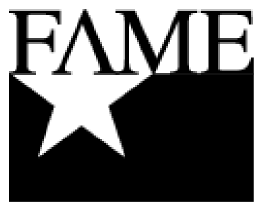
Insurance Producer Licensing from NARAB to Now:

The Promise, Progress and Failures



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INTRODUCTION

In 1999, with the enactment of the Gramm-Leach-Bliley Act's ("GLBA")[1] NARAB provisions, the states were required to enact uniform or reciprocal licensing standards and procedures or – if they failed – to create a national licensure clearing house (the "National Association of Registered Agents or Brokers" or "NARAB") that would have effectuated a nationwide agent/broker non-resident licensure regime for the states. Although the legislation has resulted in the creation of some level of licensure reciprocity, it ultimately has failed to fulfill its full promise. There remain redundancies, inefficiencies and inconsistencies across the states that result in unnecessary costs on insurance producers and consumers due to the regulatory and administrative burdens the various state licensing requirements impose.

Despite years of efforts by state regulators to meet GLBA's reciprocity standards, and to modernize and make uniform the archaic producer licensing system, the states remain far short of the goals set forth in GLBA – and indeed, by the regulators themselves. Although GLBA's minimum reciprocity threshold has been met by the states, uniform state insurance regulatory requirements remain unreachable. Uniformity has been a long-standing goal of the state insurance commissioners: in 1871, the first president of the National Association of Insurance Commissioners ("NAIC") first pledged to make state insurance laws and rules "uniform across the country."

Thus, more work remains to be done to achieve the goals of the regulators, as well as the producers and other industry players who must comply with the multitude of state licensing requirements in order to operate. To that end, the Council and other industry stakeholders, as well as the state insurance regulators, have been advocating the adoption of "NARAB 2" legislation that immediately would create a federal clearinghouse for the non-resident licensure of all agents, brokers, and firms that choose to participate. The legislation is under active consideration by Congress. In the meantime, however, it is necessary to know the current state licensing requirements –

[1] Pub. L. No 106-102, 113 Stat. 1338 (1999).

the full scope of the laws, rules, and procedures that the states impose on producers for licensure. This Report provides an overall assessment of the current state of the "national" insurance producer licensing regime, and a summary of each state's requirements. The Report includes a discussion of the NAIC and state regulatory efforts to "modernize" state producer licensing requirements in the past dozen-plus years, as well as an overview of where those efforts have fallen short. The state-by-state summary, provided in the chart attached to the Report, includes information and citations to the relevant state laws and rules governing the licensure of insurance agents and brokers, including: individual licenses; business entity (agency) licenses; renewals; lines of authority (major lines and limited lines); appointment requirements; pre-licensing education and examination requirements; fingerprint requirements; surplus lines requirements; and information regarding a state's use of the NAIC uniform application and the National Insurance Producer Registry (NIPR) electronic licensure process.

The information in this Report is based upon review and analysis of insurance producer laws, regulations, and other guidance issued by the states; the NAIC Producer License Model Act (PLMA); the NAIC Uniform Resident Licensure Standards (ULS); the NAIC PLMA Frequently Asked Questions guidance; the NAIC Producer Licensing Assessment Aggregate Report of Findings (2008) and the Progress Report to Membership on Producer Licensing State Assessments (2009); the NAIC State Licensing Handbook; the NAIC Report of the NARAB Working Group: Recommendation of States Continuing to Meet Reciprocity Requirements of the Gramm-Leach-Bliley Act (2011); the NAIC Uniform Applications for Individual and Business Entity License/Registration; and information available on the National Insurance Producer Registry website.

I. State Insurance Producer Licensing Requirements – How we got where we are today

Although the quest for uniformity among state producer licensing requirements started at the dawn of the NAIC in 1871, and The Council itself created a committee to work on the issue in the early 1930s, it was the adoption of the Gramm-Leach-Bliley Act (GLBA) in 1999 that caused the NAIC to finalize development of its Producer Licensing Model Act (PLMA), providing language for state implementation of GLBA's reciprocity provisions. Prior to that, the NAIC had approved two model acts that served as models for the states: the NAIC Agent and Broker Model Act, followed by the NAIC Single License Producer Model Act. Neither of these early model acts were enacted by the states on a uniform basis, and neither provided for reciprocity among the states.

A. The Gramm-Leach-Bliley Act (GLBA) and NARAB

The Gramm-Leach-Bliley Act (GLBA), enacted on November 12, 1999, provided for the a national insurance producer licensing organization, the National Association of Registered Agents and Brokers (NARAB), which would be created unless the states satisfied a number of producer licensing reform objectives set forth in the law. If created, the national organization would have provided a mechanism through which licensing, appointments, continuing education and other insurance producer sales qualification requirements and conditions could have been applied on a national basis, essentially providing one-stop shopping for insurance producers seeking licenses in non-resident states.

GLBA gave the states the ability to prevent the creation of NARAB if a majority of states enacted either (1) uniform agent and broker licensure laws or (2) reciprocal laws permitting an agent or broker licensed in one state to be licensed in all other reciprocal states simply by demonstrating proof of licensure and submitting the requisite licensing fee. Specifically, GLBA required that at least 29 of the 56 insurance regulatory jurisdictions of the United States (which includes all the States, the District of Columbia and the five territories) meet the uniformity or reciprocity requirements of the law by late 2002 in order to avoid triggering the creation of NARAB.

