

**December  
2014**

## inside this issue

Health Insurance Update  
on HHS Efforts to Put  
Agent and Broker  
Information on the  
Federal Website 4

Big I praises House Passage  
of Terrorism Insurance Bill  
and NARAB II 6

Foreign Account Tax  
Compliance Act:  
Frequently Asked  
Questions 8

Potential E&O Claim:  
Should I report it to my  
carrier? 16

Sample Privacy Notice  
Statement Available  
for Health Care  
Exchanges 20

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## 1st Graduating Class of the Louisiana Insurance Academy Qualified New Prospects to Work In Your Agency

For years IIABL has heard members discuss how difficult it is to find good new people to hire into their agencies. In our member survey last year, this was the second highest ranked member need behind insurance markets.

To meet this need for new employee talent for member agencies, IIABL worked with Delgado Community College in New Orleans to create the Louisiana Insurance Academy (LIA). The Louisiana Insurance Academy is designed to train select second year community college students, or mature students with prior work experience, who have already shown strong success in their first year classes or previous jobs and have passed a rigorous interview process, on both personal and commercial insurance coverages. LIA students read, study, are taught by IIABL member agents, and take exams for all nine (9) sections of the Accredited Customer Service Representative (ACSR) Program written by The

## highlights

Commissioner's Corner:  
Citizens Total Policy Count Reduced by  
50 Percent from 2008 Peak  
Through Depopulation Program **10**

Ask Mike -Subject: Kid's car jointly  
titled with parents **22**

Institutes. **Courses include:**

Personal Automobile Coverages  
Homeowners Coverages  
Other Personal Lines Coverages  
Commercial Automobile  
Coverages  
Commercial Property Coverages  
Commercial Casualty Coverages  
Other Commercial Lines  
Coverages  
Agents Errors & Omissions Loss  
Control  
Customer Service

The first class from the Louisiana Insurance Academy graduated on December 15, 2014. Eight LIA graduates are looking for jobs in independent insurance agencies. Some of them may be willing to consider moving out of New Orleans for the right job. If you need fresh new talent in your agency, what better prospects do you have?

Resumes for these LIA graduates can be found [HERE](#).

Check them out. Give them a call. Offer them a paid internship, or even better a

## 1st Graduating Class of the Louisiana Insurance Academy (continued)

starting position in your agency. Our independent agencies are no better than the people we have serving our customers. Hire a LIA graduate and start building the future of your agency!

Our hope is to continue the Louisiana Insurance Academy in the future, improve upon it, and expand it geographically around the state... with the hope of providing new entry level employees with significant insurance training to our members though out Louisiana.

### A MESSAGE FROM THE "DEAN" OF THE

### LOUISIANA INSURANCE ACADEMY

I wanted to share some quick thoughts on our first class of graduates from the Louisiana Insurance Academy. I have to admit that this class was way more intensive and detailed than I would have ever imagined. Our students learned details of coverage that I have long ago forgotten. The class was hard work and I am sure that over the course of the past 10 weeks the students have each spent well over 200 hours on the program when you take into account their 90 plus hours of classroom time.

Our class of 15 comes from very difference backgrounds, and divergent paths led them to the Academy, but they came together quickly and formed a nice, tight bond. They worked together, they studied together, they collaborated well. Their enthusiasm never waned. They have each demonstrated a strong working knowledge of insurance on both the commercial and personal lines side.

I could not be prouder of the graduates that will be coming out of this program. From a technical standpoint they are ready. They will certainly need to learn how to work IN the insurance business and I have no doubt that they will do so successfully.

I am happy to answer any questions that you might have about these students. I have gotten to know each of them pretty well over the past several weeks and can certainly provide insight as necessary.

Thanks for giving them your consideration as prospective new employees.

