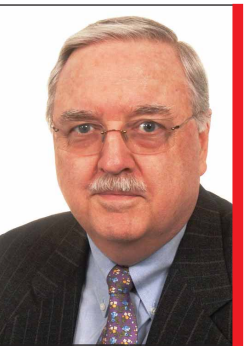
[INSIGHT] By Peter H. Bickford

State Producer Licensing: Going, Going . . . ?

Over the past several decades I have assisted a number of small to mid-sized brokerage firms with licensing and disciplinary matters with their State regulators. The majority of these matters involved inadvertent licensing lapses through inadequate record keeping and monitoring rather than juicier issues like improper placements or premium trust account mismanagement. In the past these licensing lapses were generally local events worked out with the home state insurance department, even if the broker was licensed in other states. Over time, however, even small firms found it competitively necessary to expand into more than just a few local jurisdictions, but compliance capabilities did not necessarily keep up with the additional, inconsistent and burdensome paperwork and processing requirements of each jurisdiction, not to mention the additional monetary costs.



Peter H. Bickford

In other words, even if NARAB II is passed by the Senate and becomes law, it is not clear whether the National Registry will resolve the remaining major issues with producer licensing, or whether is will simply continue to provide an un-navigable maze of mixed signals and confusing overlaps. Only time will tell.

According to the NAIC there are currently over 500,000 entities and 2 million individuals licensed as producers nationwide. Recognizing the inadequacies of the 50-state licensing system, in 1996 the NAIC initiated the National Insurance Producer Registry (NIPR), creating and overseeing an electronic system for tracking ongoing producer licensing changes from state to state. While a first step in providing consistency, NIPR was primarily a tool for state regulators to have access to better, timelier information about licensees from other states. At first it did not significantly improve the licensing process for producers, and in some respects it magnified the consequences for inadvertent mistakes through this sharing of information.

Real change to the inconsistent, costly and time-consuming multi-state licensing problem did not begin until after the passage of the Federal Graham-Leach-Bliley Act in 1999, which threatened the creation of the National Association of Registered Agents and Brokers (NARAB) if a minimum of at least 29 states did not agree to reciprocity or uniformity in producer licensing by 2002. This forced help led to NAIC adoption of the Producer Licensing Model Act in 2000 and the timely acceptance of reciprocity or equivalence by enough states to avoid the creation of NARAB. Also, over the succeeding years more states accepted NIPR standards thus improving reciprocity nationally.

However, as most multi-state licensed producers know, while there is more consistency than in the past, true and complete reciprocity and uniformity still does not exist. Recognition of this fact by the industry and regulatory communities has led to yet another stab at a Federal legislative fix – the National Association of Registered Agents and Brokers Reform Act, familiarly referred to as NARAB II. Unlike the first NARAB legislation, NARAB II does not fool around with the threat of creating a National registry – it does so. As of this writing, the legislation has been passed by the House and is pending in the Senate, and the prospects for passage appear to be good. The legislation creates a National Association "to provide a mechanism through which licensing, continuing education, and other nonresident insurance producer qualification requirements and conditions may be adopted and applied on a multi-state basis . . ."

If the legislation becomes law, NARAB will be established with a board consisting of eight state insurance commissioners, 5 members with knowledge of p/c licensing and 2 with knowledge of life or A&H licensing. The board will set standards for licensing within the statutory framework. Once a producer is licensed in its home state, it is eligible for membership in NARAB. If it chooses membership, the producer is authorized to conduct its business in every state that meets NARAB's criteria, which one presumes will include all states. Producers would also be free to bypass NARAB membership and seek licensing from other states in the old-fashioned manner.

As stated by Jim Donelson, NAIC president and Louisiana insurance commissioner, "NARAB streamlines the multi-state agent licensing process through a regulator controlled board and preserves state enforcement of critical consumer protections." But is this so? The legislation carves out for the states control over licensing in a producer's home state, but also preserves

continued on page 8

continued from page 6

other functions for the states that could cause ongoing overlap and confusion. Specifically, the legislation preserves for the states control over:

"(1) licensing, continuing education, and other qualification requirements of insurance producers that are not members of the Association;

(2) resident or nonresident insurance producer appointment requirements;

(3) supervising and disciplining resident and nonresident insurance producers;

(4) establishing licensing fees for resident and nonresident insurance producers so that there is no loss of insurance producer licensing revenue to the State; and

(5) prescribing and enforcing laws and regulations regulating the conduct of resident and nonresident insurance producers."

A couple of years ago, the Federation of Regulatory Counsel (FORC) prepared an excellent analysis of an earlier draft of the legislation, pointing out a number of issues raised by the state carve-outs. Many of these points continue to be relevant in the current iteration, including issues such as:

- Multiple fees charged by NARAB and each state in which a producer is doing business;
- The statutory status of a non-resident producer that is a NARAB member in view of the fact that it is technically only licensed by its home state;
- The potential for multiple rules for appointments, standards of supervision and conduct; and
- The continuing prospect of multiple disciplinary proceedings over one common event by the home state, NARAB, and possibly other states.

In other words, even if NARAB II is passed by the Senate and becomes law, it is not clear whether the National Registry will resolve the remaining major issues with producer licensing, or whether is will simply continue to provide an un-navigable maze of mixed signals and confusing overlaps. Only time will tell.

The NAIC and the major producer trade groups seem to be on board with the legislation, and we can hope that this support plus the efforts of the NAIC, NIPR, the new Association and the trade groups will apply the necessary desire and effort to make the national registry work seamlessly for the benefit of producers, regulators and consumers. Otherwise, this latest effort will just be one more layer of confusion and overlap that it seeks to eliminate.

Which leads to a final question: *When you constantly seek the power you need from the very people that threaten your existence, are you setting yourself up for an undesirable result?* NARAB I apparently did not solve all the issues with the insurance producer licensing process, leading to a return to the trough for NARAB II. What if this effort still does not solve all the problems? Can the states go back to the Feds for yet another fix, or will the Feds finally say: "Enough is enough. We'll just do it ourselves!" [IA]