In order to be considered *reciprocal* for non-resident producer licensing under GLBA, a state must satisfy the following four conditions:

1. The non-resident state must license a producer duly licensed in its home state to the same extent the producer is licensed in its home state, provided (a) the home state has reciprocal producer licensing requirements, and (b) the non-resident state requires only the following from the producer:
    - a request for licensure;
    - the application for licensure submitted to the home state;
    - proof of licensure and good standing in home state; and
    - payment of any requisite fee;
2. The non-resident state must accept a producer's satisfaction of its home state's continuing education requirements as satisfying the non-resident state's continuing education requirements, provided that the home state recognizes continuing education satisfaction on a reciprocal basis;
3. The non-resident state does not impose upon any producer requirements 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 "non-resident" residence or place of operations; and
4. The non-resident state grants reciprocity to residents of all other states that satisfy conditions 1, 2, and 3 above.[2]

In order to meet 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

[2] GLBA § 321(c), 15 U.S.C. § 6751(c)

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; and

5. elimination of nonresident requirements posing any limitation or condition because of the place of the producer's residence or business.[3]

B. The NAIC's Response to GLBA and NARAB: Pursuit of Reciprocity and Uniformity

1. NAIC Producer Licensing Model Act

Faced with GLBA's NARAB threat, NAIC and the state regulators chose to pursue reciprocity among the states rather than uniform state laws to avoid the creation of NARAB and the preemption of state licensing laws. In 2000, the NAIC adopted the Producer Licensing Model Act (PLMA) to provide states with a legislative model for meeting the NARAB reciprocity requirements. If a majority of the states were certified by the NAIC has having met these reciprocity requirements, the states would successfully avoid the creation of NARAB.

The PLMA also established uniform standards in key areas of resident producer licensing. The uniformity provisions were not intended to meet the GLBA uniformity requirements, but rather were an effort to move the states toward uniform producer licensure requirements, albeit slowly.

The PLMA was adopted by the NAIC in January 2000, and amended later that year and again in 2005.

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3 *Id.* at §321(b), 15 U.S.C. 6751(b)

a. Reciprocity

The PLMA provides the states with a statutory framework for satisfying GLBA's reciprocity requirements, and provides the NAIC with the tools to measure compliance, which they are given authority to do under GLBA. Most importantly, the PLMA provides for streamlined administrative licensing requirements for non-resident producers. Under the model, a non-resident person shall receive a non-resident 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; and
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.[4]

These are the four criteria that the NAIC uses to determine if a state satisfies GLBA's reciprocity requirements.

In addition to the reciprocal administrative procedures, there are a number of substantive provisions in the PLMA that provide for reciprocal recognition by a non-resident state of a producer's satisfaction of licensing-related requirements in the producer's home state. These include:

1. Surplus lines: The reciprocity provisions of the PLMA also extend to surplus lines producers. A majority of states treat surplus

[4] *Id.* § 8(A)

lines as a distinct license type. Persons holding a surplus lines producer license in their home states shall receive nonresident surplus lines producer licenses unless some other reason for disqualification exists.[5]

2. Limited lines: 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 which restricts the authority of the licensee to less than the total authority prescribed in the associated major line.[6]

3. Continuing education requirements: A nonresident state must accept the producer's satisfaction of the producer's 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.[7]

4. Exemption from examinations: Every state requires individual resident producer applicants to pass an examination before being granted a producer license in a particular line of authority. Non-resident producers are exempt from examination requirements under the PLMA's reciprocity provisions.[8]

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[5] *Id.* § 8(D).
[6] *Id.* § 8(E).
[7] *Id.* § 16 (B).
[8] *Id.* § 9(A).

5. Limitations on nonresidents: The PLMA requires the non-resident regulator to waive any licensing requirements specific to non-residents.[9]

6. Change of home state: 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.[10]

7. Licensing fees: 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.

b. Uniformity

The PLMA establishes standards for key areas of producer licensing that, if enacted by the states, would result in largely uniform licensing procedures across the country. Most important is the requirement that a person (individual or business entity) that sells, solicits, or negotiates insurance must be licensed. The PLMA defines the three key terms "sell," "solicit," and "negotiate," [11] and lists a number of exceptions to the licensing mandate, describing when an individual or business entity is not required to be licensed despite engaging in the sale, solicitation or negotiation of insurance.

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[9] *Id.* § 16(A). The PLMA differs from the GLBA in that the model act does not exempt non-resident countersignature requirements from this provision. Thus, under the PLMA, a regulator would not be authorized to enforce his/her state's non-resident countersignature requirement. With this action, the NAIC intended to encourage states to do away with countersignature requirements. The Council's successful challenges to all remaining state non-resident countersignature laws rendered this moot

[10] PLMA § 8(C).

[11] *Id.* § 2.

In addition, the PLMA addresses a number of other licensing requirements, including entity licensure,[12] license denials, nonrenewals and revocations, lines of authority (major lines and core limited lines), appointments, pre-licensing education and examination requirements, and other issues.