Parke Ellis  
2013-2014 IIABL President  
"Dean" of the Louisiana  
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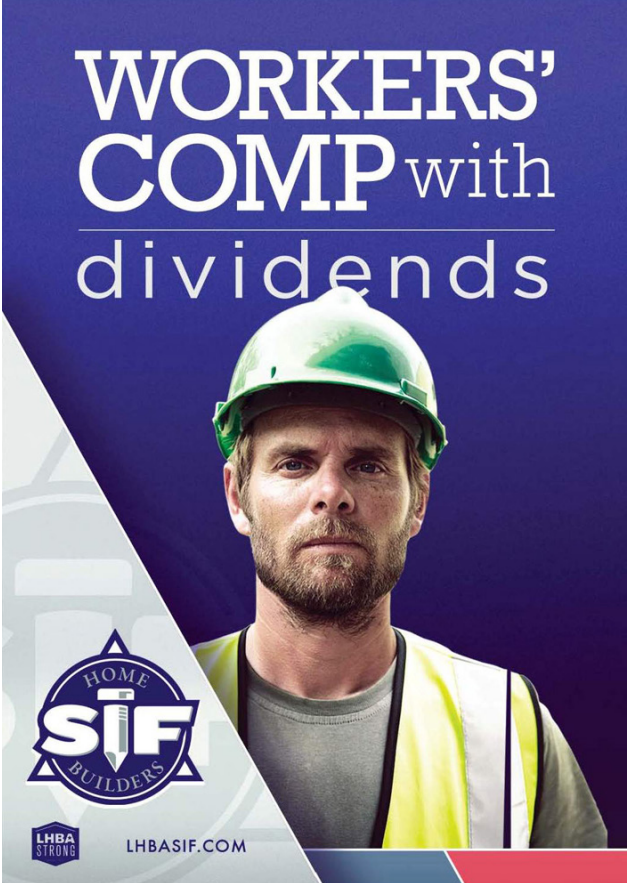


## Health Insurance Update on HHS Efforts to Put Agent and Broker Information on Federal Exchange Website

The Big I government affairs team wants to provide you with additional information on HHS's announcement that agent and broker information would be added to the federal exchange website. Unfortunately at this time, individual agencies are not showing up on the find local help page (<https://localhelp.healthcare.gov/>) when you type in zip codes to look for them. HHS is aware of this problem (Big "I" staff participated in a call with HHS staff to discuss this issue and others) and they are working to address this as soon as possible. Unfortunately they have not yet given us an estimate of when that will be.

HHS is also considering a couple of functional changes to the find local help page at the urging of the Big "I". For instance, currently on the find local help webpage you have to toggle from "no" to "yes" in order to have agent and broker results show up alongside navigators and assisters. The Big "I" expressed that we would like to see that step removed so that agents and brokers would automatically show up with the navigators and assisters.

The other change that the Big "I" urged HHS to make concerned language on the left side of the find local help webpage that appears when you scroll over the word "Agent." That language states, "An agent or broker is a person or business who can help you apply for help paying for coverage and enroll you in a Qualified Health Plan (QHP) through the Marketplace. They can make specific recommendations about which plan you should enroll in. They're also licensed and regulated by states and typically get payments, or commissions, from health insurers for enrolling a consumer into an issuer's plans. Some agents and brokers may only be able to sell plans from specific health insurers." The Big "I" has concerns that this statement could mislead people into thinking that using an agent could add to the cost for the consumer. HHS has said this is only a draft and that they might make changes although they did not give a timeline for potentially updating the statement.



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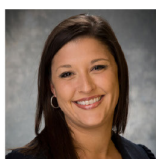
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## Big I Praises House Passage of Terrorism Insurance Bill and NARAB

The Big "I" praised the U.S. House of Representatives for passing an amendment in the nature of a substitute to S. 2244, the "Terrorism Risk Insurance Program Reauthorization Act of 2014." The legislation would extend the Terrorism Risk Insurance Act (TRIA) program for six years and includes the National Association of Registered Agents and Brokers (NARAB II) legislation that would establish a permanent NARAB.

"This Legislation further demonstrates the commitment by a strong group of bipartisan members of Congress to reauthorizing the TRIA program, as it is vitally important to the U.S. economy, and the Big 'I' is grateful for today's action," says Bob Rusbuldt, Big "I" president & CEO. "This bill is important to ensure stability in the insurance, real estate and lending markets, as well as providing needed agent and broker licensing

reform on a voluntary basis. We are optimistic that the Senate will soon pass this crucial legislation so it can be sent to the president's desk as soon as possible."

