



NARAB (EX) Working Group
Monday, June 2, 2008
8:30am – 10:00am
San Francisco Marriott
Nob Hill – B2 Level

1. Roll Call

Roger Sevigny, Chair	New Hampshire
Linda Hall	Alaska
Thomas Sullivan	Connecticut
Bill Deal	Idaho
Michael McRaith	Illinois
Susan Voss	Iowa
Mary Jo Hudson	Ohio
Kim Holland	Oklahoma
Leslie Newman	Tennessee

2. Consider Recommendation to Working Group on Reciprocity Certification for Montana
3. Consider Initial Recommendation to Working Group on Whether Issues Identified Impact GLBA Reciprocity (Attachment One)
4. Opportunity for Public Comments Regarding Recommendations
5. Any Other Matters



National Association of Insurance Commissioners

MEMORANDUM

To: NARAB (EX) Working Group

From: NAIC Legal Division

Date: May 23, 2008

Re: Update on Certification Review of Additional States as Complying with Requirements of Producer Licensing Reciprocity

The National Association of Insurance Commissioners (“NAIC”) issued the NAIC Producer Licensing Assessment Aggregate Report of Findings (“Producer Licensing Assessment Report” or “Report”) on February 19, 2008. One of the primary purposes of this Report was to review those states certified as compliant by the NARAB (EX) Working Group and validate their continued compliance with the reciprocity provisions of the Gramm-Leach-Bliley Act (“GLBA”). On May 1, 2008, the NAIC Legal Division prepared a memorandum advising the NARAB Working Group on additional states that met the criteria established by the GLBA for providing reciprocity in the licensing of non-resident insurance producers, and recommending their certification by the NAIC as reciprocal jurisdictions.

This memorandum was posted for comments by regulators and interested parties on May 2, 2008, and subsequently the Working Group certified the District of Columbia, Indiana and Missouri as being reciprocal under GLBA. The Working Group received written comments on Montana, New Mexico and Tennessee, and this memorandum is intended to provide an update on the reciprocity status of these three States.

Montana

In our prior memorandum the Legal Division recommended that Montana be certified as a reciprocal jurisdiction. In its letter dated May 4, 2008, the Independent Insurance Agents and Brokers of America, Inc. (IIABA) raised certain issues with respect to Montana, including (1) verification of continuing education compliance; (2) appointment requirements; (3) requiring the filing of articles of incorporation; and (4) requiring a U-4 confirmation of status to be submitted. These comments are accessible for review at http://www.naic.org/documents/committees_ex_narabwg_comments_iiab.pdf.

With the exception of requiring the filing of articles of incorporation (which was addressed previously in the 2002 Report of the NARAB Working Group), all these issues were in reference to two web pages maintained by the Montana Department of Insurance providing instructions for completing the (1) Individual Producer Application for License, and the (2) Business Entity

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Application for License. The Legal Division has confirmed with the Montana Department of Insurance that these instructions have been removed from these web pages and the applications in question, and that Montana does not engage in these licensing practices. Therefore, it is the opinion of the Legal Division that Montana may be certified by the Working Group and the NAIC as reciprocal under the GLBA.

New Mexico

In our prior memorandum, we noted that New Mexico has effectively eliminated the distinction between resident and non-resident applicants in the state. Comments were received by the Working Group raising issues concerning continuing education requirements caused by this practice. In addition, certain questions were raised by New Mexico's practices with respect to non-resident surplus lines brokers.

New Mexico has advised the Legal Division that it is considering issuing guidance commenting upon and clarifying certain GLBA reciprocity issues as they affect New Mexico resident and non-resident licensees. However, New Mexico has also advised the Legal Division that it will not be in a position to issue this guidance prior to the NAIC's Summer National Meeting. Therefore, the Legal Division recommends that the Working Group pend the review of New Mexico's reciprocity certification until such time as New Mexico has formally issued a clarification of its non-resident licensing practices.

Tennessee

Commissioner Leslie A. Newman (TN) has submitted the attached letter commenting on the issues discussed in the prior memorandum of the Legal Division. We recommend that the Working Group post this letter for written comments from regulators and interested parties, and that these issues be addressed as part of the general reciprocity issues analysis at an upcoming meeting of the Working Group.

Conclusion

The NAIC Legal Division recommends that the NARAB Working Group certify to the NAIC membership that Montana meets the criteria for producer licensing reciprocity as set forth in § 321(c) of GLBA. It is further the recommendation of the Legal Division that the issues identified with respect to Tennessee be brought to the attention of the Working Group for further discussion and clarification, and that New Mexico's application for reciprocity be pended until the State has had the opportunity to issue a clarification of its GLBA reciprocity issues.

