insurance business. Many states require that controlled and affiliated business relationships be disclosed both to the insured and to the insurance department in writing. Many states also prohibit title insurance agents from providing rebates, referral fees, inducements or financial incentives to producers of title insurance business. In addition to state laws, rebates and referrals related to most residential real estate transactions are prohibited under the federal Real Estate Settlement Procedures Act (RESPA).
Chapter 30

Viatical and Life Settlement Providers and Brokers

The NAIC Viatical Settlement Act defines a viatical settlement as a transaction in which the owner of a life insurance policy sells the right to receive the death payment due under the policy to a third party. Typically the owner/insured receives a cash payment, and the buyer agrees to make any remaining premium payments on the policy.

In 1993, the NAIC adopted the Viatical Settlements Model Regulation (NAIC Model #698) and a model act (NAIC Model #697) to provide a regulatory structure to protect consumers involved in viatical settlements. The model was revised in 2003 and 2004 to address the issue of healthy consumers who might want to sell their insurance policy on the secondary market, better known as “life settlements.”

Licensing requirements vary as a result of the several versions of the Model Act. Under the 1993 version of the Model Act, a viatical settlement broker was required to have an underlying life producer license before being able to apply for and receive a viatical settlement broker license. This provision was not uniformly adopted.

The 2003 version of the Model Act provided for licensing procedures of individuals who were not licensed life insurance producers by requiring continuing education to maintain the license. The 2003 version was modified in 2004 to allow for licensed life insurance producers to notify or register with the insurance regulator as prescribed by the commissioner if they were engaging in the business of settlements, and exempted life insurance producers from the viatical settlement brokers’ examination and the continuing education requirements.

The 2003 and 2004 versions of the Model Act also required the viatical settlement broker to maintain financial responsibility in the form of an errors and omissions policy, surety bond or cash deposit, or a combination of any of the three. It also placed fiduciary responsibility requirements on the broker. The 2003 and 2004 versions of the Model Act required brokers to disclose the method by which compensation was calculated, and the amount of compensation. It is essential the viatical broker meet the licensing requirements of the state where the transaction occurs.

The 2003 version of the Model Act also provided for licensing procedures for viatical settlement providers.

The Model was revised in 2007 to address, among other things, transactions that have been called “stranger-originated life insurance” (STOLI) or “investor-originated life insurance” (IOLI). These transactions are related to a life insurance policy exhibiting any one of three characteristics prior to or within two years of policy issue:

1) non-recourse premium financing
2) guarantee of settlement
3) settlement evaluation

Settlement of such policies is prohibited for five years.

Other key revisions include:

- New consumer disclosures related to viatical settlement compensation.
- A new consumer disclosure requiring a statement that the viatical settlement broker represents exclusively the viator and owes a fiduciary duty to the viator, including a duty to act in the best interest of the viator.
- Allowing life agents to sell without a viatical license, but special conditions apply.
Additional revisions include:

Under specified circumstances, a life insurance producer may operate as a viatical settlement broker. The life insurance producer is deemed to meet the viatical settlement broker licensing requirements. The revisions also permit a person licensed as an attorney, certified public accountant or financial planner accredited by a national recognized accrediting agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider, to negotiate viatical settlement contracts on behalf of a viator without having to obtain a viatical settlement broker’s license.

In order to receive and maintain a license, the 2007 revisions require a viatical settlement provider or broker to demonstrate evidence of financial responsibility through a surety bond or a deposit of cash, certificates of deposit or securities, or any combination thereof in the amount of $250,000. The surety bond must be issued in the favor of the state and must specifically authorize recovery by the commissioner on behalf of any person in the state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the provider or broker. The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary. The revisions make clear that a provider or broker that is licensed in more than one state is not required to file multiple bonds in each state. Some problems have arisen with implementing the bonding requirements of the model. Regulated entities argue that it is impossible to obtain a bond as described by the model. Both industry and the regulated entities have stated that they will request that the Life Insurance and Annuity (A) Committee revisit and amend this portion of the model.

The revisions also require an individual licensed as a viatical settlement broker to complete, on a biennial basis, 15 hours of training related to viatical settlements and viatical settlement transactions. A life insurance producer who is operating as a viatical settlement broker is not subject to this requirement.
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Part III - Section I – Appendix A

Frequently Asked Questions
Compensation Disclosure Amendment to the PLMA

This document has been prepared by the NAIC’s Executive Task Force on Broker Activities for informational purposes only. The following questions and answers are based on the language and development of the Compensation Disclosure Amendment to 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 issues regarding the Compensation Disclosure Amendment. The contents of this document should not be interpreted as a formal opinion or policy statement of the NAIC or of any individual NAIC member or state insurance department.

Question 1: How has the NAIC responded to the issue of inadequate disclosure of compensation by insurance producers?

Answer 1: The NAIC established the Executive Task Force on Broker Activities, composed of 14 states, to develop a coordinated approach to evaluate and address the issues raised in various regulatory and law enforcement investigations of producer compensation. The Task Force immediately formulated a three-pronged action plan: (1) to amend the existing Producer Licensing Model Act (PLMA) to require greater disclosure of producer compensation information; (2) to facilitate regulatory coordination through the development of uniform “templates” for the states to use in collecting information from insurers and/or producers; and (3) to establish an online fraud reporting mechanism to allow for the anonymous reporting of “tips” of unscrupulous business practices for investigation by state insurance departments.

Question 2: How did the Compensation Disclosure Amendment to the PLMA evolve?

Answer 2: In developing the Amendment, the Task Force sought input from state insurance regulators across the country regarding possible ways to achieve greater transparency of producer compensation. An initial draft of model legislation was developed and exposed for public comment in mid-November 2004. The Task Force held numerous meetings, including two public hearings at the NAIC’s 2004 Winter National Meeting in early December. Subsequent to the public hearings, a revised draft was released for public comment. More than 100 oral and/or written comments from state insurance regulators and interested parties were considered in arriving at the final draft.

Question 3: Will there be further changes to the Amendment?

Answer 3: Yes. When the Amendment was adopted Dec. 29, 2004, the Task Force committed to giving further consideration of possible additional requirements, including but not limited to recognition of a fiduciary responsibility for producers, disclosure of all quotes received by a producer for a particular placement, and disclosures relating to producer-owned reinsurance arrangements.

Question 4: To whom does the Amendment apply?

Answer 4: The Amendment applies to all producers and their affiliates that receive any compensation from the customer for the placement of insurance or, irrespective of compensation from the customer, represent the customer with respect to that placement. In the PLMA, a producer is defined as “a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.” The PLMA goes on to define “person” to include either an individual or a business entity. For information about the definition of “affiliate,” see No. 21 below.

Question 5: Are any producers expressly exempt from the Amendment?

Answer 5: Yes. Subsection C of the Amendment expressly exempts producers, such as managing general agents, sales managers or wholesale brokers, who act only as intermediaries between an insurer and other producers. This
exemption was developed because these types of producers do not have direct contact with the person involved in the purchase of insurance. In addition, Subsection C expressly exempts reinsurance intermediaries.

**Question 6:** Does the Amendment apply to producers who represent one insurer exclusively?

**Answer 6:** Yes. Such producers, commonly known as “captive agents,” are not exempt from the Amendment. However, this type of producer will typically have to comply with the disclosure requirements of only Subsection A(2), because the producer does not normally receive compensation from the customer and is appointed by the insurer the producer represents.

**Question 7:** Does the Amendment apply to independent producers?

**Answer 7:** Yes. Such producers, commonly known as “independent agents,” are not exempt from the Amendment. The disclosure this type of producer must make depends on whether the producer is appointed by the insurer the producer represents for a particular placement or whether the producer receives compensation from the customer for the placement.

**Question 8:** Does the Amendment apply to registered or licensed NASD broker/dealers?

**Answer 8:** The application of the disclosure to registered or licensed NASD broker/dealers depends on the activities of the individual broker/dealer. The disclosure requirements would apply to a broker/dealer who is licensed as a producer and engaged in the placement of insurance, such as a variable life insurance product.

**Question 9:** Does the Amendment apply to producers selling annuities?

**Answer 9:** Yes. The disclosure requirements apply when a producer receives compensation from the customer for the placement of products considered to be insurance or represents the customer with respect to that placement.

**Question 10:** Does the Amendment apply to placements of insurance in the residual market?

**Answer 10:** Yes. It is recognized that residual markets encompass placements of various types of insurance through programs established to ensure that insurance is available to individuals and businesses having difficulty obtaining coverage in the voluntary market. The Amendment does not draw any distinctions between the residual market and voluntary market based on the type or line of insurance being placed. Given the statutory nature of residual market programs, the disclosure required by the Amendment is relatively straightforward.

**Question 11:** What does the drafting note about the licensing of business entities mean?

**Answer 11:** Most states permit business entities to be licensed as producers. The drafting note is intended to encourage these states to evaluate the applicability of the Amendment to licensed business entities. States that do not require producer business entities to be licensed should adjust the language of the amendment in a manner consistent with their statutory framework, if necessary, to ensure that individual licenses make the required disclosures when compensation is made to the licensee’s unlicensed corporate employer.

**Question 12:** At what point in the placement of insurance must disclosure be made?

**Answer 12:** Pursuant to Subsection A, disclosure under Paragraph (1) or (2) must be made prior to the purchase of insurance. For disclosure to be useful to the consumer, disclosure should be made before the customer has committed to purchasing the insurance. Logistical concerns about obtaining the customer’s documented acknowledgement are addressed in Subsection D(4). See Nos. 15 and 16.
**Question 13:** Must a producer provide disclosure when servicing an existing policy, such as adding a driver to existing coverage under an auto policy or changing policy limits?

**Answer 13:** No. These types of policy changes are viewed as modifications to existing placements, which do not typically involve the customer evaluating various options for the purchase of insurance.

**Question 14:** Must a producer provide disclosure when processing a policy renewal?

**Answer 14:** Yes. A renewal is considered to be the placement of insurance. As such, if the producer is involved in the renewal process, the disclosure should be given. However, if the insurer independently generates and processes a renewal without the producer’s participation or involvement, the renewal would not trigger disclosure by the producer.

**Question 15:** How should a producer document the customer’s acknowledgement of the required disclosures?

**Answer 15:** The producer should be able to establish that: (1) the required information was conveyed to the customer on a specific date; and (2) the customer indicated his or her consent regarding the described compensation to be received by the producer or affiliate. The definition of documented acknowledgement in Subsection D(4) is intended to address the technological possibilities for obtaining the customer’s written consent.

**Question 16:** What if: (1) a producer cannot figure out his or her compensation on a particular placement; or (2) the producer believes it is too difficult to explain how the producer’s compensation is calculated?

**Answer 16:** The disclosure of compensation required by Subsection A should make the customer aware of factors and methodology used that affect the producer’s compensation. While it is not necessary to provide mathematical formulas, the appropriate disclosure is nonetheless required. If a producer is unable to provide the amount of compensation on a particular placement, the producer may accomplish this by providing specific information about compensation from the past year and any anticipated changes or a range of possible outcomes while being sufficiently specific to provide valuable information to the customer.

**Question 17:** For group insurance where a producer receives compensation from the customer or represents the customer, to whom must a producer make the required disclosures prior to the receipt of compensation from the insurer or other third party for that placement of insurance?

**Answer 17:** The producer must make the disclosures to the entity named on the policy as the group policyholder. The disclosure should be made to the person actually applying for insurance or that person’s authorized representative. A producer does not need to provide the disclosures to each individual certificate holder under a group insurance policy.

**Question 18:** Will a producer who is also an investor with an insurer and who receives stock be considered to have received “compensation from the insurer” and thus be subject to the disclosure requirements? Will an agency that has a separate, structured financial loan with a carrier for an agency acquisition or a new computer system also trigger compliance?

**Answer 18:** The intention of the disclosure is to ensure that the insurance consumer is aware of the various aspects of compensation involved in any particular insurance placement so that the consumer can make an informed decision as to whether he/she wishes to proceed with the transaction under the disclosed terms. Because of this, the disclosure should focus on “compensation from the insurer” that is related to the placement of an insurance policy. If the receipt of the stock or the structuring of the loan is connected in any manner to the placement of insurance, this should be disclosed.
**Question 19:** Will a producer who provides services unrelated to the placement of insurance be required to provide the disclosures to a customer who pays compensation to the producer for these services?

**Answer 19:** A producer may receive compensation from the customer for services unrelated to the placement of insurance without providing the disclosure as long as the producer does not receive compensation from or represent the customer with respect to the placement of insurance. For example, the receipt of compensation for the preparation of IRS Form 5500 is not related to the placement of insurance.

**Question 20:** Subsection D(3) refers to fees or expenses permitted by statute. What does this mean?

**Answer 20:** By separate law or regulation, some states permit payment for the recovery of expenses related to a specific service, such as the receipt of the cost to obtain a Motor Vehicle Report. Some states may enact the Amendment to include a specific reference to these specific laws or regulations. If the Amendment when adopted in a state includes such a statutory reference, the producer may also receive compensation from the insurer without providing the disclosure so long as the receipt of such fee does not result in any additional compensation to the producer, or the producer does not represent the customer with respect to the placement of insurance.

**Question 21:** What is the intent of the disclosures applying to an “affiliate” of the producer?

**Answer 21:** The intent of this provision is to ensure that the disclosures apply to those situations where a producer or insurer may direct a payment of compensation to another appropriately licensed affiliated entity. States that do not require producer business entities to be licensed should adjust the language of the Amendment in a manner consistent with their statutory framework, if necessary, to ensure that individual licenses make the required disclosures when compensation is made to the licensee’s unlicensed corporate employer.
RECOMMENDATIONS FOR THE COMMERCIAL LINES MULTI-STATE EXEMPTION AND COMMISSION SHARING LAWS
ADOPTED BY THE PRODUCER LICENSING WORKING GROUP: NOVEMBER 17, 2008
ADOPTED BY THE D COMMITTEE; NOVEMBER 20, 2008

TO: NAIC Officers and the Market Regulation & Consumer Affairs (D) Committee
FROM: Anne Marie Narcini, Chair of the Producer Licensing Working (D) Group
RE: Commercial Lines Multi-State Exemption and Commission Sharing Laws

As part of the 2008 charges for the Producer Licensing (D) Working Group (PLWG), the NAIC officers asked the working group to evaluate the key findings and issues regarding full adoption, and uniform interpretation of the commercial lines multi-state exemption and the commission sharing exemption across all states; provide further guidance on areas of disparate interpretations and applications and continue to encourage all states to adopt these exemptions.

Process for Completion of Charge

During July and August, a team of regulators from Alaska, District of Columbia, Virginia, Maryland, Kentucky, Utah, Mississippi, Michigan, California and New Jersey met by conference call to discuss the aggregate findings, review prior surveys and prepare recommendations. Linda Brunette of Alaska led the Task Team. The draft was then posted for public comment on the NAIC website and the Working Group discussed the document during conference calls in November of 2008.

Commercial Lines Multi-State Exemption

The task team observed that most problems with the multi-state exemption appeared related to surplus lines rather than the admitted market. In 2007 the Surplus Lines Subgroup of PLWG reviewed this issue and reported that the majority of states require a non-resident property and casualty license in order for a surplus lines placement to be made. Of the states responding to a survey at that time, only seven (7) included surplus lines in the commercial multi-state exemption. Issues surrounding the inclusion of surplus lines in a commercial multi-state exemptions and the perceived need for a license due to payment of premium taxes may affect other Committees such as the Surplus Lines (C) Task Force. We therefore recommend that any consideration of expanding the exemption to include surplus lines be coordinated with the Task Force.

The Producer Licensing Assessment Aggregate Report states that at least forty five (45) states have adopted the commercial lines multi-state exemption. It is our recommendation that the adoption of this language be considered a Uniformity Standard. We recommend the following new standard:
38. Commercial Line Multi-State Exemption

The state must adopt Section 4B (6) of the Producer Licensing Model Act which states:

A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state;

This exemption applies at a minimum to admitted business.

**Commission Sharing**

Subsection 13D of the Producer Licensing Model Act sets forth the following:

An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate [insert appropriate reference to state law (i.e., citation to anti-rebating statute, if applicable)].

The Producer Licensing Assessment Aggregate Report stated that while the application of this exemption will be fact-specific, states should review this exemption and work toward a general statement of interpretation to help eliminate the current confusion in the marketplace.

We view the problem as two fold: 1) Not all states have adopted Subsection 13D of the PLMA and 2) States that have adopted it may not all interpret the provision in a uniform manner.

In a survey conducted by the PLWG in 2006, forty four (44) jurisdictions responded and twenty eight (28) reported they adopted this provision of PLMA. We believe that the lack of uniform implementation of this provision results in confusion in the marketplace as well as inefficiencies and a burden on resources both for regulators and the industry. This confusion may be eliminated in part if it is clarified that the reference to the anti-rebating statute is not exclusive but may refer to other state laws that limit the scope of Subsection 13D. Therefore, we recommend that the requirement to adopt Section 13D of the PLMA be added as a Uniform Standard and that the Uniformity Subgroup of PLWG work with the states that have not adopted this provision to identify the barriers to adoption and encourage legislative change to incorporate the provision.

We recommend the following new standard:

39. Commission Sharing

The state must adopt Section 13D of the Producer Licensing Model Act which states:

An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate [insert appropriate reference to state law (i.e., citation to anti-rebating statute, if applicable)].

Reference to the anti-rebating statute is not exclusive but may refer to other state laws that limit the scope of Subsection 13D.

It has been reported anecdotally that some states that have already adopted this provision, make a distinction between so called “override commissions” and other forms of compensation, or allow individuals to receive commissions if they do not sell, solicit or negotiate, but prohibit agencies from doing the same, or limit the exemption to particular lines of insurance.
Subsection 13D of the Producer Licensing Model Act is clear. Any individual or agency can receive commissions, service fees or any valuable consideration without a license as long as doing so does not violate any other state law, such as anti-rebating, and the individual or entity does not sell, solicit or negotiate insurance. Individual circumstances may be fact specific simply because the person or agency must examine the particular conduct and whether the activity involves selling, solicitation or negotiation as defined in PLMA; however, if it is determined that the activity does not involve the sale, solicitation or negotiation of insurance, any jurisdiction that has adopted this subsection should not require a license.

The following are three examples of scenarios where a license would not be required to receive commission or other valuable consideration.

Example 1

A person authorized by the insurer to oversee or supervise producers with no involvement whatsoever in the sale, solicitation, or negotiation of insurance who receives only an override commission for business produced by the producer whom the person oversees or supervises, is not required to be licensed or hold an appointment with the insurer paying the commission.

Example 2

An insurer or producer may pay or assign a commission, service fee, brokerages or other valuable consideration to a business entity or an individual that does not sell, solicit, or negotiate insurance as long as the payment does not violate the state's insurance laws.

Example 3

If an individual does not use a business entity's name for any sales, solicitations, or negotiations for insurance business, the business entity would not be required to be licensed as long as the business entity does not sell, solicit or negotiate insurance. Solicitation would include any written or verbal communication as well as executed contracts issued in the business entity's name that authorize the producer to act as the insurer's agent or the client's broker.

It is our recommendation that states use this guidance and examples of when a license is not required to receive commissions or other valuable consideration in rendering determinations regarding a need for licensure.
Part III - Section I – Appendix C

NAIC Uniform Declaration Regarding CE Reciprocity

Whereas, the undersigned Insurance Commissioners of the National Association of Insurance Commissioners, hereafter the Commissioners, have determined that it is unnecessary for each State to perform a substantive review of continuing education courses or individual instructors that have previously been approved by another State.

Whereas, the Commissioners find that it is in the best interest of each of their States and their insurance producers to simplify the continuing education (CE) reciprocity course approval process and reduce barriers to non-resident CE providers that reside in a State.

The Commissioners agree as follows:

1. Once a CE provider residing in a State has received initial approval to offer courses in its home State, that reciprocal State will not require that CE provider to file courses for substantive review that have been awarded credit by the CE provider’s home state. A CE Provider’s Home State means the state in which the CE Provider Organization maintains his, her or its principal place of residence or principal place of business. However, if the laws or regulations of the CE Provider’s home state restrict or limit the minimum or maximum number of credit hours for which a national course may be approved for in that state, the CE Provider may elect to recognize another home state for the filing of its national courses in order to obtain the maximum credits allowed. A CE Provider that elects another home state in which to file its national courses shall elect a state that conducts a substantive review of its courses.

2. Unless specifically limited by State law and regulations, a reciprocal State will award a course the same number of credits and will accept all course topics as approved by the CE provider’s home State. A State will agree to a 30-day review and approval process for a course that is filed using the NAIC Uniform Continuing Education Reciprocity Course Filing Form (Exhibit A). A CE provider who wishes to offer topics that are not approvable by the home State may still file a course directly with a State by completing a specific State’s course approval form.

3. Each State will accept the NAIC Uniform Continuing Education Reciprocity Course Filing Form (Exhibit A), or a substantially similar form, including the delivery by electronic means, and the required attachment(s) as the sole form required by a non-resident CE provider.

4. Each State will use the following standards for course approval:

   a. One credit will be awarded for each 50 minutes of contact instruction. Each State will use its own method to award credit for self-study courses.

   b. The minimum number of credits that will be awarded is one credit, no partial credits will be awarded and there is no maximum number of credits.

   c. Credits will only be awarded for courses whose subject matter will increase technical knowledge of insurance principles, coverages, laws or regulations and will not be awarded for topics such as personal improvement, motivation, time management, supportive office skills or other matters not related to technical insurance knowledge. If any credits are awarded for sales and/or marketing those credits will be separately noted on the course approval document. Credits for sales and/or marketing will only be awarded in States that are permitted by law or regulation to accept credit for those topics.
d. Each State will use its own method to determine if an instructor is qualified and no instructor will be approved unless the CE provider has provided sufficient information to demonstrate that the instructor is qualified, according to that State’s laws and regulations, to teach the topics covered in the outline.

e. A reciprocal State will not review an instructor’s qualifications once that instructor’s qualifications have been reviewed and approved by the CE provider’s home State.

5. A State’s course approval document or approved course application will include, at a minimum, the following information: course name, whether the method of instruction is self-study, whether a course is part of a national or professional designation program and the contact person. A National Course is defined as an approved program of instruction in insurance related topics including a course leading to a National Professional Designation or an insurance course at an institution offered as part of a degree conferring curriculum, presented by an approved CE Provider organization.

6. Each State reserves the right to disapprove individual instructors or CE providers who have been the subject of disciplinary proceedings or who have otherwise failed to comply with a State’s laws and regulations.

7. Each State agrees that it will notify other States when a CE provider or instructor has been the subject of a formal administrative action or other disciplinary action by that State.

Drafting Note: The Producer Licensing Working Group needs to make a formal request to NAIC staff to ensure the proper programming and electronic systems are in place through which a provider/instructor is assigned a unique identifier number and notification can be made through the use of electronic means. Can this become part of the NAIC’s Regulatory Information Retrieval Systems and the Personalized Information Capture System.


Drafting Note: The Producer Licensing Working Group needs to discuss how to proceed with getting these changes officially agreed upon by states and replacing the existing Midwest Zone Guidelines and Filing Form. The working group also needs to discuss the impact these changes will have for the Uniform Regulation Through Technology.
Part III - Section I – Appendix D

Continuing Education Reciprocity Approval Guidelines

Recommended Guidelines for Online Courses

Goal: To deliver functional computer-based internet courses that offer quality insurance and/or risk management material in a password-protected online environment.

Key Components:
- Material that is current, relevant, accurate, and that includes valid reference materials, graphics and interactivity.
- Clearly defined objectives and course completion criteria
- Specific instructions to register, navigate and complete the course work
- Technical support/provider representative be available during business hours
- Process to authenticate student identity
- Method for measuring the student’s successful completion of course material and for evaluating the learning experience
- Process for requesting and receiving CE course-completion certificate

Final Assessment (exam) Criteria:
- Minimum of 25 questions for courses of 4 hours or less and a score of 70% or greater
- Minimum of 50 questions for courses that are 5 hours or more and a score of 70% or greater
- At least enough questions to fashion a minimum of 2 versions with at least 50% of questions being new/different in each subsequent version
- Inability to print the exam or to launch the exam prior to reviewing material
- Impartial “disinterested third party” (see below) - proctor/monitor who verifies identity and processes affidavit testifying the student received no outside assistance

Acceptable Procedures to determine Appropriate Number of Credit Hours:

Method A
- 600-700 words (standard font size) = one text page
- Textbooks/workbooks/other printed material – one credit for every 15 pages
- 3 screens with an aggregate total of approximately 600-700 words – one text page
- 45 screens – one hour of credit
- Divide total screens by 45 – total number of credit hours
- Multiply number of hours by 1.00 for a basic level course; 1.25 for an intermediate level; 1.50 for an advanced course for additional study time = total number of credit hours (fractional hours rounded up if .50 or above and rounded down if .49 or less)

Method B
- Divide total number of words by 180 (documented average reading time) = number of minutes to read material
- Divide number of minutes by 50 = credit hours
- Multiply number of hours by 1.00 for a basic level course; 1.25 for an intermediate level; 1.50 for an advanced course for additional study time = total number of credit hours (fractional hours rounded up if .50 or above and rounded down if .49 or less)

Method C
- Course that is part of a nationally recognized professional designation
- Credit hours equivalent to hours assigned to the same classroom course material

Disinterested Third Party – We recommend someone with no family or financial relationship to the student, or who is a licensed agent.