In addition to reauthorizing the TRIA program for six years, the bill would also raise the trigger amount needed in total losses before the TRIA program kicks in from the current \$100 million to \$200 million, over five years, beginning in calendar year 2016. Over five years, starting Jan. 1, 2016, the mandatory recoupment would also go from \$27.5 billion to \$37.5 billion, increasing by \$2 billion each year. For all events, the bill would raise the private industry recoupment total from the current 133% of covered losses to 140% of covered losses.

"The Big 'I' is also thankful that the House TRIA bill includes the National Association of Registered Agents and

Brokers legislation (NARAB II)," Charles Symington, Big "I" senior vice president of external and government affairs. "We would like to thank House Financial Services Committee Chairman Jeb Hensarling (R-Texas) and Insurance Subcommittee Chair Randy Neugebauer (R-Texas) for their leadership in moving it through the House on two separate occasions this Congress and particularly want to highlight Rep. Neugebauer's steadfast support of the bill."

NARAB II would achieve much needed reciprocity in producer licensing and help policyholders by permitting greater competition among agents and brokers. This legislation would build upon regulatory experience at the state level, promote greater consistency in agent and agency licensing, and ease the burden that many agents face in doing business across state lines.



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## Foreign Account Tax Compliance Act: Frequently Asked Questions

### **Introduction**

The purpose of these "Frequently Asked Questions" is to provide guidance to Big "I" members that must comply with the Foreign Account Tax Compliance Act ("FATCA"). As it relates to Big "I" members, FATCA places due diligence, reporting, and withholding obligations on U.S. agents and brokers placing U.S. risk with foreign insurers. FATCA does not apply to U.S. risk placed with domestic insurers or domestic subsidiaries of foreign insurers.

These FAQs are not comprehensive. Instead, the Office of General Counsel has sought to identify the topics most relevant to Big "I" members. Members that want to discuss these FAQs or have additional questions regarding FATCA are encouraged to make contact with the Office of General Counsel.

### **FAQs**

#### **What is FATCA?**

FATCA is a 2010 federal law passed by Congress and signed by President Obama as part of the Hiring Incentives to Restore Employment Act, Pub. L. 111-147 (H.R. 2847).

#### **What is the purpose of FATCA?**

FATCA was primarily intended to stop schemes used by some U.S. taxpayers to evade taxes on investment accounts held with foreign financial institutions. FATCA seeks to achieve its intent by requiring reporting to the IRS of certain foreign financial assets owned by U.S. taxpayers and certain payments made from U.S. taxpayers to foreign financial institutions.

#### **How does FATCA affect insurance brokers in the U.S.?**


FATCA requires brokers placing U.S. risk with a foreign insurer to verify the foreign insurer's FATCA status – FACTA compliant, FATCA exempt, or not compliant with FATCA – prior to making a premium payment. A broker will typically do this by obtaining an IRS Form [W-8-](#)


[BEN-E](#) from the foreign insurer and an IRS Form [W-8 IMY](#) from the foreign broker (if any). Generally speaking, a foreign insurer is FATCA compliant if it has entered an FFI agreement to obtain status as a participating FFI and to, among other things, report certain information on accounts held by U.S. taxpayers.

#### **What happens if a foreign insurer**

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## Foreign Account Tax Compliance Act: Frequently Asked Questions (continued)

### **or foreign broker does not or refuses to provide the W-8-BEN-E or W-8 IMY?**

It is anticipated that most foreign insurers and foreign brokers will provide the W-8-BEN-E and W-8 IMY to the U.S. broker in order to demonstrate that the foreign insurer is either FATCA compliant or FATCA exempt. The risk to foreign insurers and foreign brokers is that U.S. taxpayers or brokers seeking to place U.S. risk with a foreign insurer will not do business with a foreign insurer or broker that may cause the U.S. taxpayer or broker to

violate FATCA.

However, FATCA does not require foreign insurers and foreign brokers to complete the W-8-BEN-E and W-8 IMY. U.S. brokers could obtain the information required by the forms – and, therefore, verify the foreign insurer's FATCA status – through other means. Such an alternative process comes with risks, however, because it is unknown how the IRS will deal with alternative processes.