2. NAIC Uniform Licensing Standards

The Uniform Licensing Standards (ULS)[13], initially adopted by the NAIC in 2002, compliment and clarify the uniformity provisions of the PLMA. The intent of the ULS is to provide baseline standards for the implementation of the PLMA provisions. Essentially, the ULS were designed to assure state regulators who, for the first time, were going to license non-resident producers through a reciprocity process rather than a full licensing process, that the producers' resident states had sufficiently robust licensing requirements and processes, thus earning the right to be licensed as non-residents in reciprocal states. In other words, trust but verify.

The ULS focus on many of the same broad areas as the PLMA provisions, but get more specific and provide more detail. Generally, the standards focus on the following:

1. licensing qualifications (e.g., age, citizenship verification, education);
2. pre-licensing education (e.g., hours required, exemptions);
3. examinations (e.g., content, subject areas, administration, waivers);
4. integrity/background check standards (e.g., personal standards, criminal database and NAIC database checks);
5. license application process (e.g., NAIC Uniform Application, license term, renewal/continuation);
6. appointment process (e.g., procedure, renewal);

[12] The entity licensure provisions are considered "optional." When the PLMA was adopted, a number of states did not require entities to be licensed.
[13] Nat'l Ass'n of Ins. Comm'rs, *Uniform Resource Licensing Standards* (Feb. 14, 2007)

7. continuing education requirements (e.g., hours required, terms, subject areas, waivers, study methods (live/on-line)); and
8. lines of authority, including limited lines (e.g., definitions of core limited lines, testing, and continuing education).

Despite the regulators' intent, many of the "standards" do not create a single standard or baseline for the states to meet, rather they serve more as suggestions or a menu of options to guide state action. In fact, some of the standards specifically say the "standard" is whatever each state determines it to be.

The NAIC has spent most of the last decade encouraging the states to adopt the ULS, but there remains a significant lack of uniformity across the states, particularly on licensure requirements such as fingerprinting/background checks, where divergent state approaches are extremely burdensome on producers.[14] Even if there were broad state compliance with the ULS, however, producer licensing requirements would be far short of uniformity for the simple reason that a significant number of the "uniform standards" do not create a single requirement for the states to meet, rather they serve more as suggestions or a menu of options to guide state action.

Of the 42 standards, there are roughly 17 that do not require the states to meet a uniform requirement. Some of the 17 are clearer than others in their lack of standard-setting (Standard 12, for example, provides that the standard for failure of examination and re-testing is to be "determined by each state"), but all give the states flexibility that is unwarranted if the goal is to have the same requirements in every state.

3. The National Insurance Producer Registry (NIPR)

The National Insurance Producer Registry (NIPR) serves as the electronic resource for on-line resident and non-resident licensing of producers and other

[14] NAIC Producer Licensing (EX) Working Group, Producer Licensing Assessment Aggregate Report of Findings, Feb. 19, 2008, p. 14.

producer-related transactions, such as appointments, terminations, and address changes. The industry utilizes NIPR's Producer Database (PDB) for licensing and appointment information, and the State Producer Licensing Database (SPLD) provides access to producer information for use by regulators.

NIPR's electronic processes enable producers to submit non-resident applications, and transmit appointment, termination and other information to regulators in multiple states in a single transaction. For example, by submitting one application to NIPR, a producer can be licensed as a non-resident in every state and the District of Columbia.

Producers can submit applications directly to the NIPR or can utilize one of several independent service providers with which NIPR has special arrangements.

Although NIPR's electronic processes enable one-stop licensure for producers, thus simplifying the process, a number of states continue to require additional information with a producer's application. The states differ with respect to fees, fingerprinting, and certifications, among other requirements. In the event an administrative action or other similar information is disclosed in an individual application or renewal application, states generally require that additional information be submitted before the application is reviewed. The NIPR process attempts to make these additional requirements a streamlined part of the licensing process for producers, and the website contains state-by-state lists of the states' additional information requirements, as well as detailed information as to how to maneuver the license application process.

As of this writing, states are making active use of NIPR electronic processing as follows:

- 50 states, DC and the Virgin Islands (VI) electronically process nonresident licenses for individuals; Puerto Rico (PR) is in development

- 44 states, DC and VI electronically process nonresident licenses for business entities; CA, FL, NY and WA do not use NIPR for nonresident licenses for agencies; MA is scheduled to be on NIPR soon; RI does not license agencies; PR is in development
- 45 states, DC, PR and VI electronically process nonresident renewals for individuals; FL, ME, MI, NC and VA have perpetual licenses or do not require renewals
- 38 states, DC, PR and VI electronically process nonresident renewals for business entities; CA, FL, KS, NM, NY and WA do not use NIPR for nonresident renewals for agencies; MI, MT, ND, RI, SD, VA and WY have perpetual licenses or do not require renewals
- 42 states, DC and VI electronically process resident licenses for individuals; AR, CA, FL, KS, NY, PA, and SC do not use NIPR for resident licensing; PR and WA are in development
- 42 states, DC and VI electronically process resident licenses for business entities; AR, CA, FL, KS, NY, PA and WA do not use NIPR for resident licensing; MA is scheduled to be on NIPR soon; PR is in development
- 40 states, DC, PR and VI electronically process resident license renewals for individuals; AR, CA, KS and NY do not use NIPR for resident renewals; FL, ME, MI, NC, and VA have perpetual licenses or do not require renewals; WA is in development
- 37 states, DC, PR and VI electronically process resident license renewals for business entities (AR, CA, FL, NM, NY and WA do not use NIPR for resident renewals; KS, MI, MT, ND, SD, VA and WY have perpetual licenses or do not require renewals)
- 40 states and DC electronically process appointments and terminations; 13 states and DC process appointment renewals (AL, CT, DC, IA, KY, LA, NE, NJ, NM, NC, ND, OK, WV, WY); 9 states do not require appointments (AK, AZ, CO, IL, IN, MD, MO, OR, RI)