Adopted by the PLWG in Dec. 2005

**Additional Guidance for Online CE Courses**

These guidelines are being proposed to create some validity and credibility to administering the online courses.

The recommendations are as follows:

- Require each agent to enroll for the course before having access to course material.
- Prevent access to the course exam before review of the course materials.
- Prevent downloading of any course exam.
- Provide review questions at the end of each unit/chapter and prevent access to the final exam until each set of questions are answered at a 70% rate.
- Provide final exam questions that do not duplicate unit/chapter questions.
- Prevent alternately accessing course materials and course exams. This does not apply if the state allows for “open book” exams.
- Have monitor affidavit containing specific monitor duties and responsibilities printed for monitor’s use to direct the taking of the final exam. Monitor will complete the affidavit after the exam is completed. (This only for states that require a monitored exam).

Adopted by the PLWG in Sept. 2010
**UNIFORM CONTINUING EDUCATION RECIPROCITY COURSE FILING FORM**

Please clearly print or type information on this form. Thank you for helping us promptly process your application.

**Provider Information**

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**Course Information**

**Course Title**

**Date of Course Offering (if applicable)**

**Method of Instruction**

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**Examination Required?**

☐ Yes ☐ No

**Credit Hours Requested and Course Hours Decision**

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</tr>
<tr>
<td><strong>A. Insurance Topics:</strong></td>
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<tr>
<td>(Circle Appropriate Course Concentration)</td>
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<td>Life / Health</td>
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<td>Property / Casualty / Personal Lines</td>
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<td>Ethics</td>
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<td>General (Applies to all lines)</td>
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<td>Insurance Laws</td>
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<tr>
<td>Other (LTC, NFIP, Viatical, Annuities, )</td>
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<tr>
<td><strong>Total Hours</strong></td>
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</table>

**B. Adjuster Topics (Total Hours)**

**Information Below is for Regulator Use Only**

<table>
<thead>
<tr>
<th>Approval Date</th>
<th>Course Number assigned</th>
<th>Course approval expiration date</th>
<th>Signature of Home State Regulator/Representative OR ATTACH Provider Home State Approval Form</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Signature of Reciprocal State Regulator/Representative OR ATTACH Reciprocal State Approval Form</td>
</tr>
</tbody>
</table>

See State Matrix for Instruction Sheet and State Specific Fee Schedule

INSTRUCTION SHEET

NOTE: This course may NOT be advertised or offered as approved in the state to which application has been made until approval has been received from the Insurance Department.

1. If you are a PROVIDER filing for approval from the Home State:
   1.1 Complete all the fields in the “Provider Information” section except “Reciprocal State” and the adjacent “Provider #” fields.
   1.2 Complete the Course Information Section.
   1.3 In the “Credit Hours Requested and Course/Hours Decision” section, complete the “Hrs. Requested by Provider” columns, detailing in the respective columns the number of hours for sales – and marketing-related instruction and the number of hours for other insurance-related instruction. Please note the following:

   1.3.1 When using this application, which is governed by the NAIC CE Reciprocity Agreement in conjunction with ‘states’ laws, only whole numbers of credit hours will be approved – partial hours will be eliminated.

   1.3.2 States that approve sales/marketing topics will consider the hours in the “sales/Mktg” column and the hours in the “Insurance” column when deciding the number of hours to approve. States that do not permit sales/marketing topics as part of continuing education credit hours will only consider the hours shown in the “Insurance” column when making their credit-hour approval decisions.

   1.3.3 Contact the individual state to determine whether there are any specific requirements for submitting insurance adjuster courses.

   1.4 Submit the application form along with required course materials, a detailed course outline, instructor information, if required, and the required course application fee. Refer to website below for instructor information.


2. If you are a PROVIDER filing for approval from a Reciprocal State:
   2.1 Make a sufficient number of photocopies of the Home State approval form to enable you to submit a copy of this application to each of the Reciprocal States where you are seeking credit.
   2.2 On each application, write the Reciprocal State and the provider number assigned to you by that state in the “Reciprocal State” and adjacent “Provider #” fields.
   2.3 Send the CER application, home state approval, if home state issues one, a detailed course outline, and the required fee to the reciprocal state. If this is a National Course *, the Providers will be allowed to submit an agenda which must include date, time, each topic and event location in lieu of a detailed course outline.
   2.4 Subsequent national course offerings should only be reported for events that are conducted in the “home” state.

* National Course is defined as an approved program of instruction in insurance related topics, offered by an approved provider, and leads to a national professional designation or is a course offered to individuals who must update their designation once it is earned.

3. If you are a HOME STATE or the designated Representative of the Home State:
   3.1 After reviewing the course materials, complete the “Hrs Approved by Home State” column.
   3.2 Enter the date of approval, course # assigned, course approval expiration date. Sign the CER Form OR attach the home state approval form.
   3.3 If the class is not approved, note it on the bottom of the CER Form.

4. If you are the RECIPROCAL STATE or designated representative of the Reciprocal State:
   4.1 After reviewing “Hrs approved by Home State” complete the “Hrs Approved by Reciprocal State”.
   4.2 Enter the date of approval, course number assigned, course approval expiration date. Sign the CER Form OR attach the reciprocal state approval form.
   4.3 If the class is not approved, note it on the bottom of the CER Form.

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One of the 2011 charges for the Producer Licensing Working Group (PLWG) is to continue with its work in achieving uniformity in licensing, with a focus on developing best practices and guidelines for adjusters.

In most jurisdictions where licensure is required, it is the "home state" regulator that assesses the qualification of its resident adjusters. Based on securing a license in one's home state, many states will grant a comparable or similar nonresident license. While many states offer various types of adjuster licenses, there are numerous inconsistencies from state to state that have created a complex, cumbersome, non-uniform, non-reciprocal license environment. To facilitate the licensing of independent adjusters and for jurisdictions to have a comfort level with adjuster license requirements establishment of a reciprocal license process is necessary.

To transition into and create a more reciprocal and ultimately, uniform license environment for adjuster licensing, all jurisdictions are encouraged to utilize the various tools that have been developed and adopted in achieving these goals. Although not mandated or identified in any laws, in terms of the general reciprocity framework that is modeled after and consistent for producers, to achieve reciprocity for non-resident adjuster licensing, a jurisdiction must satisfy the following two (2) conditions:

(1) Permit an adjuster with a license for investigating, negotiating, or settling claims in its home State to receive a non-resident to the same extent that the adjuster is permitted to investigate, negotiate, or settle claims in its home State, if the home State also licenses reciprocally, without satisfying any additional requirements other than submitting (A) a request for licensure; (B) the application for licensure; (C) proof of licensure and good standing in home State; and (D) successful completion of an adjuster exam; (E) payment of any requisite fee and other requirements such as standards of conduct described in Section 15 of the Independent Adjuster Guidelines, and

(2) Acceptance of an adjuster's satisfaction of its home State's continuing education requirements as satisfying that State's continuing education requirements, provided that the home State recognizes continuing education satisfaction on a reciprocal basis.

In order to provide jurisdictions with a model for meeting these reciprocity requirements, in June 2008, the NAIC adopted the Independent Adjuster Guidelines. The Guidelines serve as the primary vehicle for States not only to achieve reciprocity, but also takes major steps toward reaching uniformity. With respect to reciprocity, the Guidelines provide for streamlined administrative licensing requirements, license qualifications, and reciprocal recognition of continuing education, among other things. The goal is to develop best practices and guidelines that provide consistency in license requirements to allow for reciprocal licensing for independent adjusters. This document addresses administrative licensing requirements to facilitate the application and renewal process for independent adjuster licensing.

Reciprocity Framework
The Producer Licensing Working Group (PLWG) recommends the following framework for measuring whether a State is reciprocal on specific non-resident independent adjuster licensing requirements.
1. Adopt key provisions in the Independent Adjuster Guidelines to ensure consistency with standards and requirements. Provisions include, but are not limited to

A. Definitions – home state, individual, business entity, independent adjuster, Uniform Individual Application and Uniform Business Entity Application. Add a new definition of “Designated Home State” to read, “Designated Home State is the state in which the adjuster does not maintain his, her or its principal place of residence or business, and the adjuster qualified for the license as if the person were a resident.

The Best Practices and Guidelines do not include definitions for public or company (staff) adjusters, however, states are encouraged to refer to the definition of public adjuster within the Public Adjuster Model Act.

Company (staff) adjuster is defined as a person who is a salaried employee of an insurer or an affiliate of the insurer, and who is engaged in adjusting insured losses solely for that company or other companies under common control or ownership.

B. License Qualifications; age, and fitness and character (moral turpitude)

C. Lines of Authority; If a state issues an adjuster license by lines of authority (LOA), lines offered should include property, casualty, workers compensation, or crop. States are encouraged to license nonresident adjusters for at least the line of authority held in the home state/designated home state, even if the line of authority held in the applicant’s home state/designated home state may not precisely align with the lines issued by the nonresident state.

D. Class of License; states must offer an individual license; business entity licenses are optional and applies only to states that have a business entity requirement

E. Designation of Home State - A state whose laws permit a nonresident adjuster to designate that state as its home state, the home state will require the nonresident

to qualify as if the person was a resident (exam requirements; fingerprinting, if required, and CE). Once the individual has met the qualifications, the designated home state will issue a nonresident license. The PDB and designated home state will list the record as nonresident, designated home state.

F. Designation of Home State; Conversion to true Resident State - When an adjuster’s resident state offers an adjuster license, within 90 days, the adjuster must file an application, proof of licensure and good standing from the designated nonresident state and fees to qualify for, and obtain the resident adjuster license. The new resident state should waive exam requirements. The prior designated home state adjuster license should be changed from a nonresident, designated home state license to a nonresident license.

G. Designation of Home State; Fingerprinting – If a state requires fingerprinting of resident adjusters, a state that permits a nonresident adjuster to designate that state as its home state shall require fingerprinting of that nonresident adjuster.

H. Designation of Home State; CE Requirements - A state that permits a nonresident adjuster to designate that state as its home state, the home state will require and track continuing education compliance for that adjuster.

I. Renewal Process; jurisdictions are encouraged to develop a renewal cycle consistent with what has been established for producers (biennial basis on the licensee’s month or birth of date of birth. Business entity licenses will continue on a date certain)
J. Examination Requirements; states must offer a separate test for home state adjusters and shall test the knowledge for the lines of authority sought, the duties and responsibilities of an adjuster and the home state’s insurance laws and regulations

K. License Denial, Non-renewal, or Revocation; at a minimum, as defined in Section 12 of independent Adjuster Guidelines

L. Continuing Education; the home state shall require twenty-four (24) hours of CE with three (3) of the twenty-four hours covering ethics.

N. Reporting of Actions; the state shall participate in the NAIC Attachments Warehouse, notifications and reporting of actions; Personal Information Capture System (PICS) alerts or another appropriate mechanism to monitor actions against existing licensees and take necessary action, when warranted based on the information obtained through such actions.

2. Post adjuster license information on state web sites and the National Association of Insurance Commissioners (NAIC) Producer Database (PDB)

3. Participate in National Insurance Provider Registry (NIPR) Adjuster licensing ("Other") product module that allows adjusters to electronically apply for initial and renewal of a license.

4. Participate in National Insurance Producer Registry (NIPR) Nonresident Adjuster Licensing product module that allows states to license and track adjusters that designate another state as the home state.

5. Participate in National Insurance Producer Registry Address Change Request (ACR) product module that allows a licensed adjuster to change their address.

6. A state that offers temporary licensure or registration for Emergency Adjusters shall do so in accordance with the Independent Adjuster Licensing Guidelines
Part III - Section I – Appendix F

INDEPENDENT ADJUSTER LICENSING GUIDELINE

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Section 14. Record Retention
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Section 1. Purpose and Scope

This Guideline governs the qualifications and procedures for licensing independent adjusters. It specifies the duties of and restrictions on independent adjusters.

Drafting Note: It is recommended that any statute or regulation inconsistent with this Guideline be repealed or amended.

Section 2. Definitions

A. “Apprentice independent adjuster” means one who is qualified in all respects as an independent adjuster except as to experience, education and/or training.

B. “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

C. “Catastrophe” means an event that results in large numbers of deaths or injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; or severely affects state, local and private sector capabilities to begin and sustain response activities. A catastrophe shall be declared by the Governor of the state, district, or territory in which the catastrophe occurred.

Drafting Note: Some states may need to expand the authority to include the insurance commissioner or other eligible governmental or regulatory body, if they are authorized to declare a catastrophe.

D. “Fingerprints” for the purposes of this Guideline, means an impression of the lines on the finger taken for purpose of identification.
Drafting Note: States that require fingerprinting would incorporate this Section, states that do not require fingerprinting need to determine if this would apply.

E. “Home state” means the District of Columbia and any state or territory of the United States in which an independent adjuster maintains his, her or its principal place of residence or business and is licensed to act as a resident independent adjuster. If the resident state does not license independent adjusters for the line of authority sought, the independent adjuster shall designate as his, her or its home state any state in which the independent adjuster is licensed and in good standing.

F. “Independent adjuster” means a person who:

(1) Is an individual, a business entity, an independent contractor, or an employee of a contractor, who contracts for compensation with insurers or self-insurers;

(2) One whom the insurer's or self-insurer's tax treatment of the individual is consistent with that of an independent contractor rather than as an employee, as defined in the Internal Revenue Code, United States Code, Title 26, Subtitle C; and

(3) Investigates, negotiates or settles property, casualty or workers’ compensation claims for insurers or for self-insurers.

G. “Individual” means a natural person.

H. “Insurer” means (insert reference to appropriate section of state law).

I. “Person” means an individual or business entity.

J. “Uniform Individual Application” means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Individual Application for resident and nonresident individuals.

K. “Uniform Business Entity Application” means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Business Entity Application for resident and nonresident business entities.

Drafting Note: Subsection K is optional and only applies to those states that have a business entity license requirement.

Drafting Note: If any term is similarly defined in a relevant section of the state’s insurance code, do not include the definition of the term in this Guideline or, in the alternative, reference the statute: “[term] is defined in [insert appropriate reference to state law or regulation].”

Section 3. License Required

A person shall not act or hold himself out as an independent adjuster in this state unless the person is licensed as an independent adjuster in accordance with this Guideline, or is exempt from licensure as an independent adjuster under this Guideline.

Section 4. Exceptions to License Requirement

The definition of independent adjuster shall not be deemed to include, and a license as an independent adjuster shall not be required of the following:

A. Attorneys-at-law admitted to practice in this state, when acting in their professional capacity as an attorney;

B. A person employed solely to obtain facts surrounding a claim or to furnish technical assistance to a licensed independent adjuster;
C. An individual who is employed to investigate suspected fraudulent insurance claims but who does not adjust losses or determine claims payments;

D. A person who solely performs executive, administrative, managerial or clerical duties or any combination thereof and who does not investigate, negotiate or settle claims with policyholders, claimants or their legal representative;

E. A licensed health care provider or its employee who provides managed care services so long as the services do not include the determination of compensability;

F. A managed care organization or any of its employees or an employee of any organization providing managed care services so long as the services do not include the determination of compensability;

G. A person who settles only reinsurance or subrogation claims;

H. An officer, director, manager or employee of an authorized insurer, surplus lines insurer, a risk retention group, or an attorney-in-fact of a reciprocal insurer;

I. A U.S. Manager of the United States branch of an alien insurer;

J. A person who investigates, negotiates or settles life, accident and health, annuity, or disability insurance claims;

K. An individual employee, under a self-insured arrangement, who adjust claims on behalf of their employer;

L. A licensed insurance producer, attorney-in-fact of a reciprocal insurer or managing general agent of the insurer to whom claim authority has been granted by the insurer;

M. A person authorized to adjust workers’ compensation or disability claims under the authority of a third party administrator (TPA) license pursuant to [insert applicable licensing statute].

Drafting Note: This Guideline is drafted to eliminate redundant licensure requirements with respect to the activities engaged in by a licensee. If licensed as an independent adjuster, third party administrator or similar business entity, licensees should not be required to obtain separate independent adjuster licenses, provided that the types of claims adjusted do not include life, health, annuity, or disability insurance claims.

Section 5. Temporary Licensure or Registration for Emergency Independent Adjusters

A. In the event of a declared catastrophe, an insurer shall notify the insurance commissioner via an application for temporary emergency licensure, or registration if temporary emergency licensure is not statutorily required, of each individual, not already licensed in the state where the catastrophe has been declared, that will act as an emergency independent adjuster on behalf of the insurer. The insurance commissioner shall establish standards and procedures to allow for the temporary emergency licensure or registration of an emergency independent adjuster in this state.

B. A person who is otherwise qualified to adjust claims, but not already licensed in this state where the catastrophe has been declared, may act as an emergency independent adjuster and adjust claims, if, within five days of deployment to adjust claims arising from the declared catastrophe, the insurer notifies the commissioner by providing the following information in a format prescribed by the insurance commissioner:

(1) Name of the individual;

(2) Social security number of individual;

(3) Name of insurer the independent adjuster will represent;
(4) Effective date of the contract between the insurer and independent adjuster;
(5) Catastrophe or loss control number;
(6) Catastrophe event name; and
(7) Other information the insurance commissioner deems necessary.

**Drafting Note:** The participating states, by rule, should clarify the state’s meaning and application of “qualify” as used Section 5B.

C. An emergency independent adjuster’s license or registration shall remain in force for a period not to exceed 90 days, unless extended by the insurance commissioner.

**Drafting Note:** The fee for emergency independent adjuster application for licensure or registration shall be in an amount determined by the insurance commissioner and shall be due and payable at the time of application for licensure or registration.

**Drafting Note:** The insurance commissioner may provide additional provisions that would trigger licensure or registration of an emergency independent adjuster.

**Section 6. Application for License**

A. An individual applying for a resident independent adjuster license shall make application to the insurance commissioner on the appropriate NAIC Uniform Individual Application in a format prescribed by the insurance commissioner and declare under penalty of suspension, revocation or refusal of the license that the statements made in the application are true, correct and complete to the best of the individual’s knowledge and belief. Before approving the application, the insurance commissioner shall find that the individual:

(1) Is at least eighteen (18) years of age;
(2) Is eligible to designate this state as his or her home state;
(3) Is trustworthy, reliable and of good reputation, evidence of which shall be determined by the insurance commissioner;
(4) Has not committed any act that is a ground for probation, suspension, revocation or refusal of an independent adjuster’s license as set forth in Section 12;
(5) Has completed a prelicensing course of study for the line(s) of authority for which the person has applied, where required by the insurance commissioner; and
(6) Has successfully passed the examination for the line(s) of authority for which the person has applied;
(7) Has paid the fees set forth in [insert appropriate reference to state law or regulation.

B. A business entity applying for a resident independent adjuster license shall make application to the insurance commissioner on the appropriate NAIC Uniform Business Entity Application in a format prescribed by the insurance commissioner and declare under penalty of suspension, revocation or refusal of the license that the statements made in the application are true, correct and complete to the best of the business entity’s knowledge and belief. Before approving the application, the insurance commissioner shall find that the business entity:

(1) Is eligible to designate this state as its home state;
(2) Has designated a licensed independent adjuster responsible for the business entities compliance with the insurance laws, rules and regulations of this state;

(4) Has not committed an act that is a ground for probation, suspension, revocation or refusal of an independent adjuster’s license as set forth in Section 12; and

(5) Has paid the fees set forth in [insert appropriate reference to state law or regulation].

Drafting Note: This Section is optional and applies only to those states that have a business entity requirement.

Drafting Note: Employee of the authorized affiliate insurer may be considered under this exemption with the Commissioner’s consent.

C. In order to make a determination of license eligibility, the insurance commissioner is authorized to require fingerprints of applicants and to submit the fingerprints and the fee required to perform the criminal history record checks to the state identification bureau (or state department of justice public state agency) and the Federal Bureau of Investigation (FBI) for state and national criminal history record checks.

Drafting Note: The FBI requires that fingerprints be submitted to the state Department of Law Enforcement, Public Safety or Criminal Justice for a check of state records before the fingerprints are submitted to the FBI for a criminal history record check. The FBI recommends all fingerprint submissions be in an electronic format. Public Law 92-544 requires specific parameters to submit fingerprints and obtain criminal history record information. The FBI has approved the language in Section 6C to authorize a state identification bureau to submit fingerprints on behalf of its applicants in conjunction with licensing and employment.

D. The insurance commissioner shall require a criminal history record check on each applicant in accordance with this Guideline. The insurance commissioner shall require each applicant to submit a full set of fingerprints (including a scanned file from a hard copy fingerprint) in order for the insurance commissioner to obtain and receive national criminal history records from the FBI Criminal Justice Information Services Division.

E. The insurance commissioner may contract for the collection and transmission of fingerprints authorized under this Guideline. If the insurance commissioner does so, the insurance commissioner may order the fee for collecting and transmitting fingerprints to be payable directly to the contractor by the applicant. The insurance commissioner may agree to a reasonable fingerprinting fee to be charged by the contractor.

F. The insurance commissioner shall treat and maintain an applicant's fingerprints and any criminal history record information obtained under this Guideline as confidential and shall apply security measures consistent with the Criminal Justice Information Services Division of the Federal Bureau of Investigation standards for the electronic storage of fingerprints and necessary identifying information and limit the use of records solely to the purposes authorized in this Guideline. The fingerprints and any criminal history record information shall not be subject to subpoena, other than one issued in a criminal action or investigation, and shall be confidential.

G. The insurance commissioner is authorized to receive criminal history record information from another government agency in lieu of the state identification bureau (or state department of justice or other public state agency) that submitted the fingerprints to the FBI.

Drafting Note: If the state has adopted fingerprint requirements for other classes of licenses, it may not necessary to adopt this language. This provision does not permit the sharing of criminal history record information with the NAIC or other insurance commissioners as such sharing of information is prohibited by 28 CFR 20.33.

H. The insurance commissioner may require any documents reasonably necessary to verify the information contained in the application.
Section 7. License

A. Unless denied licensure pursuant to Section 12, persons who have met the requirements of Sections 6 and 8 shall be issued an independent adjuster license. An independent adjuster may qualify for a license in one or more of the following lines of authority:

(1) Property and Casualty; or

(2) Workers Compensation; or

(3) Crop.

B. Any person holding a license pursuant to this provision shall not be required to hold any other independent adjuster, insurance or self-insurance administrator license in this state pursuant to [insert applicable TPA law cross reference] or any other provision, including, but not limited to, licenses by the [Workers Compensation Commissions, the Department of Labor or other applicable cross reference] provided that he, she or it does not Guideline as an independent adjuster with respect to life, health or annuity insurance, other than disability insurance.

Drafting Note: This Guideline is drafted to eliminate redundant licensure requirements with respect to the activities engaged in by the licensee. If licensed as an independent adjuster, third party administrator or similar business entity additional licenses should not be required provided that the type of claims adjusted do not include life, health, or annuity insurance claims, other than disability claims.

C. An independent adjuster license shall remain in effect unless probated, suspended, revoked or refused as long as the request for renewal and fee set forth in [insert appropriate reference to state law or regulation] is paid and all other requirements for license renewal are met by the due date, otherwise the license expires.

D. An independent adjuster whose license expires may, within twelve (12) months of the renewal date, be reissued an independent adjuster license upon receipt of the renewal request, as prescribed by the insurance commissioner. However, a penalty in the amount of double the unpaid renewal fee shall be required to reissue the expired license.

E. An independent adjuster who is unable to comply with license renewal procedures and requirements due to military service, long-term medical disability or some other extenuating circumstance may request a waiver of same and a waiver of any examination requirement, fine or other sanction imposed for failure to comply with renewal procedures.

Drafting Note: Some states may not contain expiration date or reissue a license that has been discontinued for nonrenewal.

F. An independent adjuster shall be subject to [cite state’s Unfair Claims Settlement Act and state’s Trade Practices and Fraud sections of the Insurance Code].

G. The independent adjuster shall inform the insurance commissioner by any means acceptable of any change in resident or business address(es) for the home state or in legal name, within thirty (30) days of the change.

H. The license shall contain the licensee’s name, address, personal identification number, the date of issuance and expiration and any other information the insurance commissioner deems necessary.

I. In order to assist in the performance of the insurance commissioner’s duties, the insurance commissioner may contract with non-governmental entities, including the NAIC, its affiliates or subsidiaries, to perform any ministerial functions, including the collection of fees and data, related to licensing that the insurance commissioner may deem appropriate.
Section 8. Examination

A. An individual applying for an independent adjuster license under this Guideline shall pass a written examination unless exempt pursuant to Section 9. The examination shall test the knowledge of the individual concerning, the lines of authority for which application is made, the duties and responsibilities of an independent adjuster and the insurance laws and regulations of this state. Examinations required by this Section shall be developed and conducted under rules and regulations prescribed by the insurance commissioner.

B. The insurance commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in [insert appropriate reference to state law or regulation].

C. Each individual applying for an examination shall remit a non-refundable fee as prescribed by the insurance commissioner as set forth in [insert appropriate reference to state law or regulation].