Attachment



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243-5065
615-741-6007

PHIL BREDESEN
GOVERNOR

LESLIE A. NEWMAN
COMMISSIONER

May 23, 2008

Commissioner Roger A. Sevigny, Chair
NAIC NARAB (EX) Working Group
Department of Insurance
21 Fruit Street, Suite 14
Concord, New Hampshire 03301

RE: Gramm-Leach-Bliley Reciprocity

Dear Commissioner Sevigny,

This letter is written to assist you in your review of Tennessee's laws in order to determine whether such laws allow for Tennessee to be certified as a reciprocal state with respect to the manner it licenses non-resident insurance producers.

I would like to first extend my appreciation to the NARAB (EX) Working Group and the NAIC for this opportunity and its thoughtful consideration of this issue. I would also like to personally thank the NAIC review team that took the time to meet with the Department in January. They were very professional and the report they issued in late January was well done.

The Department believes, and this was supported by the review team's report, that there is one issue which is of concern in finding Tennessee to be reciprocal. The review team's report states the issue as follows:

2. Based on a legal review of the responses and statutory citations provided by the state and an on-site review of the state's licensing processes, the following issues have been identified as to whether Tennessee has satisfactorily demonstrated that it meets the reciprocity requirements of Gramm-Leach-Bliley Act:

a. **Question 1: Under the laws of your state, and assuming licensure is not denied for cause pursuant to state law, are there any requirements imposed upon a non-resident producer seeking licensure in your state license other than the requirements outlined in section 8 of the NAIC Producer Licensing Model Act (PLMA).**

56-6-108(a) provides the requirements outlined in PLMA Section 8, and is consistent with NARAB reciprocity standards. However, 56-6-108(e) provides as follows: "Notwithstanding any other provision of this part, a person licensed as a limited line credit insurance producer or any other type of limited lines insurance producer in the person's home state shall receive a nonresident limited lines producer license, pursuant to subsection (a), **as long as such a license is granted to residents of this state. Such license shall grant the nonresident the same scope of authority as granted a resident insurance producer holding such a license in this state.**" [Emphasis added].

The review team is concerned that the above-indicated provision may be considered to be an additional requirement with respect to non-resident limited line producers, because Tennessee will not issue a non-resident license with the same scope of authority as the non-resident state if Tennessee does not offer this limited line of authority. Tennessee cannot statutorily waive this requirement under 56-6-118(a), which specifically excludes the requirements imposed by 56-6-108. Tennessee advised the review team that it would consider revising its statutes to delete this additional requirement.

This provision has been in the law since 2002 when Tennessee adopted its version of the NAIC Insurance Producer Model Act. This provision prevented Tennessee from being certified reciprocal several years ago and has not been changed since that time. Still, the Department encourages you to reconsider the previous decision not to consider Tennessee a reciprocal state, as the Department truly believes that Tennessee is in full compliance with reciprocity as contemplated by Gramm-Leach-Bliley.

The originator of this provision was the Insurors of Tennessee, and its purpose was clear: non-residents should not be given an undue competitive advantage over resident insurance producers. The Department cannot disagree with the logic of this point.

It is helpful to look at the language of Gramm-Leach-Bliley with respect to reciprocity:

(c) Reciprocity required

States shall be deemed to have established the reciprocity required to satisfy subsection (a)(2) of this section if the following conditions are met:

(1) Administrative licensing procedures

At least a majority of the States permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home State to receive a license to sell or solicit the purchase of insurance in such majority of States as a

nonresident to the same extent that such producer is permitted to sell or solicit the purchase of insurance in its State, if the producer's home State also awards such licenses on such a reciprocal basis, without satisfying any additional requirements other than submitting--

(A) a request for licensure;

(B) the application for licensure that the producer submitted to its home State;

(C) proof that the producer is licensed and in good standing in its home State; and

(D) the payment of any requisite fee to the appropriate authority.

(2) Continuing education requirements

A majority of the States accept an insurance producer's satisfaction of its home State's continuing education requirements for licensed insurance producers to satisfy the States' own continuing education requirements if the producer's home State also recognizes the satisfaction of continuing education requirements on such a reciprocal basis.

(3) No limiting nonresident requirements

A majority of the States do not impose any requirement upon any insurance producer to be licensed or otherwise qualified to do business as a nonresident that has the effect of limiting or conditioning that producer's activities because of its residence or place of operations, except that countersignature requirements imposed on nonresident producers shall not be deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations under this section.

(4) Reciprocal reciprocity

Each of the States that satisfies paragraphs (1), (2), and (3) grants reciprocity to residents of all of the other States that satisfy such paragraphs.