(MA is only state that processes appointments that does not utilize NIPR)

- All states, DC, PR and VI electronically accept address change requests
- All states, DC, PR and VI accept electronic funds transfer
- All states, DC, PR and VI participate in the attachments warehouse for submission and storage of application attachment information.

The Non-Admitted and Reinsurance Reform Act (NRRA) provisions of the Dodd-Frank Act, enacted in 2010, required states to participate in a national on-line licensing system for surplus lines licensing, or risk losing licensing fees. The intent was to push the states to utilize NIPR for surplus lines licensing. It appears to have worked. According to NIPR, every state except Washington is utilizing the NIPR on-line system for surplus lines licensure, and Washington is working with NIPR with the intent of utilizing the national on-line licensing process in future.

- 49 states, DC and VI electronically process nonresident surplus lines licenses for individuals (WA does not)
- 47 states, DC, PR and VI electronically process nonresident surplus lines renewals for individuals (WA does not; FL and ME do not require renewals)
- 31 states, DC and VI electronically process nonresident surplus lines licenses for business entities (WA does not; 18 states do not require it)
- 30 states, DC, PR and VI electronically process nonresident surplus lines renewals for business entities (WA does not; 19 states do not require it)
- 49 states, DC and VI electronically process resident surplus lines licenses for individuals (WA does not)

- 47 states, DC, PR and VI electronically process resident surplus lines renewals for individuals (WA does not; FL and ME do not require renewals)
- 32 states, DC and VI electronically process resident surplus lines licenses for business entities (WA does not; 17 states do not require it)
- 30 states, DC, PR and VI electronically process resident surplus lines renewals for business entities (NM and WA do not; 18 states do not require it)

4. Uniform Applications

After adoption of the PLMA, the NAIC drafted and adopted uniform applications for individuals and business entities. These applications, which are used by NIPR, provide a single format for applicants to submit information for obtaining licenses. The applications allow applicants to apply for most license types (agent, broker, producer, surplus lines broker), major lines of authority (variable life/annuity, life, health, property, casualty, personal lines), and core limited lines of authority (credit, car rental, crop, travel, surety) that are offered by the states. Because the applications are used by all states, they include more information than a single state's application might require, but, like the use of NIPR, many believe that the convenience of a single application outweighs the burden of over-reporting.

In order to make the application process more streamlined, NIPR added its attachments warehouse several years ago. The attachments warehouse allows applicants to electronically file additional information required by states in the application process. Prior to this electronic process, applicants were forced to submit administrative actions, for example, directly to each state even while submitting their application electronically through the single NIPR portal. The NIPR warehouse makes the entire process electronic.

5. NAIC Implementation Efforts

In addition to the PLMA and ULS, and the efforts of NIPR to smooth the licensing differences among the states, the NAIC has actively sought to encourage the states to move toward reciprocal and uniform licensing requirements. The regulators have a standing Task Force on producer licensing that meets regularly throughout the year and has agreed-upon charges that guide its activities in pursuit of the holy grail of a streamlined producer licensing process across the country. The Producer Licensing Working Group similarly meets regularly, and does much of the ground work for the Task Force. Moreover, there have been other regulator groups created to focus on specific issues – the NARAB Working Group reviewed and certified the states for NARAB compliance in 2002 and again in 2011; the Producer Licensing Coalition met in the late 2000s, and included industry members to allow for direct dialogue between regulators and regulated.

The regulators have also adopted materials to assist both state regulators and industry in interpreting and complying with the PLMA and ULS. After the PLMA was adopted in 2000, the NAIC drafted an FAQ document to help explain the provisions; they also adopted guidelines that addressed issues such as licensable and non-licensable activities. More recently, the regulators adopted a Producer Licensing Handbook that brings together and explains in fairly clear terms the model, the standards, and how the states interpret and implement the requirements. It is designed for regulators, but is available to the public as well.

Assessment Process and NARAB Re-Certification: In 2008, the NAIC undertook an assessment process to determine the extent to which states were compliant with the reciprocity and uniformity provision of the PLMA and ULS – as well as the goals of the organization. [15] The assessment was a significant undertaking: after a state-by-state survey and self-assessment by each state, a group of regulators and

[15] NAIC Producer Licensing (EX) Working Group, Producer Licensing Assessment Aggregate Report of Findings, Feb. 19, 2008; NAIC Producer Licensing (EX) Working Group, Producer Licensing Assessment Progress Report, Mar. 16, 2009.