### **What if a broker is unable to verify the**

### **foreign insurer's FATCA status?**

FATCA requires a broker who is unable to verify the foreign insurer's FATCA status to withhold 30% of the premium payment.

### **Does FATCA create an exception to the rule that coverage is not bound until the prospective insured makes the first premium payment in full?**

No. Making 70% (or anything less than 100%) of the first premium payment is generally insufficient to bind coverage.

**continued on page 10**



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## Foreign Account Tax Compliance Act: Frequently Asked Questions (continued)

FATCA does not change this rule. In practice, a U.S. taxpayer or broker seeking to place U.S. risk with a foreign insurer is unlikely to place such risk unless it can verify that the foreign insurer is FATCA compliant or FATCA exempt.

### What is the effective date for FATCA? How are obligations that exist prior to the effective date treated?

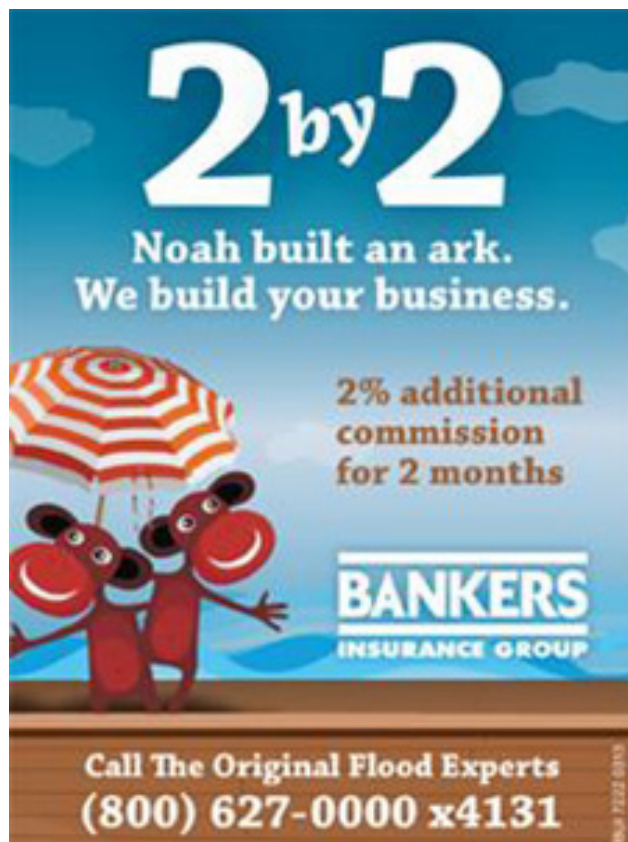
FATCA's effective date is July 1, 2014. However, the IRS recently provided relief that will inure to the benefit of many U.S. brokers.

The [IRS announced in May 2014](#) its intention to amend the existing regulations to provide additional time to comply with FATCA's requirements. The regulations in effect in May 2014 state that obligations existing prior to July 1, 2014 need not comply with FATCA's requirements as long as the obligation does not materially change after that date – for example, the premium increases. The IRS' announcement provides a limited extension to this "grandfathering" for certain obligations issued, opened, or executed between July 1, 2014 and December 31, 2014. Importantly, this

relief is limited to entity accounts and does not apply to individual accounts.

Moreover, the U.S. broker must still document the foreign insurer's FATCA status (typically via a W-8-BEN-E and W-8 IMY) but has until June 30, 2016 to do so.

The IRS also announced that it will consider 2014 and 2015 as a transition period for purposes of IRS enforcement and administration of FATCA's requirements. Although U.S. brokers are encouraged to comply with FATCA's requirements immediately, during the transition period, "the IRS will take



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## Foreign Account Tax Compliance Act: Frequently Asked Questions (continued)

into account the extent to which a . . . withholding agent [including a U.S. broker] has made good faith efforts to comply with" FATCA when determining whether to take action against that entity. The IRS cautions, however, that "[a]n entity that has not made good faith efforts to comply with the new requirements will not be given any relief from IRS enforcement during the transition period."