15 U.S.C.A. § 6751

The purpose of Gramm-Leach-Bliley's reciprocity requirement was clear then and now: insurance producers should be able to sell insurance in multiple states without having to meet the individual requirements of the various states. In addition, states should not be able to discriminate against non-residents in the requirements imposed upon them to sell insurance in such non-resident state.

To view Gramm-Leach-Bliley as requiring the states to issue limited lines licenses to non-residents that it does not issue to residents would view it to require a type of reverse discrimination which would require states to place non-resident producers in a superior position to resident producer. Certainly, Gramm-Leach-Bliley, under anybody's reading, has this effect to some extent. Should a producer's resident state have fewer requirements for licensure than a non-resident, the non-resident is certainly given an advantage of sorts to doing business in the non-resident state. However, the Department cannot believe that Gramm-Leach-Bliley was intended to create a situation where a non-resident would be allowed to sell insurance with a limited lines license in a state which does not issue such licenses to its residents.

The pertinent part of Gramm-Leach-Bliley is as follows:

At least a majority of the States permit a producer that has a resident license for selling or soliciting the purchase of insurance in its home State to receive a license to sell or solicit the purchase of insurance in such majority of States as a nonresident to the same extent that such producer is permitted to sell or solicit the purchase of insurance in its State, *if the producer's home State also awards such licenses on such a reciprocal basis*, without satisfying any additional requirements...[Empahsis added]

It is the Department's position that this provision does not require states to issue non-residents licenses which are not also issued to resident producers. As the italicized portion states, a state must issue a license to a non-resident producer if the producer's resident state also awards such licenses on such a reciprocal basis. If the non-resident state does not issue such licenses to its residents, then no other state will have the opportunity to issue the license to that state's residents on a reciprocal basis. To put plainer, if State A gives its residents a limited lines license which State B does not issue to its residents, State A will never have the opportunity to issue the limited lines license on a reciprocal basis because State B does not issue such licenses. Again, non-resident producers should not be put at a competitive disadvantage with resident producers, but they should also not be given rights not given to residents.

Even should it be decided to not change the past interpretation of Gramm-Leach-Bliley's requirements, it must be stressed that, as a practical matter, this issue has not presented any issues for the Department. Since this provision went into effect in 2003, this Department has not denied a single application for licensure by a non-resident insurance producer as long as the application was accompanied by the items which Gramm-Leach-Bliley allows to be required by the non-resident state. The Department believes this fact is very material in determining whether Tennessee is reciprocal. Regardless of how one may look at some rather obscure provision of the law, reciprocity exists in Tennessee because no non-resident has ever been refused a license.

In conclusion, I would like to thank the NARAB (EX) Working Group and NAIC staff in reconsidering this issue. Tennessee is very proud of its record with regards to reciprocity. It is even prouder about the steps it has taken over the last year in order to implement uniform

Letter to Commissioner Roger A. Sevigny

RE: Gramm-Leach-Bliley Reciprocity

May 23, 2008

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licensing standards as it believes that reciprocity and uniformity are worthy standards to achieve. For the reasons outlined above, the Department urges a finding that Tennessee is a reciprocal state and should be certified as such.

Should you wish to discuss these issues further prior to responding, please feel free to contact either myself or John Morris, Deputy Commissioner for the Department.

Sincerely,

Handwritten signature of Leslie A. Newman in cursive script.

Leslie A. Newman
Commissioner

LAN/jfm

cc: Larry C. Knight, Jr., Assistant Commissioner for Insurance
Daniel Schelp, Managing Attorney, NAIC

MEMORANDUM

To: NARAB (EX) Working Group
From: NAIC Legal Division
Date: May 23, 2008
Re: Additional Issues Identified in Producer Licensing Assessment Report

A. Executive Summary

The NAIC Producer Licensing Assessment Aggregate Report of Findings (“Producer Licensing Assessment Report” or “Report”) was issued on February 19, 2008. A valuable byproduct of this Report was the identification of various requirements imposed upon non-residents that were not specifically addressed within the reciprocity framework developed by the Report of the NARAB Working Group: Certification of States for Producer Licensing Reciprocity (“Report of the NARAB Working Group”) adopted August 8, 2002. The purpose of this legal memorandum is to review the following additional issues and provide advice to the NARAB (EX) Working Group as to whether they impact the reciprocity requirements for states under the Gramm-Leach-Bliley Act (“GLBA”). The preliminary reciprocity indications are provided in parentheses following each item.