NAIC staff reviewed each state's licensing laws and requirements, and then conducted on-site reviews in each state insurance department. The reviews included meetings with insurance department commissioners and staff, analysis of each insurance department's self-assessment, and follow-up discussions addressing areas where the states fell short of the reciprocity and uniformity goals. The initial assessment was done in 2008, and a follow-up was conducted in 2009. There has not been any state assessment since that time, although a follow-up is scheduled for sometime in 2014.

The results of the assessment were mixed. The regulators' report of findings found that there was high compliance among the states with several of the uniform licensing standards. Some of these were substantive standards, so compliance is welcome: age, citizenship, personal qualifications, and appointments. But others are meaningless, such as the standards that are "to be determined by each state" (as discussed above). On a number of more significant standards, the assessment found low compliance. These involve issues such as fingerprinting, lines of authority (major lines and limited lines), use of the NAIC uniform application for residents, and education requirements and waivers.

With respect to reciprocity, the assessment report indicated that 47 states appeared to satisfy the standards required for NARAB certification, but noted that those standards were developed in 2002 and were in need of updating by the time of the assessment (2008). To their credit, the regulators followed up the assessment by updating the NARAB certification standards and undertaking a "re-certification" process. That process, which culminated in late 2011, certified that 39 states and the District of Columbia met the NARAB reciprocity standards. Thus, a dozen years after the enactment of GLBA's NARAB provisions, 11 states (and 5 U.S. territories) remain out of compliance with GLBA's reciprocity standard. The states that failed to qualify are: California, Florida, Georgia, Hawaii, Missouri, New York, New Mexico, Pennsylvania,

Tennessee, Texas, and Washington.[16] Seven of these states had previously been certified as reciprocal but failed to meet the recertification standards. Moreover, it is important to keep in mind that among the "reciprocal" jurisdictions, there remain differences outside the non-resident reciprocity standards that continue to cause compliance difficulties for – and impose compliance costs on – producers. These will be addressed more fully below.

II. Despite Progress, Inconsistencies Among the States Cause Continuing Compliance Difficulties

A great deal of progress has been made in reforming the producer licensing process since enactment of GLBA in 1999. The NAIC and most of the state insurance regulators have actively pursued reciprocity and uniformity through the PLMA, the ULS, uniform applications, and other efforts; NIPR has enabled many of the differences among the state licensing requirements to be largely invisible to applicants through the magic of technology. As a result of these efforts, as the attached spreadsheet of state requirements illustrates, many of the states have similar statutory and regulatory requirements (based on the NAIC's PLMA and licensing standards).

Despite all this work and progress, however, inefficiencies and inconsistencies remain that affect every insurer, producer and insurance consumer, imposing costly regulatory requirements that waste time and money and provide no additional consumer protections. Reciprocity has helped, but, as noted above, more than a dozen years after enactment of GLBA's NARAB reforms, there remain 11 states still out of compliance with GLBA's reciprocity standard. Moreover, even among the states deemed reciprocal, inefficiencies and inconsistencies remain that do nothing but impose unnecessary regulatory burdens that benefit no one.

[16] NAIC NARAB (EX) Working Group, First Supplement to the "Report of the NARAB Working Group: Recommendations of States Continuing to Meet Reciprocity Requirements of the Gramm-Leach-Bliley Act," Sept. 2011, available at http://www.naic.org/committees_ex_pltf_narabwg.htm.

This begs the question: why are the states falling short? Why are they unable to develop a comprehensive, streamlined insurance producer licensing regime?

The simplest answer is that it is human nature. There are 56 insurance jurisdictions in the United States (including the states, the District of Columbia, and the territories), and each has authority to regulate producer licensing. Reaching agreement on anything, let along everything, is nearly impossible. Since enactment of GLBA, there has been significant improvement in reciprocity and uniformity across the states – motivated both by the federal pressure, as well as the realization that at least some degree of conformity among state requirements is good for everyone: consumers, regulators, and industry players. Despite similar laws and rules, however, until there is complete licensing uniformity among the states – in statute, rule, interpretation, and implementation – producers and insurance consumers will continue to suffer from unnecessary regulatory burdens and costs.

Moreover, the states are not completely reciprocal or uniform because they do not have to be. There is nothing forcing the states to do anything beyond the bare minimum in terms of reciprocity and uniformity. As long as GLBA's reciprocity standards are met – a fairly low standard – states can do anything they want without the threat of federal intervention. And without a federal threat, there is nothing – except perhaps shame and local political pressure – to get them to make changes they do not want.

To the extent a state remains non-reciprocal and non-uniform, it is usually because (1) they like the way they do things, (2) they do not trust their fellow states to do things adequately, or (3) both. This is especially true of the "big states" such as California, Florida and New York, which have large, sophisticated insurance departments that dwarf those of the smaller states.

This self-interest and mistrust is evident throughout the NAIC's producer licensing deliberations. The regulators recent attempt at business entity licensing reform provides a good example:

For a number of years, the NAIC has been discussing the possibility of reforming the licensing requirements for business entities. As discussed above, business entities that employ individuals who sell, solicit or negotiate insurance are considered to be producers under the PLMA,[17] and almost every state requires – or permits – business entities to be licensed as producers.[18] As part of the licensure process, there are a number of requirements for licensing business entities that differ from individual producer license requirements. These requirements also differ among the states. These differences have long been a potential target for reform, and, following the results of the 2008 Assessment, as well as discussions among regulators, industry players, and others, reform of the agency licensing process was seen as relatively straightforward.