D. An individual who fails to appear for the examination as scheduled or fails to pass the examination shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

Drafting Note: A state may wish to prescribe by regulation limitations on the frequency of application for examination in addition to other prelicensing requirements.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include independent adjusters.

Section 9. Exemptions from Examination

A. An individual who applies for an independent adjuster license in this state who is or was licensed in another state for the same line(s) of authority based on an independent adjuster examination shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in another state or if that state license has expired and the application is received by this state within ninety (90) days of expiration. The applicant must provide certification from the other state that the applicant’s license is currently in good standing or was in good standing at the time of expiration or certification from the other state that its Producer Database records, maintained by the NAIC, its affiliates or subsidiaries, indicate that the applicant or their company is or was licensed in good standing. The certification must be of a license with the same line of authority for which the individual has applied;

B. A person licensed as an independent adjuster in another state based on an independent adjuster examination who establishes legal residency in this state shall make application within ninety (90) days to become a resident independent adjuster licensee pursuant to Section 6, with the exception that no prelicensing education or examination shall be required of this person;

C. An individual who applies for an apprentice independent adjuster license, pursuant to Section 11, and who adjust claims in that capacity, shall not be required to take and successfully complete the independent adjuster examination.

Drafting Note: If the state does not adopt Section 11, Apprentice Independent Adjuster License, then 9C should be removed as an exemption from examination.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this Section. Rather, the state may want to amend its relevant insurance producer statute to include independent adjusters.
Section 10. Nonresident License

A. Unless refused licensure pursuant to Section 12, a nonresident person shall receive a nonresident independent adjuster license if:

(1) The person is currently licensed in good standing as an independent adjuster in his, her, or its resident or home state;

(2) The person has submitted the proper request for licensure, has paid the fees required by [insert appropriate reference to state law or regulation];

(3) The person has submitted or transmitted to the insurance commissioner the appropriate completed application for licensure; and

(4) The person’s designated home state awards nonresident independent adjuster licenses to persons of this state on the same basis.

B. The insurance commissioner may verify the independent adjuster’s licensing status through any appropriate database, including the Producer Database maintained by the NAIC, its affiliates or subsidiaries, or may request certification of good standing as described in Section 9A of this Guideline.

C. As a condition to the continuation of a nonresident independent adjuster license, the licensee shall maintain a resident independent adjuster license in his, her or its home state. The nonresident independent adjuster license issued under this Section shall terminate and be surrendered immediately to the insurance commissioner if the resident independent adjuster license terminates for any reason, unless the termination is due to the independent adjuster being issued a new resident independent adjuster license in his, her or its new home state. The new state resident independent adjuster license must have reciprocity with the licensing nonresident state(s) otherwise the nonresident independent adjuster license(s) will terminate. Notice of resident independent adjuster license termination must be given to any state(s) that issued a nonresident independent adjuster license. Notice must be given within thirty (30) days of the termination date; if terminated for change in resident home state then the notice must include both the previous and current address. Maintaining a resident independent adjuster license is required for the nonresident independent adjuster license(s) to remain valid.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this Section. Rather, the state may want to amend its relevant insurance producer statute to include independent adjusters.

Drafting Note: In accordance with Public Law No. 106-102 (the “Gramm-Leach-Bliley Act”) states should not require any additional attachments to the Uniform Application or impose any other conditions on applicants that exceed the information requested within the Uniform Application.

Section 11. Apprentice Independent Adjuster License [Optional]

A. The apprentice independent adjuster license is an optional license to facilitate the experience, education and/or training necessary to ensure reasonable competency of the responsibilities and duties of an independent adjuster as defined in this Guideline.

B. An individual applying for a resident apprentice independent adjuster license shall make application to the insurance commissioner on the appropriate NAIC Uniform Individual Application in a format prescribed by the insurance commissioner and declare under penalty of suspension, revocation or refusal of the license that the statements made in the application are true, correct and complete to the best of the individual’s knowledge and belief. Before approving the application, the insurance commissioner shall find that the individual:

(1) Is at least eighteen (18) years of age;
(2) Is a resident of this state and has designated this state as his or her home state;

(3) Has a business or mailing address in this state for acceptance of service of process;

(4) Has not committed any act that is a ground for probation, suspension, revocation or denial of licensure as set forth in Section 12;

(5) Is trustworthy, reliable and of good reputation, evidence of which may be determined by the insurance commissioner;

(6) Has paid the fees set forth in [insert appropriate reference to state law or regulation].

C. The apprentice independent adjuster license shall be subject to the following terms and conditions:

(1) Accompanying the apprentice adjuster application shall be an attestation, from a licensed independent adjuster with the same line(s) of authority for which the apprentice has applied, certifying that the apprentice will be subject to training, direction and control by the licensed independent adjuster and further certifying that the licensed independent adjuster assumes responsibility for the actions of the apprentice in the apprentice’s capacity as an independent adjuster;

(2) The apprentice independent adjuster is only authorized to adjust claims in the state that has issued the apprentice independent adjuster license;

(3) The apprentice licensee is restricted to participation in the investigation, settlement and negotiation of claims subject to the review and final determination of the claim by the supervising licensed independent adjuster;

(4) Compensation of an apprentice independent adjuster shall be on a salaried or hourly basis only;

(5) The apprentice independent adjuster shall not be required to take and successfully complete the independent adjuster examination pursuant to Section 8, to adjust claims as an apprentice independent adjuster. However, at any time during the apprenticeship the apprentice independent adjuster may choose to take the examination required by Section 8. If the individual takes and successfully completes the independent adjuster exam the apprentice independent adjuster license shall automatically terminate and an independent adjuster license shall be issued to that individual in place thereof;

(6) The apprentice independent adjuster license is for a period not to exceed twelve (12) months and is nonrenewable; and

(7) The licensee shall be subject to probation, suspension, revocation, or refusal pursuant to Section 12 of this Guideline.

D. The licensed independent adjuster responsible for the apprentice independent adjuster, as stated in Section 11(C)(1), shall only supervise [insert appropriate reference to state law or regulation]

Section 12. License Denial, Non-Renewal, or Revocation

A. The insurance commissioner may place on probation, suspend, revoke, or refuse to issue or renew an independent adjuster’s license or may levy a civil penalty in accordance with [insert appropriate reference to state law] or any combination of the above actions for any one or more of the following causes:

(1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;
(2) Violating any insurance laws, regulations, subpoena or order of the insurance commissioner or of another state’s insurance commissioner;

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(6) Having been convicted of a felony;

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(8) Using fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility, in the conduct of insurance business in this state or elsewhere;

(9) Having an insurance license, or its equivalent, probated, suspended, revoked or refused in any other state, province, district, or territory;

(10) Forging another’s name to any document related to an insurance transaction;

(11) Cheating, including improperly using notes or any other reference material, to complete an examination for an insurance license;

(12) Failing to comply with an administrative or court order imposing a child support obligation; or

(13) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax which remains unpaid.

Drafting Note: Paragraph (13) is for those states that have a state income tax.

B. In the event that the action by the insurance commissioner is to refuse application for licensure or renewal of an existing license, the insurance commissioner shall notify the applicant or licensee in writing, advising of the reason for the refusal. The applicant or licensee may make written demand upon the insurance commissioner within [insert appropriate time period from state’s Administrative Procedure Act] for a hearing before the insurance commissioner to determine the reasonableness of the refusal. The hearing shall be held within [insert time period from state law] and shall be held pursuant to [insert appropriate reference to state law].

C. The license of a business entity may be probated, suspended, revoked, or refused if the insurance commissioner finds, after a hearing, that its designated individual licensee’s violation occurred while acting on behalf of or representing the business entity and that the violation was known or should have been known by one or more of the business entity’s partners, officers or managers and that the violation was neither reported to the insurance commissioner nor was corrective action taken.

D. In addition to or in lieu of any applicable probation, suspension, revocation or refusal, a person may, after a hearing, additionally be subject to a civil fine according to [insert appropriate reference to state law].

E. The insurance commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this Guideline and Title [insert appropriate reference to state law] against any person who is under investigation for or charged with a violation of this Guideline or Title [insert appropriate reference to state law] even if the person’s license or registration has been surrendered or has expired by operation of law.
Section 13. Continuing Education

A. An individual, who holds an independent adjuster license and who is not exempt under Subsection B of this Section, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which three (3) hours must be in ethics, reported to the insurance commissioner on a biennial basis in conjunction with their license renewal cycle.

B. This Section shall not apply to:

   (1) Licensees not licensed for one (1) full year prior to the end of the applicable continuing education biennium; or

   (2) Licensees holding nonresident independent adjuster licenses who have met the continuing education requirements of their designated home state.

Section 14. Record Retention

An independent adjuster shall maintain a copy of each contract between the independent adjuster and the insurer or self-insurer and comply with the record retention policy as agreed to in that contract.

Section 15. Standards of Conduct of Independent Adjusters [Optional]

A. An independent adjuster shall be honest and fair in all communications with the insured, the insurer and the public;

B. An independent adjuster shall give policyholders and claimants prompt, knowledgeable service and courteous, fair and objective treatment at all times;

C. An independent adjuster shall not give legal advice, and shall not deal directly with any policyholder or claimant who is represented by legal counsel without the consent of the legal counsel involved;

D. An independent adjuster shall comply with all local, state and federal privacy and information security laws, if applicable;

E. An independent adjuster shall identify himself as an independent adjuster and, if applicable, identify his employer when dealing with any policyholder or claimant; and

F. An independent adjuster shall not have any financial interest in any adjustment or acquire for himself or any person any interest or title in salvage, without first receiving written authority from the principal.

Section 16. Reporting of Actions

A. The independent adjuster shall report to the insurance commissioner any administrative action taken against the independent adjuster in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent order and any other relevant legal documents.

B. The independent adjuster shall report to the insurance commissioner any criminal action taken against the independent adjuster in this or any jurisdiction within thirty (30) days of the final disposition of the criminal matter. The report shall include a copy of the initial complaint filed, the final order issued by the court, and any other relevant legal documents.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this Section. Rather, the state may want to amend its relevant insurance producer statute to include independent adjusters.
Section 17. Regulations

The insurance commissioner may, in accordance with [insert appropriate reference to state law], promulgate reasonable regulations as are necessary or proper to carry out the purposes of this Guideline.

Section 18. Severability

If any provisions of this Guideline, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the Guideline, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

Section 19. Effective Date

This Guideline shall take effect [insert date].

Note: A minimum of six months to one year implementation time for proper notice of changes, fees and procure is recommended.

Chronological Summary of Action (all references are to the Proceedings of the NAIC)

2008 Proc. 3rd Quarter (adopted).
Limited Line Term Resolution

LIMITED LINE TERM LIFE RESOLUTION

June 14, 2005

Where As, the NAIC membership adopted the Producer Licensing Model Act in 2000, which established life insurance as a major line of authority and defines the life insurance line of authority as insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;

Where As, the NAIC membership adopted the Uniform Licensing Standards in 2002, which confirmed the establishment of the six major lines of authority set forth in the Producer Licensing Act and established the following five core limited lines: (1) Car Rental, (2) Credit, (3) Crop, (4) Surety and (5) Travel;

Where As, the NAIC membership adopted the Regulatory Modernization Action Plan in 2003, which sets forth that NAIC members will build upon the regulatory framework established by the Uniform Licensing Standards adopted in 2002 and will continue the implementation of a uniform, electronic licensing system for individuals and business entities that sell, solicit or negotiate insurance while preserving the necessary consumer protections;

Where As, representatives of the insurance industry have presented individual NAIC members with a proposal for the establishment of a limited line license for producers to sell term life insurance;

Where As, this issue has been communicated by individual NAIC members to the NAIC’s Producer Licensing Working Group of the Market Regulation & Consumer Affairs (D) Committee for consideration;

Where As, the Producer Licensing Working Group recognizes the producer licensing process, which includes pre-licensing education, testing and continuing education requirements, ensures individuals selling, soliciting or negotiating insurance have the minimum level of competency and knowledge to engage in such activities;

Where As, consumer protection, consistency and uniformity of state insurance regulation are of the highest priority for state insurance regulators;

Now Therefore, the NAIC rejects any and all proposals which directly or indirectly establish a limited line license for producers to sell term life insurance.
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.
DATE: (INSERT DATE)
TO: ALL INSURERS AND INSURANCE PRODUCERS WITH A PROPERTY LINE OF AUTHORITY
FROM: (INSERT NAME AND TITLE)
RE: FLOOD INSURANCE TRAINING REQUIREMENTS FOR INSURANCE PRODUCERS WITH A PROPERTY LINE OF AUTHORITY SELLING THROUGH THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP)

Section 207 of the Flood Insurance Reform Act of 2004 requires all producers selling flood insurance policies under the NFIP to be properly trained and educated about the NFIP to ensure producers may best serve their clients.

The Act directs the Director of the Federal Emergency Management Agency, in cooperation with the insurance industry, State insurance regulators, and other interested parties to establish minimum training and education requirements for all insurance agents who sell flood insurance policies. FEMA and state-approved continuing education providers are developing courses related to the NFIP. An insurance producer who sells flood insurance may satisfy the minimum training and education requirements by completing a course related to the NFIP, which may be approved for three hours of continuing education credit by the (insert state insurance department name). The failure to comply with this continuing education requirement may jeopardize the producer’s authority to write insurance through the NFIP.

All (insert state name) licensed resident insurance producers who sell federal flood insurance policies must comply with the minimum training requirements of section 207 of the flood insurance reform act of 2004, and basic flood education as outlined at 70 Fed. Reg., 52117 (Sept. 1, 2005) (to be codified at ** C.F.R. pt.*****), or such later requirements as are published by FEMA.

Licensed insurers shall demonstrate to the commissioner, upon request, that their licensed and appointed producers who sell federal flood insurance policies have complied with the minimum federal flood insurance training requirements.

____________________________________________
(INSERT COMMISSIONER NAME)
(INSERT STATE NAME)
(INSERT DATE OF ISSUANCE)
Appendix H continued – Footnotes to the Bulletin


   The Director of the Federal Emergency Management Agency shall, in cooperation with the insurance industry, State insurance regulators, and other interested parties: (1) Establish minimum training and education requirements for all insurance agents who sell flood insurance policies, and (2) Not later than 6 months after the date of enactment of this Act, publish these requirements in the Federal Register, and inform insurance companies and agents of the requirements.

2 This notice describes FEMA’s implementation of section 207 of the Flood Insurance Reform Act of 2004. As required by the Act, FEMA has coordinated with the State insurance regulators, the insurance industry, and other interested parties. Input received from these organizations emphasizes the value of working through the State insurance departments to avoid establishing conflicting or burdensome training requirements upon insurance agents. While implementing the minimum training requirements required by section 207, FEMA has been mindful of the Senate Report language, (S. REP. NO. 108–262, at 4 & 9 (2004)), which cautions: In some cases, states may already have requirements to ensure that agents are well versed in the flood insurance program. Where possible, FEMA should work to make sure that agents are not burdened with inconsistent state and federal training and education requirements. In addition, where possible, FEMA should work to implement the training requirements through the states, which already have continuing education processes in place.
MODEL BULLETIN

DATE: [Insert Date]

TO: All Licensed Insurers Writing Long-Term Care Insurance
    All Resident Insurance Producers Authorized to Sell, Solicit or Negotiate Long-Term Care Insurance
    All Approved Continuing Education Providers
    State LTC Partnership Program

FROM: [Insert Name & Title]

RE: Producer Training – Policies Issued Under Qualified State Long-Term Care Insurance Partnership ("Qualified Partnership")

The Deficit Reduction Act of 2005, Pub. L. 109-171 ("the DRA") allows for the expansion of Qualified Partnerships. The DRA and the State Medicaid Director’s Letter (SMDL #06-019) dated July 27, 2006, issued by Centers for Medicare & Medicaid Services, require the [Insert Name of Insurance Department or Insurance Commissioner] to provide assurance that any producer who sells, solicits or negotiates “a policy under a Partnership receives training and demonstrates an understanding of Partnership policies and their relationship to public and private coverage to long-term care.”

Accordingly, an individual may not sell, solicit or negotiate long-term care insurance unless the individual is authorized as an insurance producer for accident and health or sickness [include other lines of authority as applicable] and has completed a one-time training course by or before July 1, 2008 [or substitute an alternate date at least one year after the legislation becomes effective] and ongoing training every 24 months thereafter.

Insurers providing LTC insurance shall obtain verification that the producer receives such training, maintain records subject to the state’s record retention requirements and make that verification available to the [Insert Name of Insurance Commissioner] upon request. The one time training course shall be no less than 8 hours and the ongoing training shall be no less than 4 hours. Training shall cover the following topics: long-term care insurance, long-term care services, Qualified Partnerships, and the relationship between Qualified Partnerships and other public and private coverage of long-term care.

The satisfaction of these training requirements in any state shall be deemed to satisfy the training requirements in [Insert Name of State]. These training requirements may be approved as continuing education courses under [insert reference to applicable state law or regulation].

(INsert Commissioner Name)
(INsert Commissioner Title)
(INsert State Name)
Part III - Section I – Appendix J

NAIC PRODUCER LICENSING MODEL ACT

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Section 1. Purpose and Scope

This Act governs the qualifications and procedures for the licensing of insurance producers. It simplifies and organizes some statutory language to improve efficiency, permits the use of new technology and reduces costs associated with issuing and renewing insurance licenses.

This Act does not apply to excess and surplus lines agents and brokers licensed pursuant to Section [refer to state excess and surplus lines statutes] except as provided in Section 8 and Section 16B of this Act.

Drafting Note: It is recommended that any statute or regulation inconsistent with this Act be repealed or amended.

Drafting Note: This Act also requires a report to the insurance commissioner of the termination of a producer by an insurer, whether with or without cause.

Section 2. Definitions

A. “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

B. “Home state” means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer.

C. “Insurance” means any of the lines of authority in [insert reference to appropriate section of state law].

D. “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.
E. “Insurer” means [insert reference to appropriate section of state law].

F. “License” means a document issued by this state’s insurance commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance carrier.

G. “Limited line credit insurance” includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection (gap) insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the insurance commissioner determines should be designated a form of limited line credit insurance.

H. “Limited line credit insurance producer” means a person who sells, solicits or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group or individual policy.

I. “Limited lines insurance” means those lines of insurance defined in [insert reference to state specific limited line statute] or any other line of insurance that the insurance commissioner deems necessary to recognize for the purposes of complying with Section 8E.

J. “Limited lines producer” means a person authorized by the insurance commissioner to sell, solicit or negotiate limited lines insurance.

K. “Negotiate” means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

L. “Person” means an individual or a business entity.

M. “Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

N. “Solicit” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

O. “Terminate” means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer’s authority to transact insurance.

P. “Uniform Business Entity Application” means the current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.

Q. “Uniform Application” means the current version of the NAIC Uniform Application for resident and nonresident producer licensing.

Section 3. License Required

A person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this Act.

Section 4. Exceptions to Licensing

A. Nothing in this Act shall be construed to require an insurer to obtain an insurance producer license. In this section, the term “insurer” does not include an insurer’s officers, directors, employees, subsidiaries or affiliates.
B. A license as an insurance producer shall not be required of the following:

(1) An officer, director or employee of an insurer or of an insurance producer, provided that the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in this state and:

(a) The officer, director or employee’s activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or negotiation of insurance; or

(b) The officer, director or employee’s function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance; or

(c) The officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person’s activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

(2) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans; issuing certificates under plans or otherwise assisting in administering plans; or performs administrative services related to mass marketed property and casualty insurance; where no commission is paid to the person for the service;

(3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director or trustees are engaged in the administration or operation of a program of employee benefits for the employer’s or association’s own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;

(4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;

(5) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state;

(6) A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or

(7) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission.

Drafting Note: Persons who provide general insurance advice in connection with providing other professional services such as legal services, trust services, tax and accounting services, financial planning and investment advisory services are not deemed to be soliciting the sale of insurance under this Act. Sections 3 and 4 of this Act are intended to address all persons meeting the definition of “insurance producer” as defined in Title III, Section 336, of Public Law No. 106-102 (the “Gramm-Leach-Bliley Act”).
Section 5. Application for Examination

A. A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to Section 9. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the insurance commissioner.

B. The insurance commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in [insert appropriate reference to state law or regulation].

C. Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the insurance commissioner as set forth in [insert appropriate reference to state law or regulation].

D. An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

Drafting Note: A state may wish to prescribe by regulation limitations on the frequency of application for examination in addition to other prelicensing requirements.

Section 6. Application for License

A. A person applying for a resident insurance producer license shall make application to the insurance commissioner on the Uniform Application and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual’s knowledge and belief. Before approving the application, the insurance commissioner shall find that the individual:

(1) Is at least eighteen (18) years of age;

(2) Has not committed any act that is a ground for denial, suspension or revocation set forth in Section 12;

(3) Where required by the insurance commissioner, has completed a prelicensing course of study for the lines of authority for which the person has applied;

Drafting Note: Paragraph (3) would apply only to those states that have prelicensing education requirements.

(4) Has paid the fees set forth in [insert appropriate reference to state law or regulation]; and

(5) Has successfully passed the examinations for the lines of authority for which the person has applied.

B. A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the Uniform Business Entity Application. Before approving the application, the insurance commissioner shall find that:

(1) The business entity has paid the fees set forth in [insert appropriate reference to state law or regulation]; and

(2) The business entity has designated a licensed producer responsible for the business entity’s compliance with the insurance laws, rules and regulations of this state.
Drafting Note: Subsection B is optional and would apply only to those states that have a business entity license requirement.

C. The insurance commissioner may require any documents reasonably necessary to verify the information contained in an application.

D. Each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting or negotiating limited line credit insurance a program of instruction that may be approved by the insurance commissioner.

Section 7. License

A. Unless denied licensure pursuant to Section 12, persons who have met the requirements of Sections 5 and 6 shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

(1) Life—insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.

(2) Accident and health or sickness—insurance coverage for sickness, bodily injury or accidental death and may include benefits for disability income.

(3) Property—insurance coverage for the direct or consequential loss or damage to property of every kind.

(4) Casualty—insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property.

(5) Variable life and variable annuity products—insurance coverage provided under variable life insurance contracts and variable annuities.

(6) Personal lines—property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.

(7) Credit—limited line credit insurance.

(8) Any other line of insurance permitted under state laws or regulations.

B. An insurance producer license shall remain in effect unless revoked or suspended as long as the fee set forth in [insert appropriate reference to state law or regulation] is paid and education requirements for resident individual producers are met by the due date.

C. An individual insurance producer who allows his or her license to lapse may, within twelve (12) months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.

D. A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance (e.g., a long-term medical disability) may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

Drafting Note: References to license “renewal” should be deleted in those states that do not require license renewal.
E. The license shall contain the licensee’s name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date and any other information the insurance commissioner deems necessary.

F. Licensees shall inform the insurance commissioner by any means acceptable to the insurance commissioner of a change of address within thirty (30) days of the change. Failure to timely inform the insurance commissioner of a change in legal name or address shall result in a penalty pursuant to [insert appropriate reference to state law].

G. In order to assist in the performance of the insurance commissioner’s duties, the insurance commissioner may contract with non-governmental entities, including the National Association of Insurance Commissioner (NAIC) or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the insurance commissioner and the non-governmental entity may deem appropriate.

Section 8. Nonresident Licensing

A. Unless denied licensure pursuant to Section 12, a nonresident person shall receive a nonresident producer license if:

(1) The person is currently licensed as a resident and in good standing in his or her home state;

(2) The person has submitted the proper request for licensure and has paid the fees required by [insert appropriate reference to state law or regulation];

(3) The person has submitted or transmitted to the insurance commissioner the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed Uniform Application; and

(4) The person’s home state awards non-resident producer licenses to residents of this state on the same basis.

Drafting Note: In accordance with Public Law No. 106-102 (the “Gramm-Leach-Bliley Act”) states should not require any additional attachments to the Uniform Application or impose any other conditions on applicants that exceed the information requested within the Uniform Application.

B. The insurance commissioner may verify the producer’s licensing status through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

C. A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty (30) days of the change of legal residence. No fee or license application is required.

D. Notwithstanding any other provision of this Act, a person licensed as a surplus lines producer in his or her home state shall receive a nonresident surplus lines producer license pursuant to Subsection A of this section. Except as to Subsection A, nothing in this section otherwise amends or supersedes any provision of [refer to state excess and surplus lines statutes].

E. Notwithstanding any other provision of this Act, a person licensed as a limited line credit insurance or other type of limited lines producer in his or her home state shall receive a nonresident limited lines producer license, pursuant to Subsection A of this section, granting the same scope of authority as granted under the license issued by the producer’s home state. For the purposes of Section 8E, limited line insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to Section 7A(1) through (6).
Section 9. Exemption from Examination

A. An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety (90) days of the cancellation of the applicant’s previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state’s Producer Database records, maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.

B. A person licensed as an insurance producer in another state who moves to this state shall make application within ninety (90) days of establishing legal residence to become a resident licensee pursuant to Section 6. No prelicensing education or examination shall be required of that person to obtain any line of authority previously held in the prior state except where the insurance commissioner determines otherwise by regulation.

Section 10. Assumed Names

An insurance producer doing business under any name other than the producer’s legal name is required to notify the insurance commissioner prior to using the assumed name.