- Requiring an underlying life license prior to the issuance of a non-resident variable life license (inconsistent with reciprocity framework);
- Verifying legal work authorization for non-resident applicants who are non-U.S. citizens (not a violation of reciprocity requirements);
- Requiring the designated responsible producer to be licensed or appointed prior to the issuance of a non-resident business entity license (inconsistent with reciprocity framework as applied);
- Requiring a non-resident business entity to submit articles of incorporation (inconsistent with reciprocity framework);
- Requiring individuals seeking a fraternal non-resident license to have an accident/health license and have a fraternal certificate from a company (inconsistent with reciprocity framework);
- Requiring non-resident producers to renew licensure annually, while resident producers renew biennially (inconsistent with reciprocity framework); and
- Verifying an applicant for a non-resident license renewal has paid all undisputed taxes and unemployment insurance contributions (not a violation of reciprocity requirements as applied).

This memorandum also provides a comprehensive list of further additional issues identified during the public comment period and identifies those issues where further research and analysis are warranted.

B. Legal Division Review Process

The reciprocity framework was developed by the 2002 NARAB Working Group and adopted by the NAIC in the Report of the NARAB Working Group. Specifically, the requirements for achieving

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reciprocity are provided under GLBA as codified at 15 U.S.C. § 6751(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).

In preparing this Memorandum, the Legal Division applied the reciprocity framework developed by the 2002 NARAB Working Group. In addition, the Legal Division utilized the information obtained in compiling the Producer Licensing Assessment Report to review these additional issues. Responsive comments received by the NARAB Working Group in May 2008 were also considered. The Legal Division did not undertake a comprehensive review of state laws and licensing procedures. Any preliminary opinions contained within this legal memorandum are contingent upon the accuracy of the information obtained in compiling the Producer Licensing Assessment Report and the individual state reports upon which it is based. These are preliminary opinions of the Legal Division, and as such they are subject to potential revision based upon additional information that may be provided during the review and comment process.

C. GLBA Analysis

1. Requiring an Underlying Life License Prior to the Issuance of a Non-Resident Variable Life License

It is the preliminary opinion of the Legal Division that requiring an underlying life license prior to the issuance of a non-resident variable life license is a violation of the GLBA reciprocity requirements.

One of the stated goals of the state assessment program was to evaluate each state's laws and practices against a compilation of research performed and submitted by the national producer trade associations. The trades originally identified seven states requiring non-resident applicants to hold the life line of authority in their resident state before seeking the variable line in their state, and six states requiring the filing of additional information. The review teams focused on the states' ability to test and issue the lines of authority either separately or combined, but most importantly to ensure the states are able to issue the lines of authority separately and for at least the same scope of authority the applicant has in the resident state. The Legal Division was able to confirm from the individual state reports that it appears that at least

seven states require non-residents to hold an underlying life license prior the issuance of a variable life license to these applicants.

Variable life is a separate line of authority under § 7A(5) of the NAIC's Producer Licensing Model Act ("PLMA"). Unlike other major lines of authority, most states do not have a separate insurance examination for variable life, and applicants must take a combined life and annuities insurance examination in order to be licensed to sell variable life insurance. As a result, states often require resident applicants to hold both a variable life and life producer license. In addition, variable insurance products are hybrid investments containing both securities and insurance features, and for this reason, many states also require a resident applicant to be licensed to sell variable products by the Financial Industry Regulatory Authority, or FINRA. GLBA reciprocity concerns are raised when a state requires a non-resident variable life applicant to obtain qualifications for a life license or to submit proof of a valid life license, because this appears to be an additional requirement under 15 U.S.C. § 6751(c). A producer must be able to obtain a license to sell variable life insurance in a non-resident state without the additional requirement that the producer hold a life license.

While not specifically addressing variable life insurance producer licenses, the 2002 Report of the NARAB Working Group does contain a discussion on 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. 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. This same reasoning is not applicable to variable life producers, and no other exception under GLBA, including the savings provision in 15 U.S.C. § 6751(f), is available to protect this practice. It is the preliminary opinion of the Legal Division that requiring an underlying life license prior to the issuance of a non-resident variable life license is a violation of the GLBA reciprocity requirements. At the direction of the Working Group, further outreach can be conducted, primarily focusing on discussions with the potentially impacted states.

2. Verifying Legal Work Authorization for Non-Resident Applicants who are Non-U.S. Citizens

It is the preliminary opinion of the Legal Division that verifying the legal work authorization for non-resident applicants who are non-U.S. citizens is not a violation of the GLBA reciprocity requirements.

The Legal Division identified 14 states that may require non-resident producer license applicants to provide evidence of a legal work authorization if the non-resident applicant is not a citizen of the United States. Most states implemented this practice because of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (the "Welfare Reform Act"), 8 U.S.C. § 1601, *et seq.*, which restricts the eligibility of non-U.S. citizens to receive state and local benefits. Specifically, § 1621(c)(1)(A) provides that state or local public benefits are broadly defined to include any "professional license...provided by an agency of a State or local government." This has been interpreted by most states to include insurance producer licenses.

