EXCERPT FROM THE PRODUCER LICENSING ASSESSMENT AGREGATE REPORT OF FINDINGS FEBRUARY 19, 2008

EXCERPTED FROM SECTION III, pages 18 - 20

III KEY FINDINGS AND CONCLUSIONS

D. Business Entity Licensing

The NAIC membership understands the top priority of the national producer trades is the streamlining of business entity licensing. There is continued debate regarding the consumer protections afforded consumers through the business entity licensing process. Some have argued that business entities should not be licensed and that states should focus on licensing only the individual who ultimately sells, solicits or negotiates insurance and has direct contact with consumers. In addition to arguments about consumer protections associated with business entity licensing, there are issues related to duplicative regulatory processes whereby a business entity must be licensed with the insurance department and register with the Secretary of State. Additionally, we found most states indicate the purpose of business entity licensing is (1) the enforcement and oversight regulatory concern when a business entity is marketing the product to consumers of a state and there is no other identifying information for the individual licensee to track and (2) enforcement concerns related to handling of premiums by business entities. For example, a business entity may market a product to consumers in a state without any specific identification of an individual producer. In addition, business entities may also process premium payments and, without the proper licensure and oversight, regulatory actions would become more difficult. From the insurer perspective, the licensure of a business entity facilitates and eases the payment of commissions to one legal entity and helps eliminate concerns of paying commissions to an unlicensed entity or person.

The on-site assessment found a variety of requirements for licensing business entities. These include licensing requirements for branch locations; affiliation requirements; designation of a responsible producer (DRP); filing of organizational documents; and name approval/registration. The uniformity initiatives have brought standardization to many areas of the resident and non-resident individual licensing process across multiple jurisdictions. Business entity licensing would benefit from greater consistency and uniformity. Below are some statistics that were gained from the producer licensing assessment on state requirements for business entities.

i. <u>Licensing of Branch Locations</u>

Forty-three jurisdictions issue a business entity that includes all branch locations of the business entity. Nine jurisdictions require each branch location of a business entity to be separately licensed. An additional 16 jurisdictions, while not requiring the licensure of each branch location, require a business entity to register or list each branch location.

ii. Affiliations

Twenty-two jurisdictions are "affiliation jurisdictions" and require a business entity to list all producers affiliated with it on the license application. Eleven of these states require the listing of affiliated producers by branch location. Related to this regulatory framework, five states require each individual producer's license to indicate what business entity with which the producer is affiliated.

iii. Designated Responsible Producer

In accordance with Subsection 6B(2) of the PLMA, 41 jurisdictions have the requirement that each business entity designate a producer who is responsible for the regulatory compliance of the business entity. Variations in the practice arise in that 26 jurisdictions require the DRP to hold the same line of authority as the business entity. Finally, it should be noted that 36 jurisdictions require the DRP to be licensed prior to licensing of the business entity. States should review this to ensure there is a method of concurrent licensure and that states work to facilitate the licensing of a business entity and DRP at the same time.

iv. Filing of Organizational Documents

Review teams identified twenty jurisdictions requiring business entities to file organizational documents for residents, such as articles of incorporation, with the business entity application.

v. Proof of Financial Responsibility

Review teams identified at least six jurisdictions requiring the filing of proof of financial responsibility with the business entity license for residents.

vi. Name Approval/Registration

Twenty-one jurisdictions pre-approve business entities name prior to use. If a business entity uses an assumed name, 20 jurisdictions require the assumed name to be approved prior to use, while 36 jurisdictions simply require the filing of the assumed name prior to use as required by the PLMA.

vii. Appointments

Twenty-five jurisdictions require business entities to be appointed. In addition, six states require each branch location of a business entity to hold an appointment. Finally, in 15 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.

viii. Business Entity Renewals

The renewal date for business entities varies among jurisdictions and a uniform standard has never been firmly established. While 38 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.

ix. Multi-jurisdiction licensing issues

The PLMA contains two key provisions designed to simplify the process for a business entity to operate in multiple jurisdictions; however, the producer trade associations continue to claim that not all states have adopted these exemptions. In addition, the producer trades claim that there continues to be varying interpretations and applications of these exemptions in the states that have adopted the exemptions.

- 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." At least 45 jurisdictions have adopted this exemption.

- Commission Sharing Exemption: The PLMA contains the following exemption from licensure: "An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate [insert appropriate reference to state law (i.e., citation to anti-rebating statute, if applicable). While the application of this exemption will be fact-specific, states should review their application of this exemption and work toward a general statement of interpretation to help eliminate the current confusion in the marketplace.

The producer licensing assessment process was very useful in documenting the wide range of requirements by states in terms of handling business entity licensing. With due consideration given to the consumer protections afforded through business entity licensing, the membership may want to consider a number of possibilities with regards to streamlining and standardizing both resident and non-resident licensing of business entities.

- Simplify the licensing process by eliminating the licensing of business entities by line of authority;

- Simplify the licensing process by eliminating the requirement that the DRP hold the same lines of authority as the business entity;
- Simplify the licensing process by eliminating the requirement for a business entity to track and list each producer affiliated with it;
- Simplify the licensing process by eliminating the licensing or registration of each branch location of a business entity;
- Simplify the licensing process by eliminating the filing of organizational documents;
- Simplify the licensing process by eliminating the prior approval of assumed names;
- Simplify the licensing process by creating a uniform standard for business entity renewals;
- Move away from a formal licensing process for business entities and implement a simple registration process; and
- Eliminate the licensing of business entities.