

Regulations Affect Health Insurance Exchange Navigators, Mortgage Servicers

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At both the federal and state levels, 2013 is proving to be a year of significant activity and regulatory changes for the insurance industry. **Affordable Care Act—Health Insurance Exchange Navigators**
The Affordable Care Act establishes the creation of exchanges and outlines various requirements and standards that exchanges must satisfy. Each state has the opportunity to establish an exchange, and each exchange, under §§ 1311(d)(4)(K) and 1311(1) of the Act and 45 C.F.R. § 155.210, is directed to establish a program under which it awards grants to navigators that will perform the following duties:

1. conduct public education activities to raise awareness of the availability of qualified health plans;
2. distribute fair and impartial information concerning enrollment in qualified health plans and the availability of premium tax credits and cost-sharing reductions in accordance with federal tax laws;
3. facilitate enrollment in qualified health plans;
4. provide referrals to any applicable office of health insurance consumer assistant or health insurance ombudsman, or any other appropriate state agency or agencies, for any enrollee with a grievance, complaint, or question regarding his or her health plan, coverage, or a determination under such plan or coverage; and
5. provide information in a culturally and linguistically appropriate manner.

The Act also authorizes the adoption of standards for navigators, including provisions to ensure that any entity selected as a navigator is qualified, and licensed if appropriate, to engage in the navigator activities required by the law and to avoid conflicts of interest. The Centers for Medicare and Medicaid Services of the Department of Health and Human Services has proposed regulations under

45 CFR Part 155 that would establish conflict of interest, training and certification, and meaningful access standards applicable to navigator programs in federally-facilitated exchanges. Exchanges affected include state partnership exchanges, non-navigator assistance programs in state partnership exchanges, and non-navigator assistance programs in state-based exchanges that are funded through federal exchange establishment grants. The proposed regulations require navigators and non-navigator assistance personnel to register with and be certified by the exchange. The proposed regulations establish standards for navigators and non-navigator assistance personnel to ensure meaningful access to their services by individuals with limited English proficiency and individuals with disabilities. The proposed regulations would amend existing regulations to clarify that navigators must meet any applicable licensing, certification, or other standards prescribed by the state or exchange, as long as the standards do not prevent the application of the provisions of the Act. Navigators would be required to add entities with relationships with issuers of stop loss insurance, including those compensated directly or indirectly by issuers of stop loss insurance in connection with enrollment in qualified or non-qualified health plans. The amended regulations would clarify that the same ineligibility criteria that apply to navigators providing services in any federally-facilitated exchange, including state partnership exchanges, also apply to non-navigator assistance personnel who provide assistance in state partnership exchanges and federally-funded non-navigator assistance personnel who work in state-based exchanges.

Restrictions on Force-Placed Insurance The Consumer Financial Protection Bureau adopted a final rule at 12 CFR Part 1024 that, among the implementation of other provisions of the Dodd-Frank Act, imposes restrictions on mortgage servicers regarding the purchase of force-placed insurance. Force-placed insurance is hazard, flood, fire, or other insurance purchased by a mortgage lender for a mortgaged property when a borrower does not maintain insurance on the property. Effective January 10, 2014, mortgage servicers will need to have a "reasonable basis" to determine that a consumer lacks sufficient insurance before purchasing anew policy. Mortgage servicers must make this decision on a case-by-case basis, provide the borrower notice prior to obtaining the forced-placed policy, and notify the borrower annually prior to renewing the policy. If such "reasonable basis" is not demonstrated, the mortgage servicer will have to terminate the force-placed policy within 15 days and issue a refund for any premium collected. Mortgage servicers will be required to update their policies and procedures to ensure compliance with these requirements, as well as update their systems to ensure that proper notices are sent. The regulations exempt mortgage servicers that service 5,000 mortgage loans or less, all of which the servicer or an affiliate owns or originated, from the provision prohibiting servicers from purchasing force-placed insurance, with respect to a borrower who has established an escrow account for hazard insurance if the amount of the disbursement would be greater than the cost of the force-placed insurance.

Streamlining Insurance Producer Market Access The National Association of Registered Agents and Brokers Reform Act of 2013 (S. 534) is a bipartisan bill that would amend the Gramm-Leach-Bliley Act to create a nonprofit corporation to be known as the National Association of Registered Agents and Brokers (NARAB) to streamline nonresident market access for insurance producers licensed in their resident states while preserving state insurance regulation and consumer

protections. NARAB would be led by a board of directors, of whom the majority would be state insurance commissioners, which would establish membership requirements applicable to eligible nonresident insurance producers. Membership would permit insurance producers to access insurance markets in a manner similar to the access allowed under nonresident producer licensing. NARAB would not adopt any qualification less protective to the public than that contained in the NAIC's Producer Licensing Model Act in effect at the time the NARAB legislation is enacted. The bill includes important disclosures to the states and would maintain business entity licensing requirements. Although states would no longer issue licenses to nonresidents seeking NARAB membership, a state would have the ability to object to a producer seeking to do business in its jurisdiction through NARAB under the notice and 10-day "look" period of the bill. NARAB's administrative costs would be funded through fees paid by producers. The bill is supported by the National Association of Insurance Commissioners and several national insurance trade associations. The TIPS Insurance Regulation Committee will continue to monitor insurance regulatory issues and legislation at both the state and federal levels that may be of interest to TIPS members. *Originally published in TortSource Summer 2013 Issue (American Bar Association).*

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