The reform efforts focused on the following regulatory requirements:

1. ***Licensing of Branch Locations.*** Although most states issue a single license for a business entity that includes all branch locations of the entity, some jurisdictions require each branch location of a business entity to be separately licensed, and a number of jurisdictions require a business entity to register or list (but not separately license) each branch location.
2. ***Affiliations.*** Nearly half of the jurisdictions require a business entity to list on its license application all producers affiliated with the entity. Many of these states require affiliated producers to be listed by branch location; and a few states require an individual producer to indicate on his/her licenses every business entity with which the producer is affiliated.
3. ***Designated Responsible Producer.*** The PLMA includes a provision requiring a business entity to designate an affiliated producer to

[17] PLMA § 2(A).
[18] Some states, like Iowa, provide agency licenses as a courtesy to their resident agencies, in order to allow them to obtain non-resident agency licenses from other states on a reciprocal basis.

be responsible for the entity's compliance with regulatory requirements. This requirement is in place in almost all jurisdictions, although there are variations across the states: (i) Over half of the jurisdictions require the DRP to hold the same line of authority as the business entity; and (ii) most jurisdictions require the DRP to be licensed prior to licensing of the business entity.

4. ***Filing of Organizational Documents.*** At least twenty (20) jurisdictions require business entities to file organizational documents for residents, such as articles of incorporation, with the business entity application.

5. ***Proof of Financial Responsibility.*** At least six (6) jurisdictions require the filing of proof of financial responsibility with the business entity license for residents.

6. ***Name Approval/Registration.*** Nearly half of the jurisdictions require a business entity to obtain regulatory approval of the entity's name prior to its use. Nearly half also require the assumed name to be approved prior to use, as well; the rest simply require the filing of the assumed name prior to use, as required by the PLMA.

7. ***Appointments.*** Half of the jurisdictions require business entities to be appointed by the insurers with which they do business; and a few states require each branch location of a business entity to hold an appointment. Note that in nearly twenty states, the appointment of a business entity eliminates the requirement for each individual producer working for that business entity to hold an appointment with the insurer.

8. ***Business Entity Renewals.*** The renewal date for business entities varies among jurisdictions and a uniform standard has never been firmly established. While most jurisdictions renew business entities on a specific date, the renewal date is not uniform across these states. For example some of these states renew all business entities on a date certain, such as September 1. Other states renew business entities on the date the initial business entity license was issued.

9. **Commercial Lines Multi-State Exemption:** The PLMA contains the following commercial lines exemption for business entities: "A person (including business entity) 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." [PLMA section 4] Most – but not all – jurisdictions have adopted this exemption.

The business entity reform process started several years ago with high hopes that significant reform and streamlining could be accomplished. There was even some talk of eliminating the business entity licensing requirement altogether. In predictable fashion, however, the reforms were whittled down through the NAIC committee process, and in late 2012, the NAIC's Producer Licensing Task Force considered a very short list of proposed reforms for business entity licensing. These, too, were killed when several states, led by the influential big states, raised objections. This was actually the second time the Task Force has considered adopting the reforms, an earlier attempt was also scuttled at the last second due to big-state opposition. After another year of deliberations, the Producer Licensing Task Force adopted a number of watered-down reforms pushed by the big states. The Council and other industry groups opposed the reforms, fearing they would hurt, rather than help, efforts to achieve common sense uniform licensing business entity requirements across the country. Ultimately, the proposed reforms were never considered for adoption by the full NAIC membership.

The defeat of the business entity reforms – "low hanging fruit" as one regulator called it at the beginning of the reform effort – is not surprising, nor is it unique to this issue. It is illustrative, however, of how difficult it can be to get even simple and seemingly obvious changes agreed to by all the states.

Differences in State Licensing Requirements

Although statutory and regulatory language may be similar across the states (and is included in the attached chart), the states have different interpretations, different implementation schemes, and different administrative requirements. The real differences and difficulties come to light when a producer seeks to comply with those laws and rules and faces the state-specific, sometimes undefined, requirements that must be met.

The information below is intended to provide an overview of the types of problems producers confront when they apply for a license and maintain continuing compliance. It is not a comprehensive list of every compliance difficulty producers face. The information has been collected from a number of sources, including direct review and analysis of state laws and rules, as well as discussions with producers across the country who comply with these requirements on a daily basis.

Licenses: Many Council member firms continue to hold hundreds of resident and non-resident licenses across the country. For some, the number of licenses has actually increased since enactment of GLBA. One Council member, for instance, has approximately 5,000 licensed individuals, 3,100 of whom are licensed in multiple jurisdictions, holding 76,100 licenses across the country. Another member has approximately 1,400 individuals holding 12,000 licenses nationwide. In addition to initial licenses, Council members face annual renewals in 51-plus jurisdictions, and must satisfy all the underlying requirements, such as pre-licensing and continuing education, as well as post-licensure oversight. This redundancy costs Council members anywhere from several hundred thousand to many millions of dollars annually to administer.