States have adopted their own procedures for verifying the work status of non-U.S. citizens. Texas Attorney General Opinion No. JC-0051, issued May 17, 1999, has been interpreted to require the Department of Insurance to verify the immigration status of Canadian and Mexican nationals who are physically present in the United States in order to determine their eligibility for an insurance producer license. Colorado Insurance Bulletin B-1.24 provides that resident and non-resident insurance producers

must provide proof of legal residency for initial and renewal licensure. Other states simply refer to state business practices for enforcing the federal requirement.

The Welfare Reform Act does not address the issue of resident and non-resident license applicants, but simply requires the states to verify work status prior to issuing a license. While some have argued that checking a non-resident producer application for verification of legal work authority would be an “additional requirement” under GLBA, the Welfare Reform Act directs states to carry out this requirement. The rules of statutory construction provide that an implied repeal will only be found where the provisions in the two statutes are in irreconcilable conflict. In the absence of specific authority providing that GLBA is in conflict with the Welfare Reform Act, it may be inappropriate for the non-resident state insurance regulator to delegate this responsibility to the non-resident applicant’s state of residence. Therefore, it is the preliminary opinion of the Legal Division that verifying the legal work authorization for non-resident applicants who are non-U.S. citizens is not a violation of the GLBA reciprocity requirements.

3. Requiring the Designated Responsible Producer (DRP) to be Licensed or Appointed Prior to the Issuance of a Non-Resident Business Entity License

It is the preliminary opinion of the Legal Division that requiring the DRP to be appointed prior to the issuance of a non-resident business entity license is a violation of the GLBA reciprocity requirements.

A major focus of the Producer Licensing Assessment Report and the underlying program was business entity licensing. The Report affirms that a key priority of the national producer trades is the streamlining of business entity licensing. The national producer trade associations reported that one state requires a business entity’s DRP to be licensed before the business entity’s application is accepted. The Report expands on the trades’ information, finding that 36 jurisdictions require the DRP to be licensed prior to licensing of the business entity. With respect to DRP appointments, the trades claimed one state required a business entity’s DRP to hold a carrier appointment before the entity could be licensed. The Report does not include findings specific to this issue.

GLBA does not distinguish between individuals and business entities with respect to the requirements that a reciprocal state may impose. The general reciprocity framework has been accepted to apply to business entity licensing as well as individual producer licensing. Therefore, to the extent a state conditions the acceptance of a non-resident business entity application on an additional submission as to the licensure status of the business entity’s DRP, this practice may violate the GLBA reciprocity requirements.

The designation of a licensed producer responsible for the business entity’s compliance with a state’s insurance laws, rules and regulations stems from § 6B(2) of the PLMA. This provision requires the commissioner to find the DRP has been designated “before approving the [business entity’s] application.” The DRP requirement serves to attach responsibility for regulatory enforcement issues to the individual DRP in addition to the associated business entity. Potential inconsistency with GLBA reciprocity arises if states inadvertently create a *de facto* additional submission requirement by barring the concurrent submission of business entity and DRP applications for licensure. In other words, the practice of requiring the DRP’s individual application to be submitted and approved separately prior to the business entity’s application creates the appearance of an impermissible additional submission requirement for the business entity application.

The potential reciprocity issue is remedied when states accept the business entity's application and the DRP's individual application at the same time. Clearly, the individual application must be processed first to ensure that the DRP is, in fact, licensed. As stated in the Producer Licensing Assessment Report, states should ensure there is a method of concurrent licensure and work to facilitate the licensing of a business entity and DRP at the same time. It is the preliminary opinion of the Legal Division that requiring the DRP to be licensed prior to the issuance of a non-resident business entity license is a potential violation of the GLBA reciprocity requirements, but one that is easily remedied by attention to the timing with which business entity and DRP applications are accepted for processing. Accepting business entity and DRP applications concurrently definitely avoids a violation of the GLBA reciprocity framework.

With regard to requiring a business entity's DRP to be appointed by a carrier prior to the issuance of a non-resident business entity license, the 2002 Report of the NARAB Working Group found that, generally, appointments are permitted under GLBA provided they are not required as part of the licensing process. There appears to be no statutory or administrative basis for conditioning a business entity's licensure on the submission of appointment documentation for an individual producer, especially given that companies rather than producers are subject to appointment requirements. It is the preliminary opinion of the Legal Division that requiring the DRP to be appointed prior to the issuance of a non-resident business entity license is a violation of the GLBA reciprocity requirements. At the direction of the Working Group, further outreach can be conducted, primarily focusing on discussions with the potentially impacted states.