Section 11. Temporary Licensing

A. The insurance commissioner may issue a temporary insurance producer license for a period not to exceed one hundred eighty (180) days without requiring an examination if the insurance commissioner deems that the temporary license is necessary for the servicing of an insurance business in the following cases:

1. To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the producer or for the recovery or return of the producer to the business or to provide for the training and licensing of new personnel to operate the producer’s business;

2. To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license;

3. To the designee of a licensed insurance producer entering active service in the armed forces of the United States of America; or

4. In any other circumstance where the insurance commissioner deems that the public interest will best be served by the issuance of this license.

B. The insurance commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The insurance commissioner may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The insurance commissioner may by order revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner or the personal representative disposes of the business.
Section 12. License Denial, Nonrenewal or Revocation

A. The insurance commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer’s license or may levy a civil penalty in accordance with [insert appropriate reference to state law] or any combination of actions, for any one or more of the following causes:

1. Providing incorrect, misleading, incomplete or materially untrue information in the license application;
2. Violating any insurance laws, or violating any regulation, subpoena or order of the insurance commissioner or of another state’s insurance commissioner;
3. Obtaining or attempting to obtain a license through misrepresentation or fraud;
4. Improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business;
5. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
6. Having been convicted of a felony;
7. Having admitted or been found to have committed any insurance unfair trade practice or fraud;
8. Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
9. Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;
10. Forging another’s name to an application for insurance or to any document related to an insurance transaction;
11. Improperly using notes or any other reference material to complete an examination for an insurance license;
12. Knowingly accepting insurance business from an individual who is not licensed;
13. Failing to comply with an administrative or court order imposing a child support obligation; or
14. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

Drafting Note: Paragraph (14) is for those states that have a state income tax.

B. In the event that the action by the insurance commissioner is to nonrenew or to deny an application for a license, the insurance commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant’s or licensee’s license. The applicant or licensee may make written demand upon the insurance commissioner within [insert appropriate time period from state’s administrative procedure act] for a hearing before the insurance commissioner to determine the reasonableness of the insurance commissioner’s action. The hearing shall be held within [insert time period from state law] and shall be held pursuant to [insert appropriate reference to state law].
C. The license of a business entity may be suspended, revoked or refused if the insurance commissioner finds, after hearing, that an individual licensee’s violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation and the violation was neither reported to the insurance commissioner nor corrective action taken.

D. In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine according to [insert appropriate reference to state law].

E. The insurance commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this Act and Title [insert appropriate reference to state law] against any person who is under investigation for or charged with a violation of this Act or Title [insert appropriate reference to state law] even if the person’s license or registration has been surrendered or has lapsed by operation of law.

Section 13. Commissions

A. An insurance company or insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this Act and is not so licensed.

B. A person shall not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this Act and is not so licensed.

C. Renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this state if the person was required to be licensed under this Act at the time of the sale, solicitation or negotiation and was so licensed at that time.

D. An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate [insert appropriate reference to state law, i.e. citation to anti-rebating statute, if applicable].

Section 14. Appointments [Optional]

A. An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.

B. To appoint a producer as its agent, 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. An insurer may also elect to appoint a producer to all or some insurers within the insurer’s holding company system or group by the filing of a single appointment request.

Drafting Note: The group appointment provision of Subsection B is only applicable in jurisdictions that have implemented an electronic appointment process.

C. [Optional] Upon receipt of the notice of appointment, the insurance commissioner shall verify within a reasonable time not to exceed thirty (30) days that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the insurance commissioner shall notify the insurer within five (5) days of its determination.

D. An insurer shall pay an appointment fee, in the amount and method of payment set forth in [insert appropriate reference to state law or regulation], for each insurance producer appointed by the insurer.
E. [Optional] An insurer shall remit, in a manner prescribed by the insurance commissioner, a renewal appointment fee in the amount set forth in [insert appropriate reference to state law or regulation].

Drafting Note: This act designates as optional the section on appointments of producers by insurers. That designation recognizes that some states do not require the formal appointment of a producer before business can be conducted with an insurer or multiple insurers.

Section 15. Notification to Insurance Commissioner of Termination

A. Termination for Cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract or other insurance business relationship with a producer shall notify the insurance commissioner within thirty (30) days following the effective date of the termination, using a format prescribed by the insurance commissioner, if the reason for termination is one of the reasons set forth in Section 12 or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in Section 12. Upon the written request of the insurance commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination or activity of the producer.

B. Termination Without Cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason not set forth in Section 12, shall notify the insurance commissioner within thirty (30) days following the effective date of the termination, using a format prescribed by the insurance commissioner. Upon written request of the insurance commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination.

Drafting Note: Those states that do not require formal appointments may delete any reference to appointments in Subsections A and B above.

C. Ongoing Notification Requirement. The insurer or the authorized representative of the insurer shall promptly notify the insurance commissioner in a format acceptable to the insurance commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the insurance commissioner in accordance with Subsection A had the insurer then known of its existence.

D. Copy of Notification to be Provided to Producer.

(1) Within fifteen (15) days after making the notification required by Subsections A, B and C, the insurer shall mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for any of the reasons listed in Section 12, the insurer shall provide a copy of the notification to the producer at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(2) Within thirty (30) days after the producer has received the original or additional notification, the producer may file written comments concerning the substance of the notification with the insurance commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the insurance commissioner’s file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under Subsection F.

E. Immunities

(1) In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the insurance commissioner, or an organization of which the insurance commissioner is a member and that compiles the information and makes it available to other insurance commissioners or
regulatory or law enforcement agencies shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the insurance commissioner, from an insurer or producer; or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination for cause under Subsection A was reported to the insurance commissioner, provided that the propriety of any termination for cause under Subsection A is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.

(2) In any action brought against a person that may have immunity under Paragraph (1) for making any statement required by this section or providing any information relating to any statement that may be requested by the insurance commissioner, the party bringing the action shall plead specifically in any allegation that Paragraph (1) does not apply because the person making the statement or providing the information did so with actual malice.

3) Paragraph (1) or (2) shall not abrogate or modify any existing statutory or common law privileges or immunities.

F. Confidentiality

(1) Any documents, materials or other information in the control or possession of the department of insurance that is furnished by an insurer, producer or an employee or agent thereof acting on behalf of the insurer or producer, or obtained by the insurance commissioner in an investigation pursuant to this section shall be confidential by law and privileged, shall not be subject to open records, freedom of information, sunshine or other appropriate phrase, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the insurance commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the insurance commissioner’s duties.

(2) Neither the insurance commissioner nor any person who received documents, materials or other information while acting under the authority of the insurance commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Paragraph (1).

(3) In order to assist in the performance of the insurance commissioner’s duties under this Act, the insurance commissioner:

(a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Paragraph (1), with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;

(b) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(c) [OPTIONAL] May enter into agreements governing sharing and use of information consistent with this subsection.
Drafting Note: The language in Paragraph 3(a) assumes the recipient has the authority to protect the applicable confidentiality or privilege, but does not address the verification of that authority, which would presumably occur in the context of a broader information sharing agreement.

(4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Paragraph (3).

(5) Nothing in this Act shall prohibit the insurance commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to [insert appropriate reference to state law] to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries of the National Association of Insurance Commissioners.

G. Penalties for Failing to Report. An insurer, the authorized representative of the insurer, or producer that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with [insert appropriate reference to state law].

Section 16. Reciprocity

A. The insurance commissioner shall waive any requirements for a nonresident license applicant with a valid license from his or her home state, except the requirements imposed by Section 8 of this Act, if the applicant’s home state awards nonresident licenses to residents of this state on the same basis.

B. A nonresident producer’s satisfaction of his or her home state’s continuing education requirements for licensed insurance producers shall constitute satisfaction of this state’s continuing education requirements if the non-resident producer’s home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

Drafting Note: States are encouraged to eliminate any licensing and appointment retaliatory fees. In accordance with Public Law No. 106-102 (the “Gramm-Leach-Bliley Act”) states should not require non-resident fees that are so disparate from the resident fees that they impose a barrier to entry. Such fees would be prohibited under Public Law 106-102.

Section 17. Reporting of Actions

A. A producer shall report to the insurance commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents.

B. Within thirty (30) days of the initial pretrial hearing date, a producer shall report to the insurance commissioner any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

Section 18. Compensation Disclosure

A. (1) Where any insurance producer or any affiliate of the producer receives any compensation from the customer for the placement of insurance or represents the customer with respect to that placement, neither that producer nor the affiliate shall accept or receive any compensation from an insurer or
other third party for that placement of insurance unless the producer has, prior to the customer’s purchase of insurance:

(a) Obtained the customer’s documented acknowledgment that such compensation will be received by the producer or affiliate; and

(b) Disclosed the amount of compensation from the insurer or other third party for that placement. If the amount of compensation is not known at the time of disclosure, the producer shall disclose the specific method for calculating the compensation and, if possible, a reasonable estimate of the amount.

(2) Paragraph (1) shall not apply to an insurance producer who:

(a) Does not receive compensation from the customer for the placement of insurance; and

(b) In connection with that placement of insurance represents an insurer that has appointed the producer; and

(c) Discloses to the customer prior to the purchase of insurance:

(i) That the insurance producer will receive compensation from an insurer in connection with that placement; or

(ii) That, in connection with that placement of insurance, the insurance producer represents the insurer and that the producer may provide services to the customer for the insurer.

Drafting Note: In states where no appointment is required, the phrase “that has contractually authorized the producer to act as its legal agent” may be substituted for “that has appointed the producer.”

B. A person shall not be considered a “customer” for purposes of this section if the person is merely:

(1) A participant or beneficiary of an employee benefit plan; or

(2) Covered by a group or blanket insurance policy or group annuity contract sold, solicited or negotiated by the insurance producer or affiliate.

C. This section shall not apply to:

(1) A person licensed as an insurance producer who acts only as an intermediary between an insurer and the customer’s producer, for example a managing general agent, a sales manager, or wholesale broker; or

(2) A reinsurance intermediary.

D. For purposes of this section:

(1) “Affiliate” means a person that controls, is controlled by, or is under common control with the producer.

(2) “Compensation from an insurer or other third party” means payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes or any other form of valuable consideration, whether or not payable pursuant to a written agreement.
(3) “Compensation from the customer” shall not include any fee or similar expense as provided in [insert reference to statutory provisions or regulations] or any fee or amount collected by or paid to the producer that does not exceed an amount established by the commissioner.

(4) “Documented acknowledgement” means the customer’s written consent obtained prior to the customer’s purchase of insurance. In the case of a purchase over the telephone or by electronic means for which written consent cannot reasonably be obtained, consent documented by the producer shall be acceptable.

E. This section shall take effect [insert date].

**Drafting Note**: States that are considering the licensing of business entities should reference Section 6B of the NAIC’s Producer Licensing Model Act and the Uniform Application for Business Entity License/Registration, which address the licensing of a business entity acting as an insurance producer.

**Section 19. Regulations**

The insurance commissioner may, in accordance with [insert appropriate reference to state law], promulgate reasonable regulations as are necessary or proper to carry out the purposes of this Act.

**Section 20. Severability**

If any provisions of this Act, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

**Section 21. Effective Date**

This Act shall take effect [insert date].

**Note**: A minimum of six months to one year implementation time for proper notice of changes, fees and procedures is recommended.
Part III - Section I – Appendix K

Professional Licensing Standards Recommendations

DATE: May 29, 2008

TO: NAIC Officers and the Market Regulation & Consumer Affairs (D) Committee

FROM: Anne Marie Narcini, Chair of the Producer Licensing Working (D) Group

RE: Professional Licensing Standards Recommendations

During the NAIC Spring National Meeting, the NAIC Officers formally requested the Producer Licensing (D) Working Group to evaluate the key findings and issues regarding the uniform licensing standards and provide a recommendation by the 2008 Summer National Meeting identifying the ones that should be considered professional licensing standards (i.e., standards that provide the basic requirements for engaging in the profession).

Process for Completion of Charge

To fulfill this charge, the Working Group solicited public comment at the 2008 Spring National Meeting and a small team of regulators from Alaska, District of Columbia, Kentucky, New Jersey, Pennsylvania and Utah met by conference call to discuss the task. The group concluded that the professional licensing standards outlined in the request are standards producers should satisfy to sell, solicit and negotiate insurance. Furthermore, the standards represent the knowledge, skills and conduct necessary both to commence acting as a producer and to maintain a basic level of professional knowledge and abilities to continue to engage in the business.

The conclusions of the focus group were presented to Working Group members and interested parties at the interim meeting of the Working Group on April 30, 2008. Additional public comment was requested; however, interested parties did not provide any comments.

Professional Standards

The Working Group has concluded that most of the appropriate standards are already contained within the Uniform Licensing Standards adopted by the NAIC in December 2002. The Uniform Licensing Standards address the professional standards for entry and continuation of licensure for producers, as well as administrative standards for regulators to achieve uniformity and increased efficiencies.

In summary the suggested professional standards are segmented into four broad categories: (1) legal authority to enter into contracts; (2) education and initial testing for minimum competency, (3) background checks for moral character and (4) ongoing commitment to professional conduct.

Legal Authority

All Producers must be 18 years of age. This is a required standard for entry into the profession since a person must be of majority age to execute a contract.
All producers must be a United States citizen or have legal work authorization if he/she is not a United States citizen. This standard addresses the requirement for all producers to have the authority to lawfully work in the United States.

Education and Testing

All producers must pass an examination that is monitored and independently proctored with adequate supervision. This standard addresses the measurement of the minimum subject matter expertise to engage in the profession.

The Working Group members want to emphasize that a high school diploma and pre-licensing education should not be required to obtain a producer license. While individual insurance companies may establish such standards as a condition of employment, the Working Group concluded that demonstrating sufficient knowledge to engage in the business of insurance is accomplished by successfully passing the home state examination.

While the Uniform Licensing Standards do not require states to require pre-licensing education for applicants, the Uniform Licensing Standards do address the desire for uniformity among the states by requiring any state with a pre-licensing education requirement to have 20 hours per major line of authority.

Background Checks

All producers should undergo a background check that includes fingerprinting.

All producers should complete a uniform application for licensure that includes standard background check questions.

All producers should adhere to the integrity and personal qualifications outlined in Section 12 of the NAIC’s Producer Licensing Model Act.

These three standards specifically address the fitness of character, professional competence and worthiness for licensure. It should also be noted that the background questions are a part of the license continuation/renewal process and assure continued fitness for licensure.

Ongoing Commitment to Professional Conduct

All producers should adhere to the integrity and personal qualifications defined in Section 12 of the NAIC’s Producer Licensing Model Act.

All producers should complete a uniform renewal form application for licensure that includes standard background check questions.

All producers should satisfy twenty-four hours of continuing education for all major lines of authority with three (3) of the twenty-four hours covering ethics. Fifty minutes shall equal one hour of CE. Due to ongoing change in insurance products, policy forms and laws, continuing education is a basic requirement to maintain the level of professional standard necessary to continue selling, soliciting and negotiating insurance. Ongoing ethics education helps assure continued fitness for licensure and serves as a consumer protection.

Conclusion and Next Steps

The Working Group believes these standards provide the basic foundation for individuals to distinguish themselves from the general public as insurance professionals. The basic elements of legal authority, testing, background checks and continuing education are common elements for other professionals, such as securities brokers, real estate agents and attorneys.
Because insurance regulators want to ensure the highest level of consumer protection and a high degree of professionalism among those individuals selling, soliciting and negotiating insurance, insurance regulators firmly believe the producer community should openly embrace and support these standards. The open support of these standards will confirm the professionalism of the producer community. At the same time, the failure to support these standards raises serious concerns about the ongoing commitment of the producer community to a high level of professionalism commonly found in other professions.

To this end, the Working Group will be distributing a letter to the key producer trade associations within the next 30 days asking if they support the standards outlined in this memo. The key producer trade associations include the Council of Insurance Agents & Brokers, the Independent Insurance Agents & Brokers of America, the National Association of Insurance & Financial Professionals and the Professional Insurance Agents.
PUBLIC ADJUSTER LICENSING MODEL ACT

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Section 1. Purpose and Scope

This Act governs the qualifications and procedures for the licensing of public adjusters. It specifies the duties of and restrictions on public adjusters, which include limiting their licensure to assisting insureds in first party claims.

Drafting Note: It is recommended that any statute or regulation inconsistent with this Act be repealed or amended.

Drafting Note: This Act also requires a report to the insurance commissioner of any action in another jurisdiction against either the public adjuster license or licensee.

Section 2. Definitions

A. “Apprentice public adjuster” means the one who is qualified in all respects as a public adjuster except as to experience, education and/or training.

B. “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

C. “Catastrophic disaster” according to the Federal Response Plan, means an event that results in large numbers of deaths and injuries; causes extensive damage or destruction of facilities that provide and sustain human needs; produces an overwhelming demand on state and local response resources and mechanisms; causes a severe long-term effect on general economic activity; and severely affects state, local and private sector capabilities to begin and sustain response activities. A catastrophic disaster shall be declared by the President of the United States or the Governor of the state or district in which the disaster occurred.
D. “Fingerprints” for the purposes of this act, means an impression of the lines on the finger taken for purpose of identification. The impression may be electronic or in ink converted to electronic format.

E. “Home state” means the District of Columbia and any state or territory of the United States in which the public adjuster’s principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare another state in which it becomes licensed and acts as a public adjuster to be the ‘home state.’

F. “Individual” means a natural person.

G. “Person” means an individual or a business entity.

H. “Public adjuster” means any person who, for compensation or any other thing of value on behalf of the insured:

1. Acts or aids, solely in relation to first party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;

2. Advertises for employment as an public adjuster of insurance claims or solicits business or represents himself or herself to the public as an public adjuster of first party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or

3. Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy, for the insured.

I. “Uniform individual application” means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Individual Application for resident and nonresident individuals.

J. [Optional] “Uniform business entity application” means the current version of the National Association of Insurance Commissioners (NAIC) Uniform Business Entity Application for resident and nonresident business entities.

Drafting Note: Subsection J is optional and would apply only to those states that have a business entity license requirement.

Drafting Note: If any term is similarly defined in a relevant section of the state’s insurance code, do not include the definition of the term in this Act or, in the alternative, reference the statute: “[term] is defined in [insert appropriate reference to state law or regulation].”

Section 3. License Required

A. A person shall not act or hold himself out as a public adjuster in this state unless the person is licensed as a public adjuster in accordance with this Act.
B. A person licensed as a public adjuster shall not misrepresent to a claimant that he or she is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster unless so appointed by an insurer in writing to act on the insurer’s behalf for that specific claim or purpose. A licensed public adjuster is prohibited from charging that specific claimant a fee when appointed by the insurer and the appointment is accepted by the public adjuster.

C. A business entity acting as a public adjuster is required to obtain a public adjuster license. Application shall be made using the Uniform Business Entity Application. Before approving the application, the insurance commissioner shall find that:

1. The business entity has paid the fees set forth in [insert appropriate reference to state law or regulation; and

2. The business entity has designated a licensed public adjuster responsible for the business entity’s compliance with the insurance laws, rules and regulations of this state.

Drafting Note: Subsection C is optional and would apply only to those states that have a business entity license requirement.

D. Notwithstanding subsection A through C, a license as a public adjuster shall not be required of the following:

1. An attorney-at-law admitted to practice in this state, when acting in his or her professional capacity as an attorney;

2. A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;

3. A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including photographers, estimators, private investigators, engineers and handwriting experts;

4. A licensed health care provider, or employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient; or

5. A person who settles subrogation claims between insurers.

Section 4. Application for License

A. A person applying for a public adjuster license shall make application to the commissioner on the appropriate uniform application or other application prescribed by the commissioner.]

B. The applicant shall declare under penalty of perjury and under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the applicant’s knowledge and belief.

C. In order to make a determination of license eligibility, the insurance commissioner is authorized to require fingerprints of applicants and submit the fingerprints and the fee required to perform the criminal history record checks to the state identification
bureau (or state department of justice public state agency) and the Federal Bureau of Investigation (FBI) for state and national criminal history record checks; the insurance commissioner shall require a criminal history record check on each applicant in accordance with this Act. The insurance commissioner shall require each applicant to submit a full set of fingerprints in order for the insurance commissioner to obtain and receive National Criminal History Records from the FBI Criminal Justice Information Services Division.

(1) The insurance commissioner may contract for the collection, transmission and resubmission of fingerprints required under this section. If the commissioner does so, the fee for collecting, transmitting and retaining fingerprints shall be payable directly to the contractor by the person. The insurance commissioner may agree to a reasonable fingerprinting fee to be charged by the contractor.

(2) The insurance commissioner may waive submission of fingerprints by any person that has previously furnished fingerprints and those fingerprints are on file with the Central Repository of the National Association of Insurance Commissioners (NAIC), its affiliates or subsidiaries.

(3) The insurance commissioner is authorized to receive criminal history record information in lieu of the [insert reference to Department of Justice/Public Safety Agency] that submitted the fingerprints to the FBI.

(4) The insurance commissioner is authorized to submit electronic fingerprint records and necessary identifying information to the NAIC, its affiliates or subsidiaries for permanent retention in a centralized repository. The purpose of such a centralized repository is to provide insurance commissioners with access to fingerprint records in order to perform criminal history record checks.

Drafting Note: The FBI requires that fingerprints be submitted to the state Department of Law Enforcement, Public Safety or Criminal Justice for a check of state records before the fingerprints are submitted to the FBI for a criminal history check. The FBI recommends all fingerprint submissions to be in an electronic format. The FBI has approved the language in Section 4 (C ) to authorize a state identification bureau to submit fingerprints on behalf of its applicants in conjunction with licensing and employment.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

Drafting Note: This provision does not permit the sharing of criminal history record information with the NAIC or other insurance commissioners as such sharing of information is prohibited by 28 CFR 20.33.

Section 5. Resident License

A. Before issuing a public adjuster license to an applicant under this section, the commissioner shall find that the applicant:

(1) Is eligible to designate this state as his or her home state or is a nonresident who is not eligible for a license under Section 8;

(2) Has not committed any act that is a ground for denial, suspension or revocation of a license as set forth in Section 11;

(3) Is trustworthy, reliable, and of good reputation, evidence of which may be determined by the commissioner;

(4) Is financially responsible to exercise the license and has provided proof of financial responsibility as required in Section 12 of this Act;

(5) Has paid the fees set forth in [insert appropriate reference to state law or regulation]; and
(6) Maintains an office in the home state of residence with public access by reasonable appointment and/or regular business hours. This includes a designated office within a home state of residence.

B. In addition to satisfying the requirements of Subsection A, an individual shall

(1) Be at least eighteen (18) years of age; and

(2) Have successfully passed the public adjuster examination.

(3) Designate a licensed individual public adjuster responsible for the business entity’s compliance with the insurance laws, rules, and regulations of this state; and

(4) Designate only licensed individual public adjusters to exercise the business entity’s license.

Drafting Note: Subsection C is optional and would apply only to those states that have a business entity license requirement. C’s PLMA Section 6B

C. The commissioner may require any documents reasonably necessary to verify the information contained in the application.

Section 6. Examination

A. An individual applying for a public adjuster license under this act shall pass a written examination unless exempt pursuant to Section 7. The examination shall test the knowledge of the individual concerning the duties and responsibilities of a public adjuster and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the commissioner.

B. The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in [insert appropriate reference to state law or regulation].

C. Each individual applying for an examination shall remit a non-refundable fee as prescribed by the commissioner as set forth in [insert appropriate reference to state law or regulation].

D. An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

Drafting Note: A state may wish to prescribe by regulation limitations on the frequency of application for examination in addition to other prelicensing requirements.
Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

Section 7. Exemptions from Examination

A. An individual who applies for a public adjuster license in this state who was previously licensed as a public adjuster in another state based on an public adjuster examination shall not be required to complete any prelicensing examination. This exemption is only available if the person is currently licensed in that state or if the application is received within twelve (12) months of the cancellation of the applicant’s previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state’s producer database records or records maintained by the NAIC, its affiliates, or subsidiaries, indicate that the public adjuster is or was licensed in good standing.

B. A person licensed as a public adjuster in another state based on an public adjuster examination who moves to this state shall make application within ninety (90) days of establishing legal residence to become a resident licensee pursuant to Section 5. No prelicensing examination shall be required of that person to obtain a public adjuster license.

C. An individual who applies for a public adjuster license in this state who was previously licensed as a public adjuster in this state shall not be required to complete any prelicensing examination. This exemption is only available if the application is received within twelve (12) months of the cancellation of the applicant’s previous license in this state and if, at the time of cancellation, the applicant was in good standing in this state.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

Section 8. Nonresident License Reciprocity

A. Unless denied licensure pursuant to Section 11, a nonresident person shall receive a nonresident public adjuster license if:

1. The person is currently licensed as a resident public adjuster and in good standing in his or her home state;

2. The person has submitted the proper request for licensure, has paid the fees required by [insert appropriate reference to state law or regulation] [NAIC’s PLMA Section 8A(2)], and has provided proof of financial responsibility as required in Section 12 of this Act;

3. The person has submitted or transmitted to the commissioner the appropriate completed application for licensure; and

4. The person’s home state awards non-resident public adjuster licenses to residents of this state on the same basis.

B. The commissioner may verify the public adjuster’s licensing status through the producer database maintained by the NAIC, its affiliates, or subsidiaries.
C. As a condition to continuation of a public adjuster license issued under this section, the licensee shall maintain a resident public adjuster license in his or her home state. The non-resident public adjuster license issued under this section shall terminate and be surrendered immediately to the commissioner if the home state public adjuster license terminates for any reason, unless the public adjuster has been issued a license as a resident public adjuster in his or her new home state. Notification to the state or states where non-resident license is issued must be made as soon as possible, yet no later that thirty (30) days of change in new state resident license. Licensee shall include new and old address. A new state resident license is required for non-resident licenses to remain valid. The new state resident license must have reciprocity with the licensing non-resident state(s) for the non-resident license not to terminate.