Admittedly, many of these licenses are the result of reasonable regulatory requirements: no one argues with a state's right to require an individual or agency that sells, solicits, or negotiates insurance to hold a producer license. But some of the

states go well beyond the minimum, requiring, for example, that each branch of an agency be licensed. Florida goes so far as to require branch licenses for any branch of an agency where an individual producer holds a Florida license, including both residents and non-residents. Michigan and several other states have similar requirements. Montana, reportedly, requires producers who telecommute more than 100 miles from their office to establish a licensed branch at their home. These additional agency licenses, in turn, lead to the need for additional licenses, for designated responsible producers (DRPs), for example, as well as other additional compliance burdens, such as fingerprinting.

To add to the confusion, some states still require paper licenses to be mailed to the producer (as opposed to electronic licenses that can be downloaded through the insurance department website or service provider's website, which many states permit) – and some states refuse to fax or email the license, so they must be delivered by the US mail or similar means. If the paper license is not received by the producer – if it is lost in the mail or simply never sent – at least one state requires the producer to pay a fee to have it reissued. This can cause delays in carrier appointments (which most states require) and, ultimately, in the producer's ability to engage in business.

In addition, the lines of authority for licenses do not match in all states. For example, some states include surety as a limited line under the property line of authority, while other states issue surety as its own line of authority and require an examination. States also differ in how they define certain license types, such as MGAs, TPAs, and surplus lines brokers. This causes confusion for producers (and regulators in many cases) as to whether someone holds the appropriate license in a state. The NAIC has tried to overcome this with the PLMA's definitions, but it still remains a problem in a number of states.

Other License Issues:

- Some states refuse to print the expiration date on the license, which, although not essential, would be helpful to the producer seeking to maintain a license.

- Many states require Certificate of Authority / Secretary of State Qualification before the insurance department will issue a license.
- Some states require the designated responsible producer (DRP) to be an elected officer of the agency.
- Over half the states require business entities to be licensed by line of authority; the rest do not.
- Some states require submission of officers list for entities.
- Address changes are not consistent: a few states allow address changes to be done on-line; some require address changes to be completed by paper; some require the DRP to sign the address change form as well as other documents.
- Timing for renewals differs among states: Most states renew entity licenses on a two year cycle (resident and nonresident); some renew yearly; some renew every three years (resident and nonresident); a number of states have perpetual non-resident licenses as long as the resident license is active; some states have different renewal cycles depending on the license type.
- For individuals, most states renew by date of birth month as follows:
    - last date of birth month biennially
    - last date of birth month every 4 years
    - last date of birth month triennially
    - licensee's birthday annually
    - licensee's birthday biennially
    - licensee's birthday triennially
    - first day of licensee's birth month biennially
    - last day of licensee's birth month biennially
    - last day of issuance month, every 2 years
    - last day of month of issuance every three years
    - date of issuance biennially
    - agents birth month biennially
    - a few states have perpetual licenses provided the individual satisfies continuing education requirements.

- Specific state questions: Although states use the NAIC's uniform application, a number of states are adding state specific questions to initial and renewal applications. The examples below are all recent requirements from different states, and are in addition to the standard, uniform background questions:
  - Are you a disabled veteran and requesting exemption from the state licensing fee and filing a DD314 form?
  - Since the last renewal or initial application in this state, have you failed to pay state income tax or comply with any administrative or court order directing the payment of state income tax?
  - Excluding traffic violations and first offense DWI:
    - Do you currently have any pending misdemeanor or felony charges (by indictment, information or any other instrument) filed against you in this state, in any other state or by the federal government?
    - Have you ever been convicted of any misdemeanor or felony offense in this state, in any other state or by the Federal government?
    - Have you ever had adjudication deferred on any misdemeanor or felony charge or offense in this state, in any other state or by the federal government?
    - Have you ever served any period of probation for any misdemeanor or felony offense in this state, in any other state or by the federal government?
  - Are you legally blind? Are you a veteran?
  - Provide your driver's license.
  - Has licensee earned non-resident income in this state?
  - Since the last renewal or initial application in this state, have you been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld, or have you been sentenced as a first offender?

- Since the last renewal or initial application in this state, have you failed to pay state income tax or comply with any administrative or court order directing the payment of state income tax?

Appointments: Like licenses themselves, Council members hold literally thousands of appointments with carriers. One of the smaller Council members holds approximately 2,500 carrier appointments, with one individual in that organization holding over 700. This regulatory burden is immense, and can have a significant impact on a producer's ability to do business. Moreover, the value of reporting appointments and terminations to the regulators is not clear. What is the purpose? There are 9 states where reporting of appointments and terminations is not required. Are consumers somehow less protected in those states?

Appointment inconsistencies:

- Forty states and the District of Columbia require appointments and terminations of appointments to be reported; 13 states require appointment renewals to be reported (which contradicts the NAIC Uniform Licensing Standards (ULS)); some states require producers to be appointed, but do not require appointments to be reported.
- Some states require business entities to be appointed, some require individuals to be appointed, some require both.
- Some states consider appointments perpetual for individuals, some for entities; some require renewals.
- Some states require appointments for all licensed producers – even those, such as account managers, who do not place business with carriers. This creates the awkward situation of a producer seeking "courtesy" appointments from carriers for which the producer will not place any business. Most carriers do not provide appointments to individuals unless business is associated with the individual.
- Some states require a producer to be appointed before affiliating with an agency; some require continuous appointment and will de-activate the producer's license

if appointment is terminated. Florida gives a producer 48 months to obtain a new appointment after a termination.