### **What does the U.S. broker have to do to verify the accuracy of a W-8-BEN-E or W-8 IMY?**

The U.S. broker's primary responsibility is to ensure that the form is complete. Based on the existing regulations and guidance, the IRS does not require the U.S. broker to perform any due diligence when verifying the accuracy of the forms. However, the U.S. broker cannot accept a form that the broker knows or has reason to know is inaccurate.

### **How long are a W-8-BEN-E and W-8 IMY valid?**

A W-8-BEN-E is valid until the end of the third successive calendar year after the date it is signed,

unless a change of circumstances occurs during that time. For example, a W-8-BEN-E signed on August 1, 2015 is valid until December 31, 2018. Absent a change in circumstances, the W-8-BEN-E obtained for one insured's placement is valid for other insureds' placements.

A new W-8 IMY must be obtained with each new placement because the form contains transaction-specific information.

### **What are a U.S. broker's reporting obligations to the IRS?**

A U.S. broker does not  
**continued on page 15**



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## COMMISSIONER JIM DONELON

### Citizens Total Policy Count Reduced by 50 Percent from 2008 Peak Through Depopulation Program

#### Results from Citizens' eighth depopulation efforts continue to be exceptional.

The benefit of lower rates for those whose policies have transferred to the private market, as required by law, is well worth the efforts of participating insurance companies, the numerous insurance agents and the Citizens staff who worked diligently to make the eighth year of the Depopulation Program another successful year.

Louisiana Citizens Property Insurance Corporation (Citizens) is just completing the eighth round of its Depopulation Program in which it opens its books of business and offers its policies to the voluntary market. Citizens is once again seeing great success from its efforts with the total policy count dropping below 88,000 personal and commercial policies. This represents a reduction in policy count by 50 percent from the record high of 174,000 policies in February 2008.

Citizens' homeowners market share is predicted to drop to an estimated 1.8 percent, ranking it ninth in market share size in Louisiana at year's end. This is down from 2.3 percent at the close of 2013 and down from its 9.8 percent peak in 2008. Nearly 11 percent of Citizens' current policies were authorized for take out on December 1, 2014. This year five companies will assume 10,739 residential (personal lines) policies, dropping the policy count to below 84,000

residential policies and to approximately 4,000 commercial policies.

Since Hurricanes Katrina and Rita in 2005, Louisiana has added 21 new property insurance groups, a continued indication of significant improvement in the recovery of the Louisiana insurance market. The Citizens Depopulation Program has utilized 12 of those companies during its depopulation efforts. Not only do Citizens' policyholders benefit from depopulation due to more options and better prices, but also all Louisiana property owners profit since it reduces the need for future assessments charged to property insurance consumers in the event of another Katrina-level event.

The five companies successfully making offers to write homeowners policies currently written by Citizens are Access Home Insurance Co., Maison Insurance Co., Lighthouse

Property Insurance Corp., Centauri Specialty Insurance Co. and Coastal Select Insurance. Coastal Select is new this year in our state. The other four companies have previously participated in Citizens' depopulation process. All five companies offer similar coverage as Citizens or better coverage for a lower rate. Altogether 35,869 unique policies were requested by these companies this year and 10,739 policies were authorized to be moved, representing a 29.9 percent authorization rate of total policies requested.

November 15 was the deadline for agents to authorize policies to be moved from Citizens to the requesting company. Access Home Insurance Co. requested 17,795 policies and 6,882 policies were authorized. Maison Insurance Co. requested 19,753 policies and 2,263 policies were authorized. Lighthouse Property Insurance Corp. requested 8,973



policies and 1,128 policies were authorized. Coastal Select Insurance requested 2,843 policies and 261 policies were authorized. Centauri Specialty Insurance Co. requested 1,491 policies and 205 policies were authorized.

Insurance agents are critical in the process of moving policies from Citizens to the Depopulation Program companies. Independent agents authorized 3,832 policies, or 44.4 percent of their requested policies. State Farm agents authorized 3,143 policies or 26.7 percent of their requested policies. Allstate agents authorized 2,513 policies, which is 25.3 percent of their requested policies. Farm Bureau agents authorized 1,251 policies or 22.7 percent of

their requested policies.