Drafting Note: If the state has adopted the PLMA, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

Section 9. License

A. Unless denied licensure under this Act, persons who have met the requirements of this Act shall be issued a public adjuster license.

B. A public adjuster license shall remain in effect unless revoked, terminated or suspended as long as the request for renewal and fee set forth in [insert appropriate reference to state law or regulation] is paid and any other requirements for license renewal are met by the due date.

C. The licensee shall inform the commissioner by any means acceptable to the commissioner of a change of address, change of legal name, or change of information submitted on the application within thirty (30) days of the change.

D. A licensed public adjuster shall be subject to [cite state’s Unfair Claims Settlement Act and state’s Trade Practices and Fraud sections of the Insurance Code].

E. A public adjuster who allows his or her license to lapse may, within twelve (12) months from the due date of the renewal, be issued a new public adjuster license upon the commissioner’s receipt of the request for renewal. However, a penalty in the amount of double the unpaid renewal fee shall be required for the issue of the new public adjuster license. The new public adjuster license shall be effective the date the commissioner receives the request for renewal and the late payment penalty.

F. Any public adjuster licensee that fails to apply for renewal of a license before expiration of the current license shall pay a lapsed license fee of twice the license fee and be subject to other penalties as provided by law before the license will be renewed. If the Department receives the request for reinstatement and the required lapsed license fee within sixty (60) days of the date the license lapsed, the Department shall reinstate the license retroactively to the date the license lapsed. If the Department receives the request for reinstatement and the required lapsed license fee after sixty (60) days but within one year of the date the license lapsed, the Department shall reinstate the license prospectively with the date the license is reinstated. If the person applies for reinstatement more than one year from date of lapse, the person shall reapply for the license under this Act.
G. A licensed public adjuster that is unable to comply with license renewal procedures due to military service, a long-term medical disability, or some other extenuating circumstance, may request a waiver of those procedures. The public adjuster may also request a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with renewal procedures.

Drafting Note: References to license “renewal” should be deleted in those states that do not require license renewal.

H. The license shall contain the licensee’s name, city and state of business address, personal identification number, the date of issuance, the expiration date, and any other information the commissioner deems necessary.

I. In order to assist in the performance of the commissioner’s duties, the commissioner may contract with non-governmental entities, including the NAIC or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees and data, related to licensing that the commissioner may deem appropriate.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

Section 10. Apprentice Public Adjuster License [Optional]

A. The apprentice public adjuster license is an optional license to facilitate the training necessary to ensure reasonable competency to fulfill the responsibilities of a public adjuster as defined in [insert state statute].

B. The apprentice public adjuster license shall be subject to the following terms and conditions:

(1) An attestation/certification from a licensed public adjuster (licensee) shall accompany an application for an initial apprentice public adjuster license assuming responsibility for all actions of such applicant;

(2) The apprentice public adjuster is authorized to adjust claims in the state that has issued licensure only;

(3) The apprentice public adjuster shall not be required to take and successfully complete the prescribed public adjuster examination;

(4) The licensee shall at all times be an employee of a public adjuster and subject to training, direction, and control by a licensed public adjuster;

(5) The apprentice public adjuster license is for a period not to exceed twelve (12) months, the license shall not be renewed;

(6) The licensee is restricted to participation in factual investigation, tentative closing and solicitation of losses subject to the review and final determination of a licensed public adjuster;

(7) Compensation of an apprentice public adjuster shall be on a salaried or hourly basis only; and

(8) The licensee shall be subject to suspension, revocation, or conditions in accordance with [Insert State Laws].
Section 11. License Denial, Non-renewal or Revocation

A. The commissioner may place on probation, suspend, revoke or refuse to issue or renew a public adjuster’s license or may levy a civil penalty in accordance with [insert appropriate reference to state law] or any combination of actions, for any one or more of the following causes:

1. Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
2. Violating any insurance laws, or violating any regulation, subpoena, or order of the commissioner or of another state’s insurance commissioner;
3. Obtaining or attempting to obtain a license through misrepresentation or fraud;
4. Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;
5. Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
6. Having been convicted of a felony;
7. Having admitted or been found to have committed any insurance unfair trade practice or insurance fraud;
8. Using fraudulent, coercive or dishonest practices; or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
9. Having an insurance license, or its equivalent, denied, suspended, or revoked in any other state, province, district or territory;
10. Forging another’s name to an application for insurance or to any document related to an insurance transaction;
11. Cheating, including improperly using notes or any other reference material, to complete an examination for an insurance license;
12. Knowingly accepting insurance business from an individual who is not licensed but who is required to be licensed by the commissioner;
13. Failing to comply with an administrative or court order imposing a child support obligation; or
14. Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.
Drafting Note: Paragraph (14) is for those states that have a state income tax.

B. In the event that the action by the commissioner is to deny an application for or not renew a license, the commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the non-renewal or denial of the applicant’s or licensee’s license. The applicant or licensee may make written demand upon the commissioner within [insert appropriate time period from state’s administrative procedure act] for a hearing before the commissioner to determine the reasonableness of the commissioner’s action. The hearing shall be held within [insert time period from state law] and shall be held pursuant to [insert appropriate reference to state law].

C. The license of a business entity may be suspended, revoked or refused if the commissioner finds, after hearing, that an individual licensee’s violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the business entity and the violation was neither reported to the commissioner nor corrective action taken.

D. In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine according to [insert appropriate reference to state law].

E. The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this Act and Title [insert appropriate reference to state law] against any person who is under investigation for or charged with a violation of this Act or Title [insert appropriate reference to state law] even if the person’s license or registration has been surrendered or has lapsed by operation of law.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. The state may want to amend its relevant insurance producer statute to include public adjusters.

Section 12. Bond or Letter of Credit

Prior to issuance of a license as a public adjuster and for the duration of the license, the applicant shall secure evidence of financial responsibility in a format prescribed by the insurance commissioner through a security bond or irrevocable letter of credit:

A. A surety bond executed and issued by an insurer authorized to issue surety bonds in this state, which bond:

1. Shall be in the minimum amount of $20,000;
2. Shall be in favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices in his or her capacity as a public adjuster; and
3. Shall not be terminated unless at least thirty (30) days’ prior written notice will have been filed with the commissioner and given to the licensee.
B. An irrevocable letter of credit issued by a qualified financial institution, which letter of credit:

(1) Shall be in the minimum amount of $20,000;

(2) Shall be to an account to the commissioner and subject to lawful levy of execution on behalf of any person to whom the public adjuster has been found to be legally liable as the result of erroneous acts, failure to act, fraudulent acts, or unfair practices in his or her capacity as a public adjuster; and

(3) Shall not be terminated unless at least thirty (30) days’ prior written notice will have been filed with the commissioner and given to the licensee.

C. The issuer of the evidence of financial responsibility shall notify the commissioner upon termination of the bond or letter of credit, unless otherwise directed by the commissioner.

D. The commissioner may ask for the evidence of financial responsibility at any time he or she deems relevant.

E. The authority to act as a public adjuster shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired.

Section 13. Continuing Education

A. An individual, who holds a public adjuster license and who is not exempt under Subsection B of this section, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, including ethics, reported on a biennial basis in conjunction with the license renewal cycle.

B. This section shall not apply to:

(1) Licensees not licensed for one full year prior to the end of the applicable continuing education biennium; or

(2) Licensees holding nonresident public adjuster licenses who have met the continuing education requirements of their home state and whose home state gives credit to residents of this state on the same basis.

C. Only continuing education courses approved by the commissioner shall be used to satisfy the continuing education requirement of Subsection A.

Section 14. Public Adjuster Fees

A. [Optional] A public adjuster may charge the insured a reasonable fee as determined by state law [insert appropriate reference to state law or regulation].

Drafting Note: This model designates Section 14A as optional. A majority of the states do not require a cap on fees of public adjusters.

B. A public adjuster shall not pay a commission, service fee or other valuable consideration to a person for investigating or settling claims in this state if that person is required to be licensed under this Act and is not so licensed.
C. A person shall not accept a commission, service fee or other valuable consideration for investigating or settling claims in this state if that person is required to be licensed under this Act and is not so licensed.

D. A public adjuster may pay or assign commission, service fees or other valuable consideration to persons who do not investigate or settle claims in this state, unless the payment would violate [insert appropriate reference to state law, i.e. citation to anti-rebating statute or sharing commission statute, if applicable].

E. [Optional] In the event of a catastrophic disaster, there shall be limits on catastrophic fees, no public adjuster shall charge, agree to or accept as compensation or reimbursement any payment, commission, fee, or other thing of value equal to more than ten percent (10%) of any insurance settlement or proceeds. No public adjuster shall require, demand or accept any fee, retainer, compensation, deposit, or other thing of value, prior to settlement of a claim.

**Drafting Note:** This model designates Section 14E, as optional. It is recommended that the states that establish catastrophic fees utilize the recommended language in this model.

**Section 15. Contract Between Public Adjuster and Insured**

A. Public adjusters shall ensure that all contracts for their services are in writing and contain the following terms:

1. Legible full name of the adjuster signing the contract, as specified in Department of Insurance records;

2. Permanent home state business address and phone number;

3. Department of Insurance license number;

4. Title of “Public Adjuster Contract”;

5. The insured’s full name, street address, insurance company name and policy number, if known or upon notification;

6. A description of the loss and its location, if applicable;

7. Description of services to be provided to the insured;

8. Signatures of the public adjuster and the insured;

9. Date contract was signed by the public adjuster and date the contract was signed by the insured;

10. Attestation language stating that the public adjuster is fully bonded pursuant to state law; and

11. Full salary, fee, commission, compensation or other considerations the public adjuster is to receive for services.
B. The contract may specify that the public adjuster shall be named as a co-payee on an insurer’s payment of a claim.

   (1) If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified.

   (2) Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses first approved by the insured.

   (3) Compensation provisions in a public adjusting contract shall not be redacted in any copy of the contract provided to the commissioner. Such a redaction shall constitute an omission of material fact in violation of [insert reference to relevant state law].

C. If the insurer, not later than seventy-two (72) hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:

   (1) Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim; and

   (2) Inform the insured that loss recovery amount might not be increased by insurer; and

   (3) Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.

D. A public adjuster shall provide the insured a written disclosure concerning any direct or indirect financial interest that the public adjuster has with any other party who is involved in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, including but not limited to any ownership of, other than as a minority stockholder, any compensation expected to be received from, any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm which that provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged. The word “firm” shall include any corporation, partnership, association, joint-stock company or person.

E. A public adjuster contract may not contain any contract term that:

   (1) Allows the public adjuster’s percentage fee to be collected when money is due from an insurance company, but not paid, or that allows a public adjuster to collect the entire fee from the first check issued by an insurance company, rather than as percentage of each check issued by an insurance company;

   (2) Requires the insured to authorize an insurance company to issue a check only in the name of the public adjuster;
(3) Imposes collection costs or late fees; or
(4) Precludes a public adjuster from pursuing civil remedies.

F. Prior to the signing of the contract the public adjuster shall provide the insured with a separate disclosure document regarding the claim process that states:

(1) Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. There are three (3) types of adjusters that could be involved in that process. The definitions of the three types are as follows:

(a) “Company adjuster” means the insurance adjusters who are employees of an insurance company. They represent the interest of the insurance company and are paid by the insurance company. They will not charge you a fee.

(b) “Independent adjuster” means the insurance adjusters who are hired on a contract basis by an insurance company to represent the insurance company’s interest in the settlement of the claim. They are paid by your insurance company. They will not charge you a fee.

(c) “Public adjuster” means the insurance adjusters who do not work for any insurance company. They work for the insured to assist in the preparation, presentation and settlement of the claim. The insured hires them by signing a contract agreeing to pay them a fee or commission based on a percentage of the settlement, or other method of compensation.

(2) The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy, but has the right to do so.

(3) The insured has the right to initiate direct communications with the insured’s attorney, the insurer, the insurer’s adjuster, and the insurer’s attorney, or any other person regarding the settlement of the insured’s claim.

(4) The public adjuster is not a representative or employee of the insurer.

(5) The salary, fee, commission or other consideration is the obligation of the insured, not the insurer.

G. The contracts shall be executed in duplicate to provide an original contract to the public adjuster, and an original contract to the insured. The public adjuster’s original contract shall be available at all times for inspection without notice by the commissioner.

H. The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured’s interest.

I. The public adjuster shall give the insured written notice of the insured’s right as provided in [cite the state consumer protection laws].
J. The insured has the right to rescind the contract within three (3) business days after the date the contract was signed. The rescission shall be in writing and mailed or delivered to the public adjuster at the address in the contract within the three (3) business day period.

K. If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract will be returned to the insured within fifteen (15) business days following the receipt by the public adjuster of the cancellation notice.

Drafting Note: The details in this section should comply with your state’s consumer protection contract rescission law.

Section 16. Escrow or Trust Accounts

A public adjuster who receives, accepts or holds any funds on behalf of an insured, towards the settlement of a claim for loss or damage, shall deposit the funds in a non-interest bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the public adjuster’s home state or where the loss occurred.

Section 17. Record Retention

A. A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section shall include the following:

(1) Name of the insured;

(2) Date, location and amount of the loss;

(3) Copy of the contract between the public adjuster and insured;

(4) Name of the insurer, amount, expiration date and number of each policy carried with respect to the loss;

(5) Itemized statement of the insured’s recoveries;

(6) Itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss;

(7) A register of all monies received, deposited, disbursed, or withdrawn in connection with a transaction with an insured, including fees transfers and disbursements from a trust account and all transactions concerning all interest bearing accounts;

(8) Name of public adjuster who executed the contract;

(9) Name of the attorney representing the insured, if applicable, and the name of the claims representatives of the insurance company; and

(10) Evidence of financial responsibility in a format prescribed by the insurance commissioner.

B. Records shall be maintained for at least five (5) years after the termination of the transaction with an insured and shall be open to examination by the commissioner at all times.
C. Records submitted to the commissioner in accordance with this section that contain information identified in writing as proprietary by the public adjuster shall be treated as confidential by the commissioner and shall not be subject to [insert reference to open record laws] of this state.

Section 18. Standards of Conduct of Public Adjuster

A. A public adjuster is obligated, under his or her license, to serve with objectivity and complete loyalty the interest of his client alone; and to render to the insured such information, counsel and service, as within the knowledge, understanding and opinion in good faith of the licensee, as will best serve the insured’s insurance claim needs and interest.

B. A public adjuster shall not solicit, or attempt to solicit, an insured during the progress of a loss-producing occurrence, as defined in the insured’s insurance contract.

C. A public adjuster shall not permit an unlicensed employee or representative of the public adjuster to conduct business for which a license is required under this Act.

D. A public adjuster shall not have a direct or indirect financial interest in any aspect of the claim, other than the salary, fee, commission or other consideration established in the written contract with the insured, unless full written disclosure has been made to the insured as set forth in Section 15G.

E. A public adjuster shall not acquire any interest in salvage of property subject to the contract with the insured unless the public adjuster obtains written permission from the insured after settlement of the claim with the insurer as set forth in Section 15G.

F. The public adjuster shall abstain from referring or directing the insured to get needed repairs or services in connection with a loss from any person, unless disclosed to the insured:

(1) With whom the public adjuster has a financial interest; or

(2) From whom the public adjuster may receive direct or indirect compensation for the referral.

Drafting Note: Optional language for Subsection F: “Licensees may not solicit a client for employment between the hours of ___ pm and ___ am.”

G. The public adjuster shall disclose to an insured if he or she has any interest or will be compensated by any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop or any other firm that performs any work in conjunction with damages caused by the insured loss. The word "firm" shall include any corporation, partnership, association, joint-stock company or individual as set forth in Section 15A(4).

H. Any compensation or anything of value in connection with an insured’s specific loss that will be received by a public adjuster shall be disclosed by the public adjuster to the insured in writing including the source and amount of any such compensation.

I. Public adjusters shall adhere to the following general ethical requirements:

(1) A public adjuster shall not undertake the adjustment of any claim if the public adjuster is not competent and knowledgeable as to the terms and conditions of the insurance coverage, or which otherwise exceeds the public adjuster’s current expertise;

(2) A public adjuster shall not knowingly make any oral or written material misrepresentations or statements which are false or maliciously critical and intended to
injure any person engaged in the business of insurance to any insured client or potential insured client;

(3) No public adjuster, while so licensed by the Department, may represent or act as a company adjuster, or independent adjuster on the same claim;

Drafting Note: If a state only allows licensure in one class of adjuster licensing, the adjuster may not represent another type of licensure in any circumstance.

(4) The contract shall not be construed to prevent an insured from pursuing any civil remedy after the three-business day revocation or cancellation period;

(5) A public adjuster shall not enter into a contract or accept a power of attorney that vests in the public adjuster the effective authority to choose the persons who shall perform repair work; and

(6) A public adjuster shall ensure that all contracts for the public adjuster’s services are in writing and set forth all terms and conditions of the engagement.

J. A public adjuster may not agree to any loss settlement without the insured’s knowledge and consent.

Section 19. Reporting of Actions

A. The public adjuster shall report to the commissioner any administrative action taken against the public adjuster in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order, or other relevant legal documents.

B. Within thirty (30) days of the initial pretrial hearing date, the public adjuster shall report to the commissioner any criminal prosecution of the public adjuster taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

Drafting Note: If the state has adopted the Producer Licensing Model Act, it may not be necessary to adopt this section. Rather, the state may want to amend its relevant insurance producer statute to include public adjusters.

Section 20. Regulations

The commissioner may, in accordance with [insert appropriate reference to state law], promulgate reasonable regulations as are necessary or proper to carry out the purposes of this Act.
Section 21. Severability

If any provisions of this Act, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

Section 22. Effective Date

This Act shall take effect [insert date]. Provided, however that the provision of Section 4 do not become effective until a state participates in the NAIC’s central repository for the purpose of obtaining criminal background information.

Drafting Note: A minimum of six months to one-year implementation time for proper notice of changes, fees, and procedures is recommended.

Chronological Summary of Action (all references are to the Proceedings of the NAIC).

2005 Proc. 2nd Quarter 698 (adopted by parent committee).
NAIC Public Insurance Adjuster Surety Bond Sample
BOND NO. ____________________________

Know All Persons by These Presents:
That we, ______________ as Principal, whose address is ________________________________
__________________________ and ______________ as Surety, being a surety company authorized to do business in
the State of _______ re bound to the _______ Department of Insurance in the sum of $10,000.00 as specified at [insert reference to state law or regulation]. The specified sum is payable to the [insert state] Department of Insurance for the use and benefit of any customer of the above described Principal and as defined by the [insert state] Insurance Code, [insert citation] in acceptable currency of the United States in accordance with the statutory provision cited above. By this instrument, we jointly and severally firmly bind ourselves, our heirs, executors, administrators, successors and assigns.

The conditions of the above obligations are:

Whereas the above named Principal has applied to the [insert state] Department of Insurance for a license as a Public Insurance Adjuster to engage in or continue the business of insurance as a Public Insurance Adjuster in accordance with the [insert state] Insurance Code;

Now, Therefore, should the Principal discharge losses that result from any final judgment recovered against the Principal by any customer, this obligation will become void. If this obligation is not void, it remains in full force and effect, subject to the following conditions:

1. As of ____________________________, 20___, this bond will be in full force and effect indefinitely. Continuation or renewal certificates are unnecessary.

2. The surety may, at any time, terminate this bond by submitting written notice to the [insert state] Department of Insurance thirty (30) days prior to the termination date. The surety, however, remains liable for any defaults under this bond committed prior to the termination date.

3. In no event will the aggregate liability of the Surety under this bond, for any or all damages to one or more claimants, exceed the penal sum of this bond.

In Witness Whereof said Principal and Surety have executed this bond this ____________________________ day of ________________________________, 20___ to be effective the ________________________________ day of ________________________________, 20___.

PRINCIPAL

BY

ADDRESS
Part III - Section I – Appendix L


Report of the NARAB Working Group:
Certification of States for Producer Licensing Reciprocity

Adopted August 8, 2002

The purpose of this report is to advise the NAIC membership regarding the number of States that the NARAB Working Group will recommend the NAIC certify for reciprocity under the framework established by the Working Group based on its application of the relevant provisions of the Gramm-Leach-Bliley Act (GLBA). As detailed below, the Working Group will recommend that at least 35 States be certified for reciprocity as of November 12, 2002.¹

NARAB Provisions of GLBA

GLBA requires that at least 29 jurisdictions meet the uniformity or reciprocity requirements of Section 321 of that Act by November 12, 2002, in order to avoid the preemption of certain State producer licensing laws. The NAIC elected to pursue the reciprocity option with uniformity remaining the long-term goal for non-resident (and resident) producer licensing. Thus, pursuant to Section 321(a)(2), a minimum of 29 jurisdictions must enact “reciprocity laws and regulations governing the licensure of nonresident individuals and entities authorized to sell and solicit insurance within those States” by November 12, 2002.

Section 321(d)(1) provides that the NAIC shall determine whether the requisite number of States have achieved reciprocity. The NARAB Working Group has been assigned the task of interpreting and applying the reciprocity requirements under GLBA, determining which States are compliant therewith, and making its report along with recommendations to its parent committee.

Section 321(d)(2) recognizes the expertise of the State insurance regulators in determining whether States meet reciprocity. In the event of a legal challenge to the NAIC’s conclusion, Section 321(d)(2) provides that the reviewing court shall apply the standards set forth in the Administrative Procedure Act. In relevant part, this statute states that a determination will not be overturned unless it found to be “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.” Furthermore, case law indicates that a reviewing court will consider three factors in examining a decision: scope of authority, whether the determination was arbitrary and capricious, and whether the decision-making process was procedurally valid. Chevron, U.S.A., Inc. v. National Resources Defense Council, Inc., 467 U.S. 837 (1984); Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402 (1971), overruled on other grounds, Califano v. Sanders, 430 U.S. 99 (1977). The Working Group believes that its process for considering reciprocity issues, as detailed below, meets the criteria established for affording deference to the NAIC’s reciprocity certification.

³ Subsequent to the first comprehensive review of States for reciprocity, the NARAB Working Group received information that Kansas should be added to the list of States certified for reciprocity.
⁴ More States may be added to this total based upon later enactment of producer licensing legislation and submission of materials for review by the NARAB Working Group.
⁵ For familiarity of reference, when referring to a section of the Gramm-Leach-Bliley Act (GLBA), this memorandum refers to sections of GLBA by their section numbers within that legislation as opposed to where sections are codified within the United States Code.
Reciprocity Requirements Under Section 321 of GLBA

In terms of the general reciprocity framework, the requirements for achieving reciprocity are stated in Section 321(c). In order to be considered reciprocal for non-resident producer licensing, a State must satisfy the following four conditions:

1. Permit a producer with a resident license for selling and soliciting insurance in its home State to receive a license to sell or solicit the purchase of insurance as a non-resident to the same extent that the producer is permitted to sell or solicit insurance in its home State, if the home State also licenses reciprocally, without satisfying any additional requirements other than submitting (A) a request for licensure; (B) the application for licensure submitted to the home State; (C) proof of licensure and good standing in home State; and (D) payment of any requisite fee;

2. Acceptance of a producer’s satisfaction of its home State’s continuing education requirements as satisfying that State’s continuing education requirements, provided that the home State recognizes continuing education satisfaction on a reciprocal basis;

3. No requirements are imposed upon any producer to be licensed or otherwise qualified to do business as a non-resident that have the effect of limiting or conditioning that producer’s activities because of its residence or place of operations (excepting countersignature requirements); and

4. Each State meeting (1), (2), and (3) grants reciprocity to residents of all other States that satisfy (1), (2), and (3).

Additionally, the savings provision of Section 321(f) provides that State laws or regulations purporting to regulate insurance producers (including laws on unfair trade practices, consumer protections, and countersignatures) need not be altered or amended for purposes of satisfying the reciprocity criteria unless that law or regulation is inconsistent with a specific requirement noted above and only to the extent of the inconsistency. While unfair trade practices and consumer protections laws are specifically mentioned, these types of laws are afforded no heightened protection and also are subject to the requirement of consistency with Section 321(c). The savings provision should be construed in such a way as to allow State laws generally to be saved while still achieving the Congressional intent to streamline licensing procedures and prevent discrimination against non-resident producers.

In order to provide States with a model for meeting these reciprocity requirements, the NAIC adopted the Producer Licensing Model Act (PLMA) in 2000. The PLMA serves as the primary vehicle for States not only to achieve reciprocity, but also takes major steps toward reaching uniformity. With respect to reciprocity, the PLMA provides for streamlined administrative licensing requirements, reciprocal recognition of continuing education, and reciprocity for surplus lines and limited lines producers, among other things.