- Carriers generally require their own forms and due diligence be used at time of appointment.

Affiliations: Nearly half the states require individual producers to be "affiliated" with an agency in order to be licensed. Some of these states require the affiliation to be with a specific branch office; some of these states charge fees for each affiliation or each line of authority; some require only designated responsible producers to be affiliated; some require only residents to be affiliated.

Processing affiliations appears to be particularly inconsistent: many states require a special letter or form to process additions /terminations for DRP affiliations; some states require a fee to process DRP affiliations additions/terminations; some states require paper forms to process affiliations, others process affiliations online through either departments of insurance (DOI) websites or state-specific vendors.

Education: Pre-licensing and continuing education requirements are two areas that are discussed in detail in the ULS. And the process has improved. Nonetheless, the states remain inconsistent in terms of hours required (substantive and ethics hours), whether the classes must be live or can be on-line, and whether they must include instruction in state law issues as well as the more broadly applicable subject matter.

- Nearly half the states do not have pre-licensing education requirements. Individuals must complete self-study and take an examination when they are prepared and ready. The rest of the states require some amount of pre-licensing education. The ULS standard is 20 hours per line of authority; a number of states are not consistent with this standard.
- Some states provide for extensions of continuing education (CE) requirements to provide flexibility in order to complete the required hours, while others institute a

fine to renew or reinstate the license if the CE hours are not complete and license renewed by expiration date.

- States differ in the method and tracking of CE hours. The variations include:
  - proctored or monitored on-line CE courses/exams
  - classroom proctored/monitored classroom courses
  - on-line – no monitoring required
  - no repeating of courses
  - vendors take the CE information and pass to the state
  - tracking of CE status is available either on DOI website or by vendor. states do not track and all Certificates must be submitted at time of renewal
- Some states require producers to present proof directly to the state DOI to show the hours/courses have been completed or states will not renew a license, even though this information does not appear on state DOI websites or by vendors used by states to manage CE.
- Some states require product-based continuing education or training, in addition to the published standards. These are outside CE mandates and usually not included with state instructions, and include:
  - long term care
  - annuities
  - flood
  - surplus lines
  - ethics
  - variable

Other Licensing Inconsistencies:

Administrative Actions: The NIPR Attachments Warehouse is a secure regulatory database through which producers or authorized submitters can electronically meet state filing requirements for reporting of regulatory and other legal actions required to be filed with applications. The intent is that files entered in the warehouse meet the notice

requirements for administrative, civil and criminal actions pursuant to state laws which require reporting and providing documentation of an action within 30 days for all participating states. Despite this safe harbor, however, reportedly some states continue to require notice be given according to that state's preferred method - mail or fax. As a result, what should be an efficient notification method remains a game of multiple reporting methods.

There are also State Action Reporting Requirement differences based on the offense:

- **Idaho** – Requires a §1033 waiver, approved by the licensees' resident state, be included with notification of a felony. This is required even if the resident state does not require a §1033 waiver.
- **Texas** – Requires notification of two or more DUI convictions, even though all other states do not require disclosure of DUI convictions.
- **Arkansas** – Gives an administrative action when a non-resident license is not renewed if the licensee's resident license was not renewed because of CE non-compliance. All other states just cancel a non-resident license if a renewal is not received.
- **New York** – Requires an individual whose name appears in an agency settlement or consent to answer "yes" on background questions, even though the individual was not named in the Action.

Background Checks: The NAIC ULS calls for all states to implement fingerprint/background checks. A majority of states currently require background checks for resident applicants as a prerequisite to licensure, but only half conduct background investigations after receipt of fingerprints. There remain a small number of states that require fingerprints for non-resident applicants.

Surplus Lines Licensing: As noted above, every state except Washington uses NIPR for surplus lines licenses in accordance with federal law. Despite that, there are still a number of licensing differences among the states:

- In Florida, if the producer has not held their resident surplus lines license for a year, a 60 hour pre-licensing course is required before they may take the state examination. Before any of this can be scheduled, the producer must sign an affirmation form and get fingerprinted for a background check.
- 30 states issue surplus lines licenses or surplus lines line of authority (LOA) to entities; and nearly 20 state issue a surplus lines license type; 10 states issue surplus lines as an LOA but not a license type.
- There are more than a dozen different license type names for a surplus license type.
- Maryland, Ohio and Virginia require a bond for a resident surplus lines producer.

Conclusion

Although insurance producer licensing processes have improved over the last decade and a half – due to the enactment of the NARAB provisions of GLBA and the reforms put in place by the states since that time – there remain redundancies, inefficiencies and inconsistencies across the states that result in unnecessary costs on insurance producers and consumers due to the regulatory and administrative burdens the requirements impose. This paper and the attached spreadsheet list the numerous inconsistencies among the state licensing requirements that currently exist despite more than a decade of diligent effort by regulators, legislators, and industry stakeholders. It is clear, based on this, that more needs to be done to move the states to the point where producer licensing is, in the words of the first NAIC president, spoken in 1871: “a system of insurance law which shall be the same in all states – not reciprocal but identical, not retaliatory but uniform.”

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