4. Requiring a Non-Resident Business Entity to Submit Articles of Incorporation

It is the preliminary opinion of the Legal Division that requiring a non-resident business entity to submit articles of incorporation is a violation of the GLBA reciprocity requirements.

The Producer Licensing Assessment Report states that national producer trades referred to one state requiring business entities to submit organizational documents, such as articles of incorporation or partnership agreements. The reference does not specify whether the concern is raised as to residents or non-residents. The Report further cites 20 jurisdictions as requiring resident business entity applicants to file organizational documents. For empirical purposes only, this reciprocity analysis assumes that this requirement is applied to non-resident business entity applicants as well.

Organizational document requirements typically arise in conjunction with the concept of Secretary of State registration. The NAIC membership has worked actively to address the industry's concerns in this area, as detailed in the Producer Licensing Assessment Report. The 2002 Report of the NARAB Working Group discussed the reciprocity implications of the requirement to file proof of Secretary of State registration, concluding such requirements were not inconsistent with reciprocity, because they "transcend issues of insurance licensing and relate to basic police powers of States to require registration of business entities." This analysis will focus on requirements pertaining to organizational documents required by the insurance regulator independent of Secretary of State registration requirements.

As discussed above, GLBA does not distinguish between individuals and business entities with respect to the requirements that a reciprocal state may impose. Documentation of a business entity's organizational structure outside of information provided on the NAIC's Uniform Application for Business Entity Insurance Producer Licensing/Registration is an additional submission requirement.

An organizational documentation requirement for non-resident entities appears to be aimed at facilitating communication by providing director and officer contact information to the insurance regulator. This is

an administrative aid rather than a consumer protection measure, particularly because the applicant's resident state may collect the same information and corporate information is readily available in most, if not all, states through the Secretary of State or equivalent web site. The requirement also appears to be imposed by administrative practice rather than statute or regulation.

It does not appear that the savings clause of 15 U.S.C. § 6751(f) is available to protect this practice. The savings clause only protects state requirements that are consistent with the GLBA reciprocity framework. As discussed above, this practice is not consistent with the reciprocity requirement limiting the documentation that may accompany non-resident producer license applications; therefore, the practice cannot be preserved pursuant to the savings clause. It is the preliminary opinion of the Legal Division that requiring a non-resident business entity to submit articles of incorporation is a violation of the GLBA reciprocity requirements. At the direction of the Working Group, further outreach can be conducted, primarily focusing on discussions with the potentially impacted states.

5. Requiring Individuals Seeking a Fraternal Non-Resident License to Hold an Accident/Health License and Have a Fraternal Certificate from a Company

It is the preliminary opinion of the Legal Division that requiring a non-resident applicant to submit a fraternal certificate is a violation of the GLBA reciprocity requirements.

The treatment of producers selling, soliciting or negotiating the purchase of insurance provided by fraternal benefit societies was not raised as an issue by the national producer trades. The Producer Licensing Assessment Report and underlying information indicates that at least one state requires individuals seeking a fraternal non-resident license to qualify for an accident/health license and have a fraternal certificate from a company prior to licensure.

In one state that reported the fraternal certificate requirement, a sample certificate appears in an insurance regulation, accompanied by very little direction as to the use of the form. The certificate is to be completed by the fraternal organization, which attests to the organization's confidence in the producer's trustworthiness and competence. The state's fraternal code, however, directs the licensing of fraternal agents to be administered in accordance with the general resident and non-resident insurance producer laws and regulations. The fraternal certificate is not mentioned in the general licensing laws and regulations. It appears the fraternal certificate is a carryover from outdated fraternal laws and regulations, because it serves a purpose similar, if not identical, to the modern automated licensure verification systems such as NAIC's SPLD and other regulatory databases.

On its face, a fraternal certificate requirement for non-resident applicants is not consistent with the GLBA reciprocity framework. It is documentation required to be submitted in addition to the permitted request for licensure, application, proof of licensure in good standing and applicable fee. It does not appear that the savings clause of 15 U.S.C. § 6751(f) is available to protect this practice because it creates an additional submission requirement inconsistent with the GLBA reciprocity framework. States with this requirement should consider whether the requirement can be waived as to non-resident applicants under PLMA § 16A. It is the preliminary opinion of the Legal Division that requiring a non-resident applicant to submit a fraternal certificate is a violation of the GLBA reciprocity requirements. At the direction of the Working Group, further outreach can be conducted, primarily focusing on discussions with the potentially impacted states.