Reciprocity Framework Developed by the NARAB Working Group

In the course of developing a reciprocity standard for use in measuring compliance by the States, the Working Group conducted extensive research and analysis of the relevant provisions and legislative history of GLBA. The Working Group also identified and analyzed various State non-resident producer licensing requirements. Throughout this process, the Working Group consulted with NAIC Legal Division as well as State insurance regulators experienced in the area of producer licensing. Interested parties were also given an opportunity to provide comments.

As a result of this approach, the Working Group developed a framework for measuring whether a State is reciprocal which is both reasonable and consistent with the spirit and intent of GLBA’s reciprocity requirements, i.e., a desire to streamline the process of licensing non-resident producers and eliminate protectionist barriers directed toward non-resident producers. The following discussion summarizes the recommendations of the Working Group on specific non-resident producer licensing requirements.
Fingerprints and Background Checks

The Working Group addressed the issue of the due diligence States may perform in reviewing the qualifications of a non-resident applicant, including whether States may require fingerprints of non-resident applicants. With respect to State review of application materials, the Working Group determined that GLBA affords States the opportunity to determine that an applicant meets a particular State’s qualifications for licensure, provided such due diligence required no additional submissions beyond the items permitted by Section 321(c)(1). Therefore, the Working Group believes that States may perform background checks or other due diligence without being inconsistent with reciprocity.

During the course of its discussions, the Working Group considered whether fingerprints may be required as a means of performing an effective review of the applicant’s qualifications. Within the context of reciprocity, the principal argument favoring a fingerprint requirement was that GLBA protected this requirement as an important consumer protection through application of the savings clause of Section 321(f), and that fingerprints provide the most effective means of performing a background check. Arguments opposing fingerprints as a permissible requirement also focused on the savings provision and questioned whether such a requirement is “consistent” with the provisions of Section 321(c).

After careful review, analysis, and extensive debate, the Working Group adopted the position that a fingerprint requirement for non-resident producer applicants is inconsistent with the reciprocity requirements under GLBA. Section 321(c)(1) provides that non-resident producers be permitted to receive a license “without satisfying any additional requirements other than submitting” a request for licensure; the home State application or Uniform Application; proof of licensure and good standing in the home State; and the payment of required fees. After considering several alternatives for allowing fingerprints within the GLBA reciprocity formula, the Working Group determined that pre-licensing fingerprint requirements for non-resident producers constituted an “additional requirement” which does not satisfy reciprocity under Section 321(c)(1). However, the Working Group adopted a report of a Reciprocity Subgroup appointed to address fingerprinting issues, which recommended that State insurance regulators make fingerprinting a requirement for resident licensure in all States as part of a plan to achieve uniformity in producer licensing. It also expects to adopt a similar recommendation from the Uniform Producer Licensing Initiatives Subgroup.

Surplus Lines Bonds

The Working Group examined the use of surplus lines bonds as both a pre- and post-licensing non-resident requirement. As a pre-licensing requirement, the Working Group determined that a surplus lines bond does not satisfy reciprocity under GLBA. A consumer protection justification was not found to be available within the context of reciprocity. The savings provision is not a broad exemption for laws based upon a valid consumer protection justification. Rather, Section 321(f) saves laws generally -- including those related to consumer protection -- provided they do not violate a specific requirement of the reciprocity provisions of Section 321(c). The Working Group determined that a pre-licensing surplus lines bond is inconsistent with Section 321(c), i.e., a pre-licensing surplus lines bond is an “additional requirement” and, therefore, States imposing such a requirement do not satisfy reciprocity under Section 321(c)(1).

7 This position is consistent with Section 8 of the Producer Licensing Model Act (PLMA). Section 8A of the PLMA provides that an applicant shall receive a license by submitting the items noted “unless denied licensure pursuant to” the section that enumerates causes for taking action against or denying a license.
8 California prepared an opinion supporting the conclusion that a fingerprinting requirement did not violate GLBA's reciprocity provisions, but the Working Group did not adopt this position.
Likewise, with respect to post-licensing surplus lines bonds, the Working Group determined that these post-licensing requirements, which condition the use of the license on having such a bond in place, are not consistent with GLBA reciprocity. The Working Group found that such a bond would be a de facto licensing requirement due to the inability of the producer to use the license without first posting a bond.9

Underlying Licensing Requirements for Surplus Lines Producers

The Working Group considered whether States may require non-residents to obtain non-resident general lines licenses as a prerequisite to surplus lines licensure and still be considered reciprocal. As part of its analysis, the Working Group recognized the unique nature of the surplus lines market, relative to general lines of authority such as life and property. Surplus lines brokering is a specialized insurance producer function whereby producers secure insurance coverage generally unavailable from carriers licensed in that jurisdiction. By contrast, general and limited lines insurance producers are licensed to sell, solicit, or negotiate products offered by licensed insurance carriers. In a “typical” insurance transaction, the producer and the company are licensed within the same jurisdiction. This dual system of producer and insurer licensing is not present with respect to risks covered by the surplus lines market.

Almost all States require resident surplus lines producers to first obtain a license to act as a general lines producer. Generally, surplus lines producers must first search the admitted market as a prerequisite to searching the non-admitted market. Thus, both general lines and surplus lines authority are required in order to operate as a surplus lines producer. In many cases, the rationale for the admitted market prerequisite is generally one of consumer protection. The surplus lines insurer, being a non-admitted carrier, is not subject to the jurisdiction of insurance regulatory authorities in that State. Further, there is typically no guaranty fund coverage for risks insured in the non-admitted market. Many States require that insureds be notified of these facts.

In the non-resident licensing context, the question is whether a State requirement that non-residents obtain both general lines and surplus lines authority is an administrative or regulatory requirement. The Working Group concluded that requiring a general lines license relates to regulation of the surplus lines market and is not an additional administrative requirement being imposed on non-residents. The general lines license gives the non-resident producer the authority, otherwise lacking, to search for coverage within the admitted market. Generally speaking, without this authority, a surplus lines producer would be unable to fulfill his or her duty to first attempt to place business in the admitted market. Thus, the general lines license gives effect to the surplus lines license. Many States issue these two licenses in tandem.

Viatical Settlements

Two comment letters were received from an interested party dealing with the issue of whether reciprocal treatment should be afforded viatical settlement brokers. The interested party contended that those States requiring separate licensing for viatical settlement activities could not be considered reciprocal. Because GLBA includes a broad definition of “insurance producer” in Section 336, the interested party argued that the term included persons who advise or facilitate viatical or life settlements, which would thus embrace viatical settlement brokers. Characterizing GLBA as envisioning licensing reciprocity or uniformity for this broad range of “insurance producers,” the interested party concluded that States requiring separate viatical settlement licensure are not reciprocal. Additionally, during the Working Group’s meeting on June 10, 2002, a representative of the interested party commented that he did not advocate reciprocity for viatical settlement brokers. Rather, it was argued that States failed to achieve reciprocity where producers may perform certain services in some States but require separate licensing to do so in others.

9 However, with other NAIC working groups considering surplus lines bonds within the context of uniformity, the Working Group indicated its support for consideration by such working groups of the merits of surplus lines bonds as a uniformity requirement.
For purposes of the Working Group’s task, this issue is one of reciprocity. The NAIC Legal Division previously examined the question of which insurance producers were entitled to reciprocity under GLBA. In May 2000, in response to requests from several State insurance regulators, the Legal Division issued a memorandum on this topic. The memorandum noted GLBA’s broad definition of “insurance producer,” but reviewed particularly the provisions requiring producer licensing reciprocity. Sections 321(a) and 321(c), which provide the standards for achieving reciprocity, refer only to producers that sell or solicit the purchase of insurance. Therefore, GLBA only requires that reciprocity be extended to those classes of producers that sell or solicit insurance. Because they do not sell or solicit the purchase of insurance, viatical settlement brokers are not entitled to reciprocity regardless of the broad definition of “insurance producer.”

Thus, the Working Group rejected the argument that GLBA entitles viatical settlement brokers to reciprocity in non-resident producer licensing or otherwise requires States to eliminate requirements that those who engage in viatical settlement activities be separately licensed to do so.

**Appointments and “Agent-Only” States**

The Working Group identified States that do not recognize brokering activities in the sense that all producers/“agents” are agents of the insurer and thus require that producers/“agents” be appointed by an insurer even though such a requirement ordinarily may not exist for “brokers.” As a general rule, the Working Group believes that appointments are permitted under GLBA as long as they are not required as part of the licensing process. The “agent-only” States do not require an appointment as a pre-licensing requirement, thereby avoiding the imposition of an additional requirement to licensure. Furthermore, appointment requirements are imposed upon companies, rather than producers, thus removing the burden from the producer seeking licensure. Accordingly, the Working Group did not find the imposition of such an appointment requirement to be inconsistent with reciprocity.

**Other Issues**

In the course of its consideration of issues affecting reciprocity, the Working Group analyzed other specific reciprocity issues in addition to those detailed above in making its determinations. These issues included requirements for foreign corporations to register to do business in other States; requirements for appointment of agents to receive service of process; continuing education requirements for producers who have no such requirements in their home States; requirements for trust accounts; requirements for producers to be insured by errors and omissions policies; special restrictions limiting State, special fund, or State funded business to resident producers only; countersignature requirements; special training or experience requirements; tax clearance requirements; reciprocity for bail bondsmen; greater licensing fees for non-resident producers; and requirements for in-state business offices. Where review of State submissions required resolution of these issues, such resolutions are noted in Exhibit A.

**Review of State Laws and Reciprocity Checklist Materials**

As part of its primary duties, the NARAB Working Group serves as the NAIC entity charged with conducting the review of State producer licensing laws to help determine which States have achieved reciprocity under GLBA. In order to facilitate this process, the Working Group developed a Reciprocity Checklist (and Addendum) for the State insurance departments to complete and submit for review. The Reciprocity Checklist and Addendum are designed to help identify specific non-resident producer licensing requirements in the States. Completed Checklists and Addenda were posted to a page on the NAIC Web site devoted to the activities of the Working Group and the Checklists in particular. The documents have been and remain accessible at the following URL: http://www.naic.org/GLBA/narab_wg/Reciprocity_checklist.htm.

The purpose behind posting these documents to the Web was to provide interested parties and State insurance regulators with an opportunity to review and offer comments with respect to any of the Checklists and Addenda. The Working Group attempted to keep interested parties informed about the status of available materials by e-mail communication to the interest party distribution list of the Working Group. Interested parties were advised that they had 30 days from the date of posting in which to submit comments to the NAIC on the Checklist materials. Interested party comments also were posted to the NAIC Web site.
Utilization of NAIC Legal Division Review

The Working Group requested the NAIC Legal Division provide assistance in monitoring and reviewing the efforts of States to satisfy the reciprocity requirements. The NAIC Legal Division was specifically requested to conduct a review of producer licensing laws enacted by the States, in addition to reviewing each completed Reciprocity Checklist and Addendum, and to make recommendations to the Working Group regarding the reciprocity status of individual States.

The Working Group’s recommendations regarding the reciprocity status of particular States are based solely on the following:

(a) Review and analysis of legislation\(^1\) enacted by the respective States to adopt, wholly or in part, the PLMA or similar legislation;

(b) Certified Reciprocity Checklists and Addenda submitted to the NAIC by State insurance departments\(^2\);

(c) Representations made regarding the application and effect of State law by State insurance department personnel, who have represented they are knowledgeable about the laws and regulations of their State, including the practices and procedures, regarding the licensing of non-resident insurance producers;

(d) Consultations with various State insurance department personnel who are experienced with producer licensing issues, as well as the NAIC Legal Division and other NAIC staff personnel who are generally knowledgeable about the licensing of insurance producers;

(e) Recommendations of the NARAB Working Group regarding a framework for interpreting the reciprocity requirements under GLBA; and

(f) Comments submitted by interested parties.

Furthermore, in developing its recommendations, the Working Group has made the following assumptions:

(a) State insurance department personnel have made full disclosure concerning their respective State producer licensing laws and regulations, all applicable licensing practices and procedures, including but not limited to those which may be based on internal rules or procedures, and the decisions, orders, and/or findings of an administrative hearing or court of law, or other action which may be construed as having the effect of law; and

(b) The laws and regulations reviewed for the purposes, and which form the basis, of the recommendation have not been repealed, revised or otherwise amended subsequent to its review and analysis, and if such amendment has occurred, the States would have provided notice to the NARAB Working Group or the NAIC Legal Division.

Finally, some of the States listed below have enacted producer licensing legislation that is not in effect as of the date of this report. Thus, the Checklist materials and the corresponding recommendations of the Working Group relate to State law when it becomes effective at a future date. In any event, the recommendations of the Working Group are based on an assessment of the expected status of State law on November 12, 2002.

\(^{1}\) One State adopted changes to producer licensing laws by regulation rather than by legislation.

\(^{2}\) Each completed Reciprocity Checklist and Addendum contained the following certification: “I hereby certify that I am familiar with the laws, decisions, rules, regulations and other state action having the effect of law in my jurisdiction and upon review of the same affirm that the responses to the above and foregoing are true and correct. Moreover, I hereby further certify that I have the authority to waive those producer licensing requirements as indicated hereinabove and agree to waive said requirements in order to meet the reciprocity standard for non-resident producer licensing as set forth in the Gramm-Leach-Bliley Act.”
States Recommended for Certification of Reciprocal Status

Based on our review, as described and qualified above, the Working Group concludes that the following States meet or will meet the requirements for producer licensing reciprocity as set out in Section 321(c) of GLBA by November 12, 2002. Exhibit A explains how issues arising in the course of this review were resolved favorably.

Alabama
Arizona
Arkansas
Colorado
Connecticut
Delaware
Georgia
Hawaii
Illinois
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Michigan
Minnesota
Mississippi
Nebraska
Nevada
New Hampshire
New Jersey
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Rhode Island
Texas
Utah
Vermont
Virginia
West Virginia
Wisconsin
Wyoming
Exhibit A

Reciprocity Checklists: Responses Submitted by States Recommended for Certification

Question A

Question A asked States if they imposed any requirements upon non-residents seeking licensure other than (a) currently being licensed and in good standing in the home State; (b) submitting the proper request for licensure and paying the required fees; (c) submitting or transmitting the home State application or Uniform Application; and (d) requiring that the non-resident’s home State license residents of that State on a reciprocal basis. This question mirrors Section 8A of the Producer Licensing Model Act (PLMA), which provides for non-resident licensure in accordance with these provisions as long as licensure is not denied for cause pursuant to State law. Thirty-one of the 35 States recommended for certification answered “No.”

Illinois, Nevada, Texas, and Virginia answered “Yes” to Question A.

Illinois referenced a statute requiring residents and non-residents to obtain a surety bond to broker business in Illinois; however, Illinois indicated it will waive this requirement for non-residents.

Nevada indicated that its “additional requirement” is a letter of certification from the home State. Proof of home State licensure is specifically permitted under Section 321(c)(1)(C) of the Gramm-Leach-Bliley Act (GLBA). Thus, the letter of certification requirement is not inconsistent with reciprocity.

Texas listed several additional requirements beyond the four noted above; however, Texas indicated it will waive such additional requirements.

Virginia stated that business entities are required to obtain a certificate of authority from the clerk of the State Corporation Commission as a prerequisite to licensure. Corporate registration requirements are matters of State corporate law, whereby States require all business entities (not just those that are insurance-related) to register with the Secretary of State or an equivalent office. The Working Group believes that such requirements transcend issues of insurance licensing and relate to basic police powers of States to require registration of business entities. Thus, this requirement is not inconsistent with reciprocity.

Question B

Question B asked if States possessed the legal authority to waive any requirements, other than the four requirements stated in Question A, relating to the licensing of a non-resident producer if the non-resident producer’s home State grants licenses to producers from that State on the same basis. Thirty of the 35 States answered “Yes.”

Arizona, Georgia, and Wisconsin answered “No.” There is no indication, however, that these States impose any additional licensing requirements for which waiver may be required in order to achieve reciprocity. Therefore, the lack of waiver authority does not appear to create any inconsistency with reciprocity.

Kansas also answered “No”; however, a review of its producer licensing legislation indicated that Kansas enacted a provision providing for waiver authority.

Kentucky also answered “No”; however, Kentucky recently received waiver authority through newly enacted legislation.

Question C

Question C asked if States would grant a non-resident license for at least the same scope of authority as the non-resident producer applicant’s home State license. This question addresses whether a producer is able to receive a license for the same or similar lines of authority as the producer holds in the home State. All 35 States recommended for certification answered “Yes.”
**Question D**

Question D asked if a non-resident producer’s continuing education requirement is met if the non-resident producer fulfills his or her home State continuing education requirement and the home State also grants such reciprocal recognition for continuing education. All 35 States recommended for certification answered “Yes.”

In its response, Virginia noted that while it recognizes continuing education reciprocity, it will require non-residents to file a certification that they have complied with home State continuing education requirements, as well as a filing fee. GLBA contains no prohibition against requiring non-residents to demonstrate satisfaction of home State continuing education requirements. Therefore, this requirement is not inconsistent with reciprocity.

**Question E1**

Question E1 asked if an appointment is required prior to or concurrent with licensure. Thirty-three of the 35 States recommended for certification answered “No.”

Michigan answered “Yes”; however, recent legislation changed this requirement such that pre-licensing appointments are no longer required.

Texas also answered “Yes”; however, Texas has indicated that an appointment will not be required as a condition to licensure.

**Question E2**

Question E2 asked if there are any bond, E & O, deposit, tax clearance, or trust account requirements for non-resident producer applicants. Thirty of the 35 States recommended for certification answered “No” to Question E2.

Delaware, Illinois, Texas, and Wyoming answered “Yes”; however, these States indicated they will waive such requirements.

Nebraska also answered “Yes,” indicating that such requirements apply to title agents performing escrow closings. Because GLBA Section 336 specifically excludes title insurance from the definition of “insurance” applicable to the NARAB provisions, Nebraska is not required to extend reciprocity to such agents. These requirements, therefore, are not inconsistent with reciprocity.

Finally, while answering “No” to Question E2, Wisconsin noted that State law requires that all surplus lines premium tax monies be held “in trust.” This provision applies to non-resident and resident agents. Wisconsin indicated that this is neither a licensing requirement nor is it enforced through a licensure action. The statute is silent on where a trust account, if any, should be maintained. Thus, this requirement is not inconsistent with reciprocity.

**Question E3**

Question E3 asked if non-resident surplus lines producers are required to post a bond. Twenty-eight of the 35 States recommended for certification answered “No.”

Hawaii and Nebraska answered “Yes”; however, recent legislation repealed this requirement.

Illinois, Texas, and West Virginia also answered “Yes”; however, these States indicated they will waive this requirement.

Maine and Rhode Island also answered “Yes”; however, both States have indicated that this requirement will not be imposed upon non-residents seeking licensure on a reciprocal basis, i.e., a bond will not be required of their residents seeking non-resident licensure.
**Question E4**

Question E4 asked if there are any training, education, prior experience requirements, or minimum age requirements for non-resident producer applicants. Twenty-four of the 35 States recommended for certification answered “No.”

Arkansas answered “Yes,” and cited two sections of Arkansas law. One section concerns non-resident producer licensing, and follows Section 8 of the PLMA. The other section was repealed. Thus, this response creates no inconsistency with reciprocity.

Delaware also answered “Yes”; however, Delaware indicated it will waive such requirements for States that reciprocate with Delaware.

Illinois also answered “Yes”; however, Illinois indicated it will waive such requirements.

Georgia, Michigan, Nebraska, Nevada, Texas, Utah, Virginia, and Wisconsin answered “Yes” to Question E4, indicating that they will impose a minimum age requirement of 18 years old. Minimum age requirements often are grounded in State contract law, which allows minors to contract in very limited circumstances. The Working Group does not believe that minimum requirements respecting the age of contracting parties in an insurance transaction contravene the spirit or letter of producer licensing reciprocity.

Virginia also indicated that it will require that the applicant be of good moral character and possess a reputation for honesty, and comply with other licensing requirements. The Working Group believes that a State may conduct a due diligence review of the application materials to ensure that the applicant meets the State’s qualifications for licensure. There is no indication that the applicant is required to submit anything beyond the items noted in GLBA Section 321(c); thus, the Working Group does not believe that these requirements are inconsistent with reciprocity.

**Question E5**

Question E5 asked if there are any provisions allowing only resident producers to sell or solicit insurance or bonds for State business, special funds or entities, or State funded projects. Thirty-four of the 35 States recommended for certification answered “No.”

Arkansas answered “Yes”; however, Arkansas indicated it will waive such requirements.

**Question F**

Question F asked if there are any post-licensing requirements imposed upon any non-resident producer that limit or condition the non-resident producer’s activities because of such producer’s residence or place of operations. Thirty of the 35 States recommended for certification answered “No.”

Arkansas answered “Yes”; however, Arkansas indicated it will waive such requirements.

Illinois also answered “Yes,” indicating that it required a surety bond to broker business in Illinois; however, Illinois indicated it will waive this requirement.

Iowa also answered “Yes,” indicating that non-residents are not permitted to provide bail or bond in criminal cases. The Working Group does not believe that States are required to extend reciprocity for bail bonds. Thus, this requirement is not inconsistent with reciprocity.

Kansas also answered “Yes,” indicating that it imposed a requirement that agents submit proof of errors and omissions coverage upon license renewal; however, Kansas has indicated it will waive this requirement for non-residents.

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12 Texas indicated it would waive the minimum age requirement for 17-year-olds.
Utah also answered “Yes,” indicating that bail bond and title agents must be residents of Utah. As stated above, the Working Group does not believe that States are required to extend reciprocity for bail bonds. With respect to title agents, GLBA Section 336 specifically excludes title insurance from the definition of “insurance” applicable to the NARAB provisions; thus, Utah is not required to extend reciprocity to such agents. Therefore, these requirements are not inconsistent with reciprocity.
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:\footnote{Note Standard 14A and B apply to both resident and nonresident applicants while 14C is for resident applicants only} \footnote{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}

**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 contendre, 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 asked on the Uniform renewal application; however the applicant need only answer based on any changes since the last renewal.\footnote{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}

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.
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 disclose 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.  

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?
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)

15The 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?”
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 disclosed 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 fined, the Department should post the action on the NAIC’s Regulatory Information Retrieval System (RIRS).

**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.

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<th>Question</th>
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<td>5. The age of the applicant at the time of the administrative action.</td>
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<td>6. The length of time that has passed since the incident(s).</td>
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<td>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.</td>
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<td>8. Whether the applicant has satisfied any requirement to make restitution or other terms of the consent agreement or order from the regulatory agency.</td>
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<td>9. Whether the regulatory violation adversely impacted other person(s).</td>
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<td>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.</td>
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<td>11. Whether the resident state took action against the applicant/licensee.</td>
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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 rational 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.
Part III - Section I – Appendix N

Uniform Appointment Process

Uniform Appointment Procedures

1. Any state that requires notice of appointment of an insurance producer acting as an agent of an insurer will adopt the uniform procedures for notice of appointments/terminations of such producers as soon as is practicable or when that state adopts the requirements of the NAIC Producer Licensing Model Act.

2. States will encourage electronic filing and will discourage and phase out paper filings no later than January 1, 2004. Paper filings will be accepted, but will only be accepted upon written request to the state.

3. States will use the new uniform appointment form for paper appointments.

4. States will utilize a billing system for payment by insurers of initial appointments. Each state may elect to bill either monthly, quarterly or annually. States that are unable to change their laws to switch to a billing system will endeavor to utilize the banking service offered by NIPR so that the method of payment does not interfere with the use of electronic process.

5. Insurers shall select the effective date of the initial appointment. The date must be expressed as mm/dd/yyyy. The appointment shall be continuous until such appointment is terminated. Each state shall establish a fee billing date by zone or other method. Insurers shall pay the appropriate fee for their appointments as of the billing date. Each state, if necessary, will enact or promulgate language similar to the following:

   An insurer shall, within 15 days from the date the agency contract is executed or the first insurance application is submitted or longer if specified by state law, after its appointment or termination of its agency relationship with a producer, notify the commissioner (director) in a format prescribed by the commissioner (director).

   Failure to timely file appointment or termination notifications may subject an insurer to sanctions under (insert reference to regulation that sets amount).

6. Only one appointment/termination form or transaction shall be required per producer per company. It is the insurer’s responsibility to verify that the producer is licensed and qualified to sell all products the producer sells for that insurer. States will strongly consider enacting language which permits, upon a finding of the commissioner (director), filing appointments/terminations via use of holding company numbers. Appointments may not be required for insurance agencies. (Each state will determine whether appointments will be required for insurance agencies.)

7. Terminations for cause may be submitted on the uniform form (or electronically). Additional written documentation must be submitted to the Insurance Department in accordance with the requirements of (insert appropriate citation to the state statutory provision based on NAIC Producer Licensing Model Act Section 15). Any information received by the Insurance Department must remain confidential in accordance with the (insert appropriate citation to the state statutory provision based on NAIC Producer Licensing Model Act Section 15).
8. Suggested definitions for states to adopt:

Appointment – means a notification filed with the insurance department that an insurer has established an agency relationship with a producer.

Appointment renewal – Continuation of a company’s existing appointment based on payment of the required fee without submission of an appointment form.