6. Requiring Non-Resident Producers to Renew Licensure Annually, while Resident Producers Renew Biennially

It is the preliminary opinion of the Legal Division that offering inconsistent terms of licensure for residents and non-residents is a violation of the GLBA reciprocity requirements.

Differing lengths or terms of licensure for resident and non-residents was not raised as an issue by the national producer trade associations. The Producer Licensing Assessment Report and underlying information indicates that at least one state licenses resident individual producers for two-year terms and non-resident individual producers for one-year terms. In one state that reported this practice, the license terms are set forth in regulation. This type of requirement may be intended to ease the state's licensing administrative workload or make it more predictable.

This requirement does not call for any specific additional submission on the part of the producer, nor is the term of licensure a specified element of the GLBA reciprocity framework. This requirement implicates the third element of GLBA's reciprocity conditions: whether any requirement is imposed upon any otherwise qualified non-resident producer that has the effect of limiting or conditioning the producer's activities because of the producer's residence or place of operations. This element is traditionally cited as prohibiting residency limitations on the placement of certain business, such as state-funded projects or statutory funds. However, the effect of the requirement at issue limits the duration of a producer's license because of the producer's place of residence. This would seem to conflict with the anti-discrimination element of the GLBA reciprocity framework, even though no extra documentation is required to be presented with the renewal/continuation application.

It does not appear that the savings clause of 15 U.S.C. § 6751(f) is available to protect this practice because the basis for the practice appears to be inconsistent with the reciprocity framework even if there is consumer protection or other regulatory value inherent to this requirement. It is the preliminary opinion of the Legal Division that offering inconsistent terms of licensure for residents and non-residents is a violation of the GLBA reciprocity requirements.

7. Verifying an Applicant for a Non-Resident License Renewal Has Paid All Undisputed Taxes and Unemployment Insurance Contributions.

It is the preliminary opinion of the Legal Division that a tax verification requirement applicable to non-residents and implemented in such a way that it does not depend on additional documentation supplied by the applicant is saved under 15 U.S.C. § 6751(f), because it is are not inconsistent with GLBA reciprocity requirements.

The Producer Licensing Assessment Report and underlying information indicates that at least one state restricts renewal of non-resident insurance producer licenses based on consideration of state tax and unemployment insurance delinquencies. Written comments from the Maryland Insurance Administration report that at least seven states in addition to Maryland consider tax delinquency of non-resident producer licensing applicants. Tax clearance requirements for non-resident insurance producers was not specifically raised as an issue by the national producer trade associations, but the trades did register a general objection to the filing of additional proof related to affirmative answers to background questions. The NAIC Uniform Applications for individuals and business entities include a background question about delinquent tax obligations.

Maryland's comments, which include an unofficial opinion of the Office of the Attorney General, discuss the Maryland statute, Ins. Art. § 10-115(f)(2), which requires the Insurance Commissioner to "verify through the Office of the Comptroller that the applicant has paid and undisputed taxes and unemployment insurance." It is unknown at this time whether other states are subject to a specific insurance code statute triggering tax clearance review. States' tax clearance practices have been part of the reciprocity analysis since the 2002 Report of the NARAB Working Group, but a detailed analysis has not been published.

An important point raised by Maryland is that state consideration or verification of information derived from sources other than the applicant does not trigger the additional submission requirement element of the GLBA reciprocity framework. GLBA, in 15 U.S.C. § 6751(c)(1), limits the types of documentation a reciprocal state can require a non-resident applicant to submit. It does not address the information a state may consider or verify through sources other than the applicant.

This reasoning holds true for tax clearance as implemented in Maryland as well as many other conditions of licensure such as the possible grounds for license denial, nonrenewal or revocation included in PLMA § 12. The background questions section of the NAIC Uniform Applications solicits a yes or no response on most questions and, with regard to tax clearance, asks for the applicable jurisdiction where a delinquency action exists. In Maryland, the statute at issue specifically requires coordination with the state Office of the Comptroller, which is performed without any additional submission to the Insurance Administration by the applicant. Thus, the implementation of a tax clearance requirement that does not require submission of proof by the applicant may avoid a GLBA reciprocity violation. GLBA serves to limit the applicant's documentation responsibilities and discriminatory state requirement practices as applied to non-residents; it does not serve to limit the information a state may consider in issuing or renewing a license.

It is the preliminary opinion of the Legal Division that a tax verification requirement applicable to non-residents and implemented in such a way that it does not depend on additional documentation supplied by the applicant is saved under 15 U.S.C. § 6751(f) because it is not inconsistent with GLBA reciprocity requirements. As such, this practice is not a GLBA reciprocity violation.