Termination for cause – means an insurer has ended its agency relationship with a producer for one of the reasons set forth in (NAIC Producer Model Section 12) or that the producer has been found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities set forth in (NAIC Producer Model Section 12).

9. Appointment renewals – In states that renew appointments, the following procedures shall be used:

States shall provide or publish pre-notice to companies informing them that appointment renewals are imminent.

At the time for renewal, a state will generate an invoice and may include a renewal list for delivery to each insurer. States shall work to develop electronic methods to deliver the renewal lists.

The invoice may not be altered, amended or used for appointing or terminating producers.

Payment is due at the insurance department on the prescribed due date.

The only items to be returned to the department or the department’s designee shall be the invoice and the payment.

States shall establish a dispute resolution process to accommodate errors after the fact.
REVISIONS AND CLARIFICATIONS TO THE UNIFORM LICENSING STANDARDS

The uniform licensing standards, adopted by the NAIC in December 2002, were revised in December 2008 based upon issues identified during the Producer Licensing Assessments conducted in 2007 and 2008. The standards are again proposed for revisions to more specifically address limited line requirements.

The standards are broken down into the following broad categories (1) licensing qualifications standards; (2) pre-licensing education requirements; (3) integrity and personal background checks; (4) application for licensure; (5) the appointment process; (6) continuing education requirements; (7) limited lines and (8) surplus lines.

LICENSING QUALIFICATIONS STANDARDS

1. Age:
Applicant must be 18 years of age.

2. Citizenship:
No U.S. citizenship is required but applicant must have legal work authorization if he/she is not a U.S. citizen. The resident state will require proof of proper work authorization for non-citizens at the time of initial application. The resident state may ask for evidence of current work authorization if the initial work papers have expired.

3. Education:
No high school diploma is required.

PRE-LICENSING EDUCATION TRAINING STANDARDS FOR RESIDENT APPLICANTS

4. Hours Required:
No pre-licensing education is required; however, states that require pre-licensing education shall require 20 hours of pre-licensing education per major line of authority. For example, an applicant seeking 2 major lines of authority, such as the property line and the casualty line needs 40 hours of pre-licensing education. If a state has less or more hours per line of authority, it would not be compliant with this standard and will need to increase or decrease the number of required hours. States may waive pre-licensing education requirements for the variable line of authority. States shall independently determine the content requirements for pre-licensing education. No state shall require additional pre-licensing education for non-resident applicants or non-resident producers who change their state of residency.

5. Training Method:
States must accept classroom study verifiable self-study or a combination of both. Online learning may be a combination of verifiable self-study and classroom study. Classroom study may include distance learning, webinars, virtual classes and traditional classroom teaching. States have discretion to limit, but may not prohibit, verifiable self-study.

6. Verification of Completion:
Applicant or pre-licensing education provider must submit original certificate of completion or verification of completion to the insurance department or to the testing vendor of the applicant’s home state through a hard copy submission or electronic transmission.
7. **Waiver/Exemption:**
States must allow for waiver or exemption of pre-licensing education if the applicant can verify he or she has obtained certain verifiable, recognized professional designation(s) that requires education and formal testing, or a bachelor’s or advanced degree in insurance. The following designations are examples of those which may be authorized for waiver of pre-licensing education:

- CEBS, ChFC, CIC, CFP, CLU, FLMI, 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.

A bachelor’s degree or advanced degree in insurance would waive/exempt the pre-licensing education for all lines of authority.

**PRODUCER LICENSING TEST STANDARDS FOR RESIDENT APPLICANTS**

8. **Lines of Authority:**
States must adopt the six major lines as defined in the Producer Licensing Model Act (PLMA). These are as follows: (1) Life, (2) Accident and Health or Sickness, (3) Property, (4) Casualty, (5) Variable Life and Variable Annuity Products and (6) Personal Lines. States must offer a separate test for each major line of authority; however, combination exams may be offered. States may, but are not required to, waive testing for the Variable Products line. The resident state shall verify an applicant for Variable Product line has successfully completed the appropriate securities exams and is registered with FINRA.

9. **Waiver/Exemption:**
No waiver or exemption except for those noted in Section 9 of the PLMA. An individual who applies for an insurance producer license in this state and who was previously licensed for the same lines of authority in another state shall not be required to complete any pre-licensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety (90) days of the cancellation of the applicant’s previous license and at the time of cancellation, the applicant was in good standing in that state. Verification shall be done via the State Producer Licensing Database (SPLD) unless data is unavailable.

10. **Exam Content and Testing Administration Standards:**
States will implement the Producer testing Programs Recommended Best Practices found in Chapter 8 of the NAIC State Licensing Handbook, attached as an Appendix to these Standards.

    **Producer Exam Content and Testing Administration Recommended Best Practices for Regulators**

- States should use accepted psychometric methods including job analysis to determine if the examination content falls within the content domain that a minimally competent candidate of that specific line of authority tested would be expected to know.

- States should set passing scores (cut scores) and difficulty level using psychometric methods and appropriate Subject Matter Experts and based on what an entry level producer needs to know.

- States are encouraged to move to one part exams

- States should require the test vendor or other entity responsible for test development, to document the process for ensuring quality control and validity of the examination including psychometric review and editing and analysis of item bias or cultural and gender sensitivity.

- To allow for meaningful comparison, all jurisdictions should define first time pass rate as the percentage of candidates who pass the whole test the first time.
• At least annually, reports regarding exam pass rates, candidate demographics when collected, and number of exams administered should be made available to the public. Reports should include first-time pass success; and average scoring by subject area. Whenever possible, the reports should be available by education provider and provided to those providers.

• A state advisory committee consisting of regulators and industry, including, where possible, recently licensed producers, should annually work with the testing vendor to review the questions on each examination form for substantive and psychometric requirements. If during any other time any examination results exhibit significant unexplained deviations, the examination should be reviewed.

• States should work with testing vendors and approve Candidate Information Bulletins (CIB) that describe the examinations and examination policies and procedures, and provide sufficient examination content outline and study references for the candidate to prepare for the examination. Updated editions of the CIB/Content Outline should be provided to prelicensing education providers at least six weeks in advance of implementation so that training materials can be updated.

• Testing should be made available at locations reasonably convenient to residents of all areas of the state, with registration available online or by telephone and the ability for a candidate to schedule testing within 2-5 business days of registration.

• Pass/Fail notices should be issued at exam sites upon taking the exam. The fail notice should break scores out by each subject area. The state should provide a method to facilitate prompt retesting, while allowing a reasonable time for candidates to review and prepare for retest.

• States should deliver exams in a secure test center network that employs qualified test proctors.

• States should set clear performance standards for test vendors and require accountability.

INTEGRITY/PERSONAL QUALIFICATIONS/BACKGROUND CHECKS STANDARDS

13. Integrity/Personal Qualifications:
At a minimum, as defined in Section 12 the PLMA.

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 for major lines of authority, and crop and where required, designated responsible producers for limited lines business entities 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 for major lines of authority, and crop and where required, designated responsible producers for limited lines business entities 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.
APPLICATION FOR LICENSURE/LICENSE STRUCTURE STANDARDS

15. Application:
States must use the current version of the NAIC Uniform Application for initial licensing as set forth in the PLMA. A state which accepts electronic applications shall be considered compliant if it is using the same data fields and questions contained in the most current version of the NAIC Uniform Application.

16. Lines of Authority Issued:
A Six major lines of authority consistent with the definitions found in the NAIC’s PLMA. A state’s definition of a major line of authority should not expand or reduce the products that can be offered under the major lines defined by PLMA. Each major line of authority must be offered independently and cannot be offered as a limited line (such as industrial life or fire or personal lines or auto).

A state may require a life license requirement for a resident producer seeking variable products authority. States that adopt surety as a separate line must designate it as a limited line since surety is typically included within the casualty line of authority.

If an applicant is in good standing in his or her home state for the line(s) of authority requested, the nonresident state shall grant the line(s) of authority without further verification of eligibility for the authority. This standard does not limit the state’s ability to deny the license based on integrity/personal qualifications and background check standards.

17. License Term:
The term of the license shall be perpetual contingent upon payment of fee and completion of resident CE, as set forth in Subsection 7B of the PLMA.

18. Continuation Process:
Individual licenses will renew/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.
States are compliant when using either date of birth or birth month. Birth month is defined as the last date of birth month. States that need to make changes to become compliant, however, are urged to choose birth month.

States may wish to consider having the year of renewal/continuation based on the year of birth. For example, if the producer was born in an odd-numbered year, the producer would renew his/her license in odd numbered years. If the producer was born in an even-numbered year, the producer would renew his/her license in even numbered years.

If a state is only collecting a fee for continuation, no application is required; however, if the state is using an application or asking questions as part of the renewal/continuation process, the state must use only the most current version of the NAIC Uniform Application for Producer License Renewal/Continuation. A state shall be considered compliant if the state is using the same data fields contained in the most current version of the NAIC Uniform Application.

19. Enforcement:
Denial/revocation and imposition of civil penalties at minimum as established in Section 12 of the PLMA. The state shall participate in the NAIC attachment warehouse Personal Information Capture System (PICS) alerts or another appropriate mechanism to monitor actions against existing licensees and take necessary action, when warranted based on the information obtained through such notifications.

20. Fee:
Non-resident licensing fees must not be so high as to be a barrier to entry as set forth in GLBA.
APPOINTMENT PROCESS STANDARDS

21. Process:
If a state requires appointments, it shall follow the appointment and termination process as defined in the Uniform Appointment Process or use the NIPR electronic appointment and termination process. In addition, states shall mail a pre-notice renewal letter or provide electronic notice to companies informing them that appointment renewals are imminent. (Process and form attached).

22. Appointment Renewal Cycle:
Appointments shall be continuous subject to payment of any applicable fees. Fees must be calculated as of a date certain.

CONTINUING EDUCATION REQUIREMENTS STANDARDS FOR RESIDENT PRODUCERS

23. Credit Required:
Twenty-four (24) hours of CE for all major lines of authority with three (3) of the twenty-four hours covering ethics. Fifty minutes shall equal one hour of CE.

24. Term of Compliance:
The biennial CE compliance period shall coincide with the producer’s license continuation date.

25. Lines of Authority:
CE shall be required for the six (6) major lines of authority contained in the PLMA.

26. Subject Area Requirements:
States may determine the subject area requirements for CE except that 3 of the 24 hours of CE shall be in ethics.

27. Repeating of CE Courses:
Producers may repeat CE courses for credit but will not be permitted to take a course for credit more than once in a license continuation period.

28. CE Study Method:
States must accept both classroom study, verifiable self-study or a combination of both. On-line learning may be a combination of verifiable self-study and classroom study. Classroom study may include distance learning, webinars, virtual classes and traditional classroom. States have discretion to limit, but may not prohibit, verifiable self-study.

29. Verification of Completion:
The Producer or CE provider must submit the original certificate of completion or verification of completion to the insurance department of the producer’s home state through either a hard copy submission or electronic transmission.

30. Waiver/Exemption:
None, except as provided in subsection 7D of the PLMA. A state may not permit any waivers or exemptions except as provided in subsection 7D of the PLMA. States must eliminate waivers based on age or years in the business on a prospective basis. In so doing, those producers currently licensed and exempt or eligible for a waiver prior to the elimination of the exemption would remain exempt. A state which has successfully effectuated such a change shall be considered compliant with this standard. States with waivers for professional designations should consider allowing CE credits for filed and approved courses used to obtain and maintain professional designations.

31. Course Approval Standards and Process:
Follow the standards set forth in the CE Reciprocity (CER) Course Filing Form (CER Form and instructions attached).
32. Advertising of CE Programs:
CE hours should not be advertised until state course approval is received; however, if the course is advertised prior to start approval, the advertisement must clearly state that the course is pending state approval.

LIMITED LINES UNIFORMITY STANDARDS

33. Definitions of Core Limited Lines:
A state shall have nine or fewer limited lines, which include the core limited lines. A state shall adopt definitions for car rental, credit, crop, and travel that are consistent with the definition of the core limited lines adopted by the NAIC in Appendix A. The state must have Credit as defined in PLMA.

34. Limited Lines Travel Insurance Standard (adopted 8/16/10)
A. Definitions.
(1) “Limited Lines Travel Insurance Producer” means an insurer designee, such as a managing general underwriter, managing general agent, or limited lines producer of Travel Insurance.
(2) “Travel Retailer” means a business entity that offers and disseminates Travel Insurance on behalf and under the direction of a Limited Line Travel Insurance Producer.
(3) “Travel Insurance” means Insurance coverage for personal risks incident to planned travel, including but not limited to:
   a. Interruption or cancellation of trip or event;
   b. Loss of baggage or personal effects;
   c. Damages to accommodations or rental vehicles;
   d. Sickness, accident, disability or death occurring during travel.

Travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting 6 months or longer, including for example, those working overseas as an expatriate or military personnel being deployed.

B. A Travel Retailer may offer and disseminate Travel Insurance under Limited Lines Travel Insurance Producer business entity (“licensed business entity”) license only, if the Limited Lines Travel Insurance Producer holds a business entity license and:
   (1) The licensed business entity is clearly identified as the licensed producer on marketing materials and fulfillment packages distributed by Travel Retailers to customers; identification shall include the entity’s name and contact information;
   (2) The licensed business entity keeps a register of each Travel Retailer that offers Travel Insurance on the licensed business entity’s behalf. The register shall include the name and contact information of the Travel Retailer and an officer or person who directs or controls the Travel Retailer’s operations, and the Travel Retailer’s FEIN number. The licensed business entity shall also certify that the Travel Retailer registered complies with 18 USC 1033. The licensed business entity shall submit such Register within 30 days upon request by the state insurance department;
   (3) The licensed business entity has designated one of its employees as a licensed individual producer (a “Designated Responsible Producer” or “DRP”) responsible for the business entity’s compliance with the insurance laws, rules and regulations of the state;
   (4) The DRP, president, secretary, treasurer, and any other officer or person who directs or controls the licensed business entity’s insurance operations comply with the fingerprinting requirements applicable to insurance producers in the resident state of the business entity;
(5) The licensed business entity has paid all applicable insurance producer licensing fees as set forth in applicable state law; and

(6) The licensed business entity requires each employee of the Travel Retailer whose duties include offering and disseminating Travel Insurance to receive a program of instruction or training, which may be subject to review by the commissioner.

C. A Travel Retailer, including its employees, whose activities are limited to offering Travel Insurance on behalf of and under the direction of a licensed business entity meeting the conditions stated in paragraph A above, is authorized to do so upon registration by the licensed business entity as described in paragraph A.2. above.

D. As the insurer designee, the Limited Lines Travel Insurance Producer is responsible for the acts of the Travel Retailer.

Drafting Note: For purposes of state implementation, states may incorporate Limited Lines Travel Insurance as an authorized limited line by way of statute, administrative regulation, order, bulletin or similar regulatory action pursuant to the state statutory authority for designation of limited lines.

35. Crop Limited Lines Standard
Both individuals and business entities selling, soliciting or negotiating crop insurance are required to be licensed. If the state requires appointments or affiliations for other lines of insurance, they are also required for crop.

36. Testing and Prelicensing Education Requirement Resident Applicants
For crop insurance, states may independently determine the need for or extent of prelicensing education independently, as well as the content requirements, if prelicensing education is required. States requiring prelicensing education may waive it upon verification of completion of the RMA required 12 hour structured training program.

There will be no testing requirement for limited lines; although, states may choose to test for certain limited lines, such as surety, if a limited line, and crop, as long as content is limited to the subject matter. States requiring testing for crop may waive it upon verification of passing the RMA required basic competency test No state shall require additional pre-licensing education or testing for nonresident applicants or non-resident producers who change their state of residency.

37. Standards for Non-Core limited lines:
A state is not required to implement any non-core limited line of authority for which a state does not already require a license or which is already encompassed within a major line of authority; however states should consider products where the nature of the insurance offered is incidental to the product being sold to be limited line insurance products. If a state offers non-core limited lines such as pet insurance or legal expense insurance, it shall do so in accordance with the following licensing requirements.

A.) A limited line license for non-core limited lines identified by the Insurance Commissioner may be issued to a person or entity, inclusive of profit and non-profit, who sells solicits, or negotiates the limited line insurance.

B.) A business entity may act as a Limited Line Insurance Producer if it:
(1) Has obtained the Limited Lines Insurance Producer License by submitting the appropriate application form and paid all applicable fees as set forth in applicable state law;
(2) The business entity has designated an individual Limited Lines Insurance Producer to act as the business entity’s Designated Responsible Producer (DRP) and who would be responsible for the business entity’s compliance with insurance laws, rules and regulations of the business entity’s resident state.
(3) The designated individual must meet the requirements for a DRP pursuant to the insurance laws, rules and regulations of the business entity’s resident state.
(4) The business entity DRP and officers must comply with the fingerprint requirement applicable to insurance producers in the resident state of the business entity; and
(5) The licensed business entity keeps a register of each employee that offers Insurance on the licensed business entity’s behalf. The licensed business entity shall also certify that the registered employees comply with 18 USC 1033. The licensed business entity shall submit such Register within 30 days upon request by the state insurance department.

C) An employee of the limited lines insurance producer business entity that offers and disseminates limited line insurance on behalf of the business entity and under the direction of a Limited Line Insurance Producer is not required to be licensed if the employee:

1. Receives a program of instruction or training subject to review by the insurance department prior to receiving permission to operate on behalf of the business entity and under the direction of the DRP; and

2. Does not receive a commission or compensation that is dependent on the placement of the insurance product.

D. Individuals who sell, solicit or negotiate insurance or who receive commission or compensation that is dependent on the placement of the insurance product must obtain a limited line insurance producer license. The individual applicant must:

1. Obtain the Limited Lines Insurance Producer License by submitting the appropriate application form and paying all applicable fees as set forth in applicable state law; and

2. Receive a program of instruction or training subject to review by the insurance department

E. No prelicensing or testing shall be required for the identified non-core limited lines insurance. All employees offering the products; individuals licensed to sell, solicit or negotiate; insurance producers and all DRP’s shall receive a program of instruction.

Definitions for legal expense and pet insurance are provided for guidance and states are encouraged to adopt the same or substantially similar terms.

States may elect to add a miscellaneous limited line to issue a nonresident license for those nonresidents who have requested a line of authority outside the major or core limited lines and not offered by the state. A state must issue the nonresident a license in compliance with GLBA.

38. CE Requirement Resident Producers:
CE will not be required, however, due to federal requirements; states may require CE for Crop authority

SURPLUS LINES STANDARDS

39. Surplus Line Standards:
States shall require an underlying property & casualty license prior to the issuance of a resident surplus lines license.

40. Surplus Line Exam
States may, but are not required to have a surplus line examination.

COMMERCIAL LINE MULTI-STATE EXEMPTION STANDARD

41. Commercial Line Multiple Exemption
The state must adopt Section 4B (6); of the Producer Licensing Model Act which states:
A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in
the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state.

This exemption applies at minimum to admitted business.

COMMISSION SHARING STANDARD

42. Commission Sharing
The state must adopt Section 13D of the Producer Licensing Model Act which states:
An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate [insert appropriate reference to state law (i.e., citation to anti-rebating statute, if applicable)]. Reference to the anti-rebating statute is not exclusive. It may also refer to other state laws which limit the scope.

Appendix A

LIMITED LINES DEFINITIONS (Originally Adopted on 6/10/02. Amended 8/16/10)

CAR RENTAL – insurance offered, sold, or solicited in connection with and incidental to the rental of rental cars for a period of [insert relevant time period per state law], whether at the rental office or by pre-selection of coverage in master, corporate, group or individual agreements that (i) is non-transferable; (ii) applies only to the rental car that is the subject of the rental agreement; and (iii) is limited to the following kinds of insurance:
   (a) personal accident insurance for renters and other rental car occupants, for accidental death or dismemberment, and for medical expenses resulting from an accident that occurs with the rental car during the rental period;
   (b) liability insurance that provides protection to the renters and other authorized drivers of a rental car for liability arising from the operation or use of the rental car during the rental period;
   (c) personal effects insurance that provides coverage to renters and other vehicle occupants for loss of, or damage to, personal effects in the rental car during the rental period;
   (d) roadside assistance and emergency sickness protection insurance; or
   (e) any other coverage designated by the insurance commissioner.

CREDIT – credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, or any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation and that is designated by the insurance commissioner as limited line credit insurance.

CROP INSURANCE – Insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease or other yield-reducing conditions or perils provided by the private insurance market, or that is subsidized by the Federal Crop Insurance Corporation, including Multi-Peril Crop Insurance.

SURETY – Insurance or bond that covers obligations to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust. For purpose of limited line licensing, Surety does not include Surety Bail Bonds.

(OPTIONAL) Surety also includes surety insurance as defined in [insert state-specific reference]. It is recommended that surety be eliminated as a core limited line going forward and states considering surety are encouraged to offer it under the Casualty major line (adopted on 8/16/10)

TRAVEL INSURANCE Amended 8/16/10
Means Insurance coverage for personal risks incident to planned travel, including but not limited to:
   a. Interruption or cancellation of trip or event;
   b. Loss of baggage or personal effects;
   c. Damages to accommodations or rental vehicles;
d. Sickness, accident, disability or death occurring during travel.

Travel insurance does not include major medical plans, which provide comprehensive medical protection for travelers with trips lasting 6 months or longer, including for example, those working overseas as an ex-patriot or military personnel being deployed.

**Recommended Definitions for Certain Non-Core Limited Lines Proposed August 2011**

1. “Limited Lines Pet Insurance Producer” means an insurer designee, such as a managing general underwriter, managing general agent, or limited lines producer of Pet Insurance.

2. “Pet Insurance” means health insurance coverage including but not limited to coverage for injury, illness, and wellness, for pets such as birds, cats, dogs, and rabbits.

3. “Legal Expense Insurance” means a contractual obligation to provide specific legal services, or to reimburse for specific legal expenses, in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiaries individually or by a third person for them, but does not include the provision of, or reimbursement for, legal services incidental to other insurance coverages.; or consultation or advice in connection with, or a part of referral services. Legal expenses insurance does not include a retainer agreement directly between the lawyer and the client, where no third party is at risk.
**IMPLEMENTATION GUIDELINES OF THE PRODUCER LICENSING MODEL ACT**

**AUGUST 27, 2000**

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<tr>
<th>ACTIVITIES</th>
<th>LICENSABLE “AGENT” ACTS</th>
<th>NON-LICENSABLE “CLERICAL” ACTS</th>
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<td><strong>Solicit</strong></td>
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<td>selection forms or other similar forms in response to a request from</td>
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<td>Scheduling appointments with insurance producers to discuss insurance</td>
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<td>Disseminating information as to rates secured by reference to a published</td>
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<td>or printed list or computer data base of standard rates</td>
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<td>to obtain factual information necessary for an insurance producer to</td>
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<td>complete a review</td>
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<td>Explain, discuss or interpret coverage, analyze exposures or policies, or</td>
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<td>give opinions or recommendations as to coverage</td>
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<td>Discuss the effect of age, health or other risk-related conditions of the</td>
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<td>Counsel, urge or advise any prospective purchaser to buy a particular</td>
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<td>policy or to insure with a particular company</td>
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<td><strong>Sell</strong></td>
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<td>Receiving requests for coverage for transmittal to a licensed insurance</td>
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<td>maintained under the supervision of an insurer or licensed insurance</td>
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<td>and preparing an application for insurance pursuant to instructions from</td>
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<td>and for the review of an insurance producer</td>
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<td>Obtain underwriting information from credit agencies, DMV, and other</td>
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<td><strong>Sell (continued)</strong></td>
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<td>As an underwriter employed by an insurer or by a licensed insurance producer, upon receipt of an application submitted by a licensed producer, requesting and reviewing information relating to the audit of records or loss control on underwriting verifications and inspections, requesting and reviewing the results of a physical examination of a prospective insured named in a submitted application, requesting and reviewing information from persons other than the applicant, making a determination that the applicant meets the insurer’s underwriting criteria, and mailing the policy to the policyholder or the producer</td>
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<td>Indicate that requested coverage is or will be bound or issued</td>
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<td>Bind coverage</td>
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<td>Receiving and recording information from an applicant or policyholder and preparing for an insurance producer’s review and signature all binders, certificates, endorsements, identification cards or policies pursuant to instructions from the insurance producer</td>
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<tr>
<td>Receiving premiums at the recorded place of business where the payment is being made on a binder, endorsement or existing policy</td>
<td></td>
<td>x</td>
</tr>
<tr>
<td>Issue certificates of insurance, endorsements, binders, commitments, insurance policies or insurance identification cards</td>
<td></td>
<td>Dependent upon whether issuance is physical delivery only or the effectuation of the insurance policy</td>
</tr>
</tbody>
</table>

| Servicing of Existing Policyholders | | |
| Receiving and recording an insured’s request concerning any additions or deletions to an existing policy and preparing the appropriate endorsements or processing the appropriate changes. | | x |
| Person could give rate quote on the requested change only. | | |
| Informing the insured as to his or her coverage as indicated in policy records | | x |
| Receive telephone calls reporting additional or replacement items (vehicles, property, drivers) for policies currently in force | | x |
| Opening mail, office filing and mailing billings | | x |
Part III - Section III – General Reference Materials

A. Sample Continuing Education Program Instructions to Course Providers
B. Sample Frequently Asked Questions by Producers Regarding Continuing Education Requirements
C. Sample State Licensing Department Internal Training Manual
Part III - Section III – Appendix A

Sample Continuing Education Program Instructions to Course Providers

This Appendix contains a sample outline of the type of information a state may consider providing to Continuing Education providers. It may also serve as a guide to states that wish to adopt formal regulations on CE provider requirements. This document has not been formally adopted by the PLWG or the NAIC. See also information on the CER and the PLWG guidelines on CE in this appendix.