D. Additional Issues Raised In Written Comments

The Working Group received written comments from regulators and interested parties identifying additional possible GLBA reciprocity issues which were not addressed in the Producer Licensing Assessment Report. The Legal Division is available to address each of these additional issues at the direction of the Working Group; however, preliminary responses as to each issue are included below.

- 1. Verifying the Age of Non-Resident Applicants.** Section 6A(1) of the PLMA and Uniform Resident Licensing Standard No. 1 provide that the applicant must be at least 18 years of age. The Ohio Department of Insurance raised the issue that non-resident states should not verify the age of the applicant, stating that if a resident state has already issued a producer license, then the non-resident state should not need to verify the age of the applicant. The Legal Division recommends further analysis on this issue.
- 2. Underlying Licensing Requirements for Surplus Lines Producers.** The National Association of Professional Surplus Lines Offices and the Excess Line Association of New York both addressed the issue of whether states may require non-residents to obtain non-resident general lines licenses as a prerequisite to surplus lines licensure and still be considered to be GLBA reciprocal. This issue was addressed in the 2002 Report of the

NARAB Working Group, which 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 Legal Division does not recommend further analysis on this issue.

3. **States Not Adopting the Major Lines of Authority Definitions of the PLMA.** The Property Casualty Insurers Association of America (PCI) raised the issue of whether states that have not adopted all or part of the major lines of authority definitions set forth in Section 7A of the PLMA can offer reciprocity to non-resident producers in states that have adopted the major lines definitions of the PLMA. The Legal Division recommends further analysis on this issue.
4. **Requirement for Foreign Corporation to Register to do Business in Another State.** The Independent Insurance Agents and Brokers of America, Inc. (IIABA) asked for a specific finding that requiring proof of foreign corporation registration to do business in another state is inconsistent with GLBA reciprocity. This issue was addressed in the 2002 Report of the NARAB Working Group, wherein the Working Group concluded such requirements are not inconsistent with reciprocity and transcend issues of insurance licensing and relate to basic police powers of states to require registration of business entities. The Legal Division does not recommend further analysis on this issue.
5. **Trust Accounts.** The IIABA asked the Working Group to consider whether requirements that obligate non-residents to maintain trust accounts in a financial institution with an office in the non-resident state or to maintain funds related to business generated within the nonresident state in a separate state-specific trust account is inconsistent with GLBA reciprocity. The Legal Division recommends further analysis on this issue.
6. **One-Time Training & Continuing Education Requirements.** The IIABA asked the Working Group to consider whether requirements that obligate non-residents to complete one-time training programs or continuing education on a particular subject matter in order to obtain or renew a license or to sell, solicit, or negotiate insurance policies involving that line of authority or product, regardless of whether the licensee has completed a similar class in his/her home state, are inconsistent with GLBA reciprocity. The Legal Division recommends further analysis on this issue.
7. **Limited Lines Issues.** Consumer Credit Industry Association (CCIA) and World Access urge for special reciprocity and uniformity treatment for limited lines that are very narrow in scope and resemble service contracts. CCIA identified several issues in credit insurance such as uniformity in interpretation of limited lines license rules, uniform availability of group enrollment exemption, preservation and simplification of business entity rules, a uniform application for limited lines licenses and the elimination of fingerprinting for limited lines applicants. World Access asked the Working Group to reconsider the licensing requirements for travel insurance and suggested licensing only business entities who are primary providers of travel insurance. The Legal Division does not recommend further analysis on this issue because it is beyond the scope of the reciprocity framework. The Working Group may want to consider reserving these comments for future consideration or referring these comments to the Producer Licensing (D) Working Group.

E. Conclusion

It is the preliminary opinion of the Legal Division that the following additional issues identified in the Producer Licensing Assessment Report may be in violation of the GLBA reciprocity standards:

- Requiring an underlying life license prior to the issuance of a non-resident variable life license;
- Requiring the designated responsible producer to be licensed or appointed prior to the issuance of a non-resident business entity license;
- Requiring a non-resident business entity to submit articles of incorporation;
- Requiring individuals seeking a fraternal non-resident license to have an accident/health license and have a fraternal certificate from a company;
- Requiring non-resident producers to renew licensure annually, while resident producers renew biennially; and

At the direction of the Working Group, the Legal Division is prepared to conduct additional outreach into these issues, primarily focusing on discussions with the potentially impacted states. The Legal Division will also undertake additional research and analysis on the issues identified in the written comments received by the Working Group. The Legal Division will also provide the Working Group with an update to the extent that any further additional reciprocity questions arise with respect to state-specific issues identified in the Certification of Additional States Memorandum dated May 1, 2008.