Fees and Recordkeeping Requirements

- Continuing Education providers’ initial application fee is ___.
- Course approval filing fee shall be ___.
- CE providers must maintain attendance records, course outlines and course completion records of participants for ___ years following each course offering. The insurance department will periodically conduct audits of provider’s records. Any provider who cannot furnish the requested records when audited shall be subject to suspension or revocation.

Providers are responsible for advertising where and when a course offering will be held. A course should not be advertised before it has been approved. Failure on the part of a course provider to hold a course may result in suspension and/or revocation of the provider’s authority, if the course is not rescheduled or the fees refunded to the participants.

Section I – CE Provider Responsibilities

1. The CE provider must meet the criteria defined by state laws and regulations.

2. If the state uses a vendor, insert instructions on filing with the vendor.

3. The CER form must be used. All CE provider application forms submitted to the department must be typed. The application form must include the name of the person who will represent the provider for continuing education purposes. If any part of the application is not filled out, the application will be returned to the applicant, delaying the approval process.

4. The CE provider is responsible for ensuring that each participant satisfactorily completing a course is furnished with a Certificate of Completion. The provider must also send CE course completion rosters/reports electronically to the department or its vendor within ____ days of course completion.

5. The CE provider shall maintain attendance records, course outlines and course completion records of participants for ___ years following each course offering. Any provider who cannot furnish the requested records when audited shall be subject to suspension or revocation.

6. CE course completion reports must be formatted correctly and information must be accurate. If not, reports will be rejected and returned.

7. All CE providers, study materials and certifications are subject to audit by the department or designated representatives of the department at any time. An audit may be conducted through class schedules and records of the course or through actual attendance of class presentations at any time and without warning.

8. Each licensee taking the course must be issued a certificate. CE providers should instruct the class participants to keep these certificates in a safe place until the next license renewal (reporting period) in the event that they are audited.

9. Providers may submit a course outline for approval only after having been approved as a CE provider. CE providers are responsible for their own advertisements.
Section II – Course Approval

1. All course applications and required forms must be submitted for approval to the department (vendor) at least _____ days prior to the first course offering.

2. The CE provider must submit a detailed course summary in outline form. In addition to the outline, if the proposed course is self-study, the provider must also submit all the course material that the licensee will receive for department review. Self-study and online courses must include an appropriate testing instrument requiring a grade of 70 percent or higher to successfully complete the course. The examination must be administered by a licensed producer or representative of the CE provider. The outline should state a description of the course content, including a time frame for each major topic area to be covered in the course. If the content of an approved course should change, the provider must resubmit the course along with a new course outline and time frame for approval. Courses can be approved for classroom instruction, seminar, self-study (correspondence), and/or online in whole credit-hour increments only.

The following are examples of subjects that most likely will qualify for continuing education credits:

- Fundamentals/principles of property insurance
- Fundamentals/principles of casualty insurance
- Fundamentals/principles of life insurance
- Fundamentals/principles of health insurance
- Estate planning/taxation (may not be for personal benefit)
- Ethics in insurance
- Legal, legislative and regulatory matters in insurance
- Insurance policy contents
- Proper use of insurance products
- Insurance rating
- Accounting/actuarial considerations in insurance
- Principles or risk management
- Provisions/differences in insurance policy contracts
- Professional designation courses (see list of designations in Pre-license Education section)

Examples of subjects that most likely will NOT qualify for prelicensing or continuing education credits:

- Prospecting
- Motivation
- Sales
- Psychology
- Recruiting
- Basic non-insurance related computer training
- Office skills
- Time management
- Telephone skills
- Health/Stress/Exercise courses
- Personal finance or tax courses intended for the producer instead of his/her clients

Section III – Instructor

The CE provider must monitor the activities of instructors. Each CE provider is responsible for the actions of their instructors. An instructor teaching an approved course shall qualify for the same number of classroom hours as would be granted to a person taking and successfully completing such a course or seminar. The instructor, if also a licensee, should be issued a Certificate of Completion and entered on the roster for the course offering.
Section IV – CE Reciprocity Course Filings

(See also PLWG CE guidelines regarding courses that are part of a national designation program.)

(Insert information on the NAIC Continuing Education Reciprocity (CER) filings)

Section V – Definitions

Course – A course is an organized, outline body of information intended to convey knowledge to the licensee.

Continuing Education Course Provider (CE Provider) – A CE provider is an entity that has been approved by the department to offer continuing education courses to insurance producers in the state.

CE Credit – Fifty (50) minutes of participation in an approved course is equal to one CE credit.
Part III - Section III – Appendix B

Sample Frequently Asked Questions by Producers Regarding Continuing Education Requirements

This Appendix contains sample questions and answers regarding continuing education requirements. These examples contemplate that a producer must complete a certain number of credits to be eligible to renew their license. A state should alter the questions to refer to a continuing education reporting period if the state does not renew licenses. This document has not been formally adopted by the PLWG or the NAIC.

Q: How many hours do I need to renew my license?
A. (Insert state requirement)

Q: Do I need to complete the CE requirements if I am a non-resident?
A: No. A non-resident who has satisfied his/her home state’s continuing education requirement is exempt.

Q: Does my company renew my license?
A: No. Companies renew appointments. License renewal is the producer’s responsibility.

Q: Must licensees take courses related to the lines of insurance they hold?
A: No. You may take any approved course without regard to the type of license you hold.

Q: Can I count the prelicensing course I recently took for my CE requirements?
A: No. This course is not approved for CE credits, only prelicensing.

Q: Can extra credits earned from the previous year count for this year’s renewal requirements?
A: No. Carryover is not allowed.

Q: Can credits earned while taking courses to obtain a professional designation be used for the annual CE requirements?
A: Yes, but only after the provider and courses have been approved by the state department of insurance and only if the course is completed after the producer has already received an insurance producer license.

Q: Do I need to send my certificates of completion to the state department of insurance?
A: No, if you renew online, there is no need to send certificates to the department; however, always keep your certificates on file. (Other possible answers: Yes, if you are unable to renew online due to a CE discrepancy or upon a CE audit request, you may have to send certificates for verification.)

Q: Can the person who teaches the course receive CE credits?
A: Yes, instructors will receive the same number of credits as the individuals who take the course.
Q: Can I go to the Department Web site to look up how many CE credits I have?

A: (It is recommended that states offer this service.)

Q: How can I find out how many continuing education hours I have?

A: It is your responsibility to keep a record of your CE credits and retain your certificates of completion. If a department requires CE providers to file attendance reports, the department will only be able to verify the number of credits that have been reported by CE providers.

Q: Do I have to take 12 credits for my life license and 12 credits for my property license?

A: No, you only have to submit the total number of credits hours required, no matter how many lines of authority you hold.

Q: Can I take online CE courses?

A: Yes, if the provider and course is approved in your state.

Q: Can I take the same CE course two years in a row and receive credit?

A: No. You cannot receive credit for any course more than once in any CE reporting period.
Part III - Section III – Appendix C

Sample State Licensing Department Internal Training Manual

This Appendix contains a sample outline and some suggested text for a state insurance department to use to create an internal training manual for licensing staff. This document has not been formally adopted by the PLWG or NAIC.

Introduction

The State of ______ Insurance Department is required by the Code of ______ to license individuals to sell insurance in the state of ______. The Producer Licensing Division’s responsibility is to make sure this is carried out as written.

The Producer Licensing Division is governed by laws and regulations adopted by the commissioner to provide the basic details necessary to implement statutory requirements. Regulations most likely to be of interest to employees in this division are_______. A brief description of each is found in the glossary.

The Continuing Education Program was established to provide producers with information to keep them informed of new laws, rules and regulations governing the insurance industry. It also serves the consumer by providing licensed continuing education providers to industry personnel so that they may provide a more informative means of communication. Many other states require continuing education hours. In an effort to aid the process, the department, like most states, participates in a reciprocal program where we accept hours from other states and they do the same for our resident producers.

This resource manual is compiled to serve as a guide to employees in the insurance department who work directly and/or indirectly with the Producer Licensing Division. It contains pertinent regulatory information that is applicable to the prelicensing education, testing, licensing, license renewal and continuing education requirements. This manual will be used as a training guide for new employees and as a reference guide for other employees.

Contents

Division Organization Chart
Prelicensing Information
Testing Information
Licensing Information
Renewal Information
Continuing Education Information
Miscellaneous Forms
Exhibits
Glossary

Answering Calls

1. Answer promptly (before the third ring if possible).
2. Before picking up the receiver, discontinue any other conversation or activity such as eating, typing, etc., that can be heard by the caller.
3. Speak clearly and distinctly in a pleasant tone of voice.
4. Use “hold” button when leaving the line so that the caller does not accidentally hear conversations being held nearby.
5. When transferring a call, be sure to explain to the caller that you are doing so and where you are transferring them.
6. Remember that you may be the first and only contact a person may have with your department, and that first impressions will stay with the caller long after the call is completed.
7. If the caller has reached the wrong division, be courteous. Sometimes they have been transferred all over
the department with a simple question. If possible, attempt to find out where they should call/to whom they
should speak. They will greatly appreciate it.
8. When the called party is not in, use a tactful response to protect the privacy of the office staff.
9. At the end of the day, spend a few moments reflecting on what you have accomplished. Tally up the good
experiences against the bad. You might be surprised to find that on any given day, there were many more
“pluses” than “minuses.”
10. Because you are a professional, it’s natural to remember and be concerned about the negative contacts you
experience. But don’t let the negatives overwhelm you; take those few minutes to tally the successes.

Mail/Fax Procedures

Address and Name Changes

1. Name and address changes are processed_______.
2. Name change requests must be accompanied by a marriage certificate, divorce decree, or other court
document.
3. Address change forms do not have to be verified.
4. Make sure all names are spelled correctly, whether in the address or name.
5. Name changes can now be done online.
   (Address changes can easily be made online through NIPR’s Address Change Request – ACR)

Prelicensing Education Information (optional)

Individuals must complete a prelicensing course of study for the lines of authority desired before taking most of the
insurance producer license examinations. The prelicensing course must consist of 20 credit hours per line of
authority, or equivalent individual instruction, on the general principles of insurance for that line of authority. The
lines of authority requiring a prelicensing course are as follows:

- Life
- Accident & Health or Sickness
- Variable Life & Variable Annuity
- Property and/or Casualty
- Personal Lines

Once the prelicensing course is completed and a certificate is awarded, the insurance licensing examination can be
taken within _____ from the date of the certificate. If the examination is not taken, the certificate will expire, and the
course must be retaken to qualify for the examination.

Prelicensing Course Exemptions

- Holders of the following designations are exempt from the prelicensing requirement:
  Life: CEBS, ChFC, CIC, CFP, CLU, FLMI, LUTCF
  Health: RHU, CEBS, REBC, HIA
  Property/Casualty: AAI, ARM, CIC, CPCU
• Applicants for the following limited lines of authority may be exempt from the prelicensing requirement:

- Crop Insurance
- Credit Insurance
- Travel Insurance
- Car Rental Insurance
- Surety

Examinations

Once the appropriate prelicensing course is completed, an individual is eligible to sit for the insurance producer examination. If not reported electronically, test candidates must present an original certificate of completion from an approved prelicensing provider at the time of the examination. A prelicensing course certificate is valid for ____ from date of completion. The insurance producer examination is available in ____ locations around the state. Information about testing locations is on the department Web site. This Web site also contains information on insurance licensing, the application process, registration for examinations and the issuance of licenses. The examination fee is $__.

Initial Licensing Qualifications

The qualifications necessary to become an insurance producer include, but are not limited to, the following:

- Must be at least 18 years of age.
- Must not have committed any act that is a ground for denial, suspension or revocation of license (See PLMA section 12).
- Must complete a prelicensing course of study, if required, for the major lines of authority for which the person is applying.
- Must successfully complete the examination for the lines of authority for which the individual has applied.

Initial Licensing Process

Residents

There are two options available to obtain a resident license:

- Option 1: Test results are reported electronically to the insurance department. Applications can be submitted online at the department Web site. (or)

- Option 2: After successfully completing the examination, applicants must attach both the original examination results certificate and a $__ fee to the uniform application form for Individual Producer License and send to ____.

Non-Residents

- Applicants must be in good standing and hold an active license in their resident state for the same lines of authority for which they are applying.
- Applicants must complete the NAIC Uniform Application for Individual License.
- No letter of certification is required with application.
Appointments (Optional)

Once licensed, a producer can then be appointed by one or more insurers to act as their producer.

Renewal Process

Upon license expiration, producers are eligible to reinstate their license for a period of 12 months from the last day of their birth month without the necessity of completing the prelicensing course or passing a written examination.
Part III - Section IV – Glossary

1033 (1033 consent waivers)

A federal law commonly referred to by licensing directors as “1033” establishes a ban on certain individuals from working in the insurance business. The law provides that a banned person can apply to the state insurance commissioner for a written consent to participate in the insurance business.

Adjuster

A person who determines coverage and evaluates the damage caused to property or people when an insurance-related accident occurs. There are three classes of adjusters: company adjusters (employed by an insurance company), independent adjusters (independent contractors with an insurance company) and public adjusters (employed by the policyholder).

Appointment

A notification filed with the insurance department that an insurer has established an agency relationship with an insurance producer.

Appointment renewal

The continuation of a company’s existing appointment.

Bail Bond Agents

Any person or corporation that will act as a surety and pledge money or property, or that will sell an insurance product as bail for the appearance of a criminal defendant in court.

Business Entity

Under the Producer Licensing Model Act, a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

Central Registration Depository (CRD)

The securities industry online registration and licensing database, operated by FINRA contains reports on industry registration/licensing forms completed by brokerage firms and regulators. Contains professional background information on approximately 660,000 currently registered brokers and 5,100 currently registered securities firms. Information is also available on thousands of formerly registered firms and brokers.

Charitable Gift Annuities (CGA)

An arrangement in which an individual transfers cash or marketable securities to a charitable organization. The organization issues the gift annuity and makes a promise to make fixed annual payments to the individual for life. In exchange, the individual is eligible for a current income tax deduction. In some states, charitable organizations engaging in this activity are required to register with the state insurance department.

Charitable Organizations

Under NAIC Model Charitable Gift Annuities Act (Model #241), an entity described by either Section 501(c)(3) or Section 170(c) of the Internal Revenue Code.
Continuing Education Reciprocity (CER)

A simplified filing method for continuing education courses approved by other states.

Controlled Business

Insurance business over which an insurance producer is able to exercise personal influence. Some states prohibit a producer from obtaining or continuing to hold a producer license if more than a certain percentage of the producer’s business is generated through controlled business.

Financial Industry Regulatory Authority (FINRA)

The non-governmental regulator (a self-regulatory association designated by Congress) for all securities firms doing business in the United States. FINRA oversees more than 5,000 brokerage firms, about 171,000 branch offices and more than 672,000 registered securities representatives. FINRA was created in July 2007 through the consolidation of the National Association of Securities Dealers (NASD) and the member regulation, enforcement and arbitration functions of the New York Stock Exchange.

Fraternal Benefit Society

A membership organization that is legally required to offer life, health and related insurance products to its members, be not-for-profit and carry out charitable and other programs for the benefit of its members and the public.

Gramm-Leach-Bliley Act (GLBA)

A federal law adopted in 1999 that required states to develop either a reciprocal or uniform approach to insurance producer licensing by Nov. 12, 2002. The law provides that if states either missed the deadline, or later fell below the minimum standards, an organization known as the National Association of Registered Agents and Brokers (NARAB) would be created. NARAB would override state law in regard to licensing of nonresident producers.

Home State

Under the Producer Licensing Model Act, the District of Columbia and any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer.

I-SITE

Internet-State Interface Technology Enhancement, a tool created by the NAIC as a portal for insurance regulators to access numerous services and confidential databases.

Interstate Insurance Product Regulation Compact

An organization formed by the states to provide a vehicle to (1) develop uniform national product standards that will afford a high level of protection to consumers of life insurance, annuities, disability income and long-term care insurance products; (2) establish a central point of filing for these insurance products; and (3) thoroughly review product filings and make regulatory decisions according to the uniform product standards. The compact is administered by the Interstate Insurance Product Regulation Commission (IIPRC). For more information visit the Web site at: www.insurancecompact.org.
Life Settlement

A transaction (also referred to as a viatical settlement) in which the owner of a life insurance policy sells the right to receive the death payment due under the policy to a third party. Typically the owner/insured receives a cash payment, and the buyer agrees to make any remaining premium payments on the policy.

Managing General Agents (MGA)

An agent authorized by an insurance company to manage all or a part of the insurer’s business in a specific geographic territory. Activities on behalf of the insurer may include marketing, underwriting, issuing policies, collecting premiums, appointing and supervising other agents, paying claims, and negotiating reinsurance. Many states regulate the activities and contracts of managing general agents.

Market Actions Working Group (MAWG)

Identifies and reviews insurance companies that are exhibiting, or may exhibit, characteristics indicating a current or potential market regulatory issue that may impact multiple jurisdictions. The Working Group determines if regulatory action is being taken and supports collaborative actions in addressing problems identified. MAWG meets in closed session and its membership is limited to 16 regulators appointed by the Chair of D Committee.

Market Regulation Handbook

Developed by the NAIC Market Regulation Handbook Working Group and contains guidelines for market regulation examinations and investigations. The handbook contains guidelines for regulators on different options for investigation techniques, called the continuum of regulatory responses.

Multiple Employer Welfare Arrangements (MEWA)

Arrangements allowed under the federal Employee Retirement Income Security Act (ERISA) law that allow a group of employers collectively to offer health insurance coverage to their employees. MEWAs are most often found among employer groups belonging to a common trade, industry or professional association.

National Association of Insurance Commissioners (NAIC)

The organization of insurance regulators from the 50 states, the District of Columbia and five U.S. territories. The NAIC provides a forum for insurance regulators to develop uniform policy when uniformity is appropriate.

National Association of Registered Agents and Brokers (NARAB)

If states fail to maintain compliance with the standards expressed in GLBA, NARAB would be established to provide a mechanism through which uniform licensing, appointment, continuing education and other insurance producer sales qualification requirements and conditions would be adopted and applied on a multistate basis. NARAB guidelines would preempt state licensing laws.

National Flood Insurance Program (NFIP)

A federal program enabling property owners in participating communities to purchase insurance as protection against flood losses. The program is administered by FEMA. Individuals selling flood insurance must be licensed as an insurance producer.
National Insurance Producer Registry (NIPR)

A non-profit affiliate of the NAIC created in 1996 through collaboration of the NAIC and industry. The purpose of the NIPR was to work with the states and the NAIC to reengineer, streamline and make more uniform the producer licensing process for the benefit of regulators, the insurance industry and consumers. The NIPR worked with the NAIC to develop and implement the Producer Database (PDB) utilized by the industry for licensing and appointment information and the State Producer Licensing Database (SPLD) for use by regulators.

National Producer Number (NPN)

A unique identification assigned by the NIPR that identifies each person in the State Producer Licensing Database.

Negotiate

Under the Producer Licensing Model Act, the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

North American Securities Administrators Association (NASAA)

A voluntary association, similar to the NAIC, whose membership consists of 67 state, provincial and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada and Mexico.

Producer (Insurance Producer)

Under the Producer Licensing Model Act (PLMA) a person required to be licensed under the laws of a state to sell, solicit or negotiate insurance. A producer may be an individual or a business entity.

Producer Database (PDB)

This database is an electronic public database consisting of information relating to insurance agents and brokers (producers). The PDB links participating state regulatory licensing systems into one common system establishing a repository of producer.

Producer Licensing Model Act (PLMA)

A model act adopted by the NAIC to update and standardize many aspects of state producer licensing. Full text available through the NAIC Model Law Service.

Producer Licensing Working Group (PLWG)

The NAIC working group charged with creating and monitoring uniform licensing standards and providing guidance to state insurance licensing departments. The PLWG reports to the NAIC Market Regulation (D) Committee. The PLWG has an information page on the NAIC Web site.
Psychometrician

One who designs, administers and interprets quantitative tests for the measurement of psychological variables such as intelligence, aptitude and personality traits. In licensing, the duties relate more to the interpretation of the data derived from the knowledge-based licensing exams. He/she basically looks at the test statistics and makes appropriate suggestions for any adjustments to the test items.

Regulatory Information Retrieval System (RIRS)

A database maintained by the NAIC that includes information filed by states to report formal administration actions.

Reinsurance Intermediary

Acts as a broker in soliciting, negotiating or procuring the writing of any reinsurance contract or binder. Acts as an insurance producer in accepting any reinsurance contract or binder on behalf of an insurer.

Risk Management Agency (RMA)

Part of the United States Department of Agriculture. RMA operates and manages the Federal Crop Insurance Corporation (FCIC). The RMA was created in 1996.

Risk Purchasing Group (RPG)

Allowed under Federal Law to form so that similar risks may pool purchasing power. RPGs are purchasing entities, not insurers, and are not generally subject to state insurance laws. RPGs are only allowed to place liability coverage.

Risk Retention Group (RRG)

Under the Federal Liability Risk Retention Act certain product sellers are allowed to provide group self-insurance. RRGs are insurers licensed and fully regulated in one state pursuant to that state’s laws. RRGs are limited to providing non-workers’ compensation commercial lines liability insurance to their members. All owners of an RRG must be insureds, and all insureds must be owners.

Securities and Insurance Licensing Association (SILA)

An industry association created for the purpose of communication and education for licensing and education experts whose occupations encompass all areas of securities and insurance licensing and registration.

Sell

Under the Producer Licensing Model Act, to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

Solicit

Under the Producer Licensing Model Act, attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

Special Activities Database (SAD)

A proprietary NAIC database available only to regulators through I-SITE. Regulators share confidential investigative information through the SAD.
Stamping Offices

Nonprofit non-governmental agencies whose existence is authorized by law. These offices act as a liaison between the surplus lines producer and the state insurance department. Stamping office duties vary among the 14 states in which they exist. Responsibilities may include evaluation of insurance companies for inclusion on a white list, review of surplus lines policies, and education. Stamping offices are funded by stamping fees assessed on each policy of surplus lines insurance written in the state.

State Producer Licensing Database (SPLD)

An electronic database consisting of information relating to insurance producers. Participating states regularly send updates from their state licensing database to the SPLD. The SPLD links participating state regulatory licensing systems into one common repository of producer information.

STOLI or IOLI

Stranger-originated life insurance or investor-originated life insurance. The typical scenario for this type of transaction involves the recruitment of an individual to consent to the purchase of life insurance or an annuity with a promise to, in some manner, finance the purchase of the product. The “stranger” or investor becomes the owner of the product and will receive the death benefits paid under the product.

Surety

Under the Uniform Licensing Standards, insurance or bond that covers obligations to pay the debts of, or answer for the default of, another, including faithlessness in a position of public or private trust. For purpose of limited line licensing, surety does not include Surety Bail Bonds.

Surplus Lines Insurance (SLI)

Products sold by authorized nonadmitted companies. SLI companies provide access to products and coverages not available in a state. In some states, SLI companies are required to file a special registration with the state.

System for Electronic Rate and Form Filing (SERFF)

An NAIC program that allows companies to send and states to receive, comment on, and approve or reject insurance industry rate and form filings. For more information, visit the NAIC Web site or www.serff.org.

Terminate

Under the Producer Licensing Model Act, the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer’s authority to transact insurance.

Termination for Cause

When an insurer has ended its agency relationship with a producer for one of the reasons set forth in Section 12 of the PLMA or that the producer has been found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities set forth in Section 12.

Third-Party Administrators (TPA)

A person who directly or indirectly underwrites, collects charges or premium, or adjusts or settles claims on behalf of a self-funded insurance plan for life, annuity or health coverages.
Title Insurance

Insurance against losses from defects in title to real property and from the invalidity or unenforceability of mortgage liens. It is meant to protect an owner’s or lender’s financial interest in real property against loss due to title defects, liens or other matters.

Title Insurance Agent

An individual who sells title insurance. In most states, title insurance agents are required to either register or obtain a license from the state insurance department.

Uniform Applications

The Producer Licensing Working Group has adopted uniform applications for individual producers, business entities and third-party administrators. The forms are available at www.naic.org on the PLWG homepage.

Uniform Licensing Standards (ULS)

A set of standards adopted by the Producer Licensing Working Group to guide state licensing directors in implementing uniform standards among the states.

Viatical Settlement

A transaction (sometimes called a life settlement) in which the owner of a life insurance policy sells the right to receive the death payment due under the policy to a third party. Typically the owner/insured receives a cash payment, and the buyer agrees to make any remaining premium payments on the policy.
The National Association of Insurance Commissioners (NAIC) is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate their regulatory oversight. NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. NAIC members, together with the central resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

For more information, visit [www.naic.org](http://www.naic.org).