Citizens' policyholders whose policies were authorized to be moved to another company have 60 days to decide whether they prefer to remain with Citizens. In prior rounds, typically less than two percent of Citizens policyholders opted out and chose to remain with Citizens.

In the seven previous rounds of Citizens depopulation, Citizens has shed a total of 99,546 policies. Each of the depopulation rounds saw the following reductions in policy counts: round one - 26,595 policies on June 1, 2008, round two - 13,343 policies on December 1, 2008, round three - 3,368 policies on April 1, 2009,

round four - 13,466 policies on December 1, 2010, round five - 10,890 policies on December 1, 2011, round six - 6,877 policies on December 1, 2012, round seven - 14,268 policies on December 1, 2013 and round eight - 10,739 policies on December 1, 2014.

Results from Citizens' eighth depopulation efforts continue to be exceptional. The benefit of lower rates for those whose policies have transferred to the private market, as required by law, is well worth the efforts of participating insurance companies, the numerous insurance agents and the Citizens staff who worked diligently to make the eighth year of the Depopulation Program another successful year.

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<b>Arnold Insurance Group</b> Benton	<b>Bubrig Insurance Agency</b> Belle Chasse	<b>Raymond M. Fondel Jr. Ins. Agency</b> Lake Charles

They join these 49 agents who have already earned Signature Agent status.

<b>A Victory Insurance Agency</b> Mandeville	<b>Castello Agency</b> Zachary	<b>Glenn Dean Insurance Agency</b> Denidder	<b>Quality Plus, Inc.</b> Lafayette
<b>ABC Agency Network</b> Houma	<b>Community Financial</b> Monroe	<b>Grant C. Bennett Insurance</b> Slidell	<b>Riverlands Insurance Services</b> Luling
<b>ABC Agency Network</b> Alexandria	<b>Curtis Insurance Agency</b> Lake Charles	<b>Harlan Insurance Agency</b> Alexandria	<b>Semon Insurance Agency</b> Shreveport
<b>ABC Insurance Agency</b> Lafayette	<b>Cypress Insurance</b> Hammond	<b>Insurance Network of LA</b> Baton Rouge	<b>Shaver Robichaux Agency</b> Thibodaux
<b>Action Insurance, Inc.</b> Lafayette	<b>David Cordell Insurance</b> Baton Rouge	<b>Insurance Unlimited</b> Lake Charles	<b>Thomson, Smith &amp; Leach</b> Lafayette
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<b>Alliance Insurance Agency</b> Metairie	<b>DJW Insurance Agency</b> New Iberia	<b>Kyle Thomas Insurance Agency</b> Shreveport	<b>Total Insurance of Watson, Inc.</b> Denham Springs
<b>Baton Rouge Insurance Agency</b> Baton Rouge	<b>Eagan Insurance Agency</b> Metairie	<b>Liggio Insurance Agency</b> Lafayette	<b>Toups Insurance Agency</b> Thibodaux
<b>Beard Insurance</b> Baton Rouge	<b>Emery James LTD</b> Hammond	<b>Market Insurance</b> Covington	<b>TWFG Insurance Services</b> Lake Charles
<b>Beasley-Keith, Inc.</b> Bossier City	<b>First Federal Insurance/ Community Financial</b> Lake Charles	<b>Moore-Jenkins</b> Bogalusa	<b>TWFG Insurance Services</b> Mandeville
<b>Boswell Insurance</b> Shreveport	<b>Gary Losey Insurance</b> Baton Rouge	<b>Moore-Jenkins</b> Franklinton	<b>Walpole Insurance Agency</b> Bossier City
<b>Bourg Insurance</b> Donaldsonville	<b>Gendusa Insurance Agency</b> Hammond	<b>Page &amp; Sons Insurance</b> Houma	<b>Whitney Insurance Agency</b> New Orleans
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## Foreign Account Tax Compliance Act: Frequently Asked Questions (continued)

provide the W-8-BEN-E or W-8 IMY to the IRS. Those forms must be retained in the broker's files.

Per instructions issued by the IRS in July 2014, U.S. brokers will have to file a Form [1042-S](#) with the IRS even if the broker did not withhold any portion of any premium payment.

### How will Lloyd's report its FATCA status?

Reporting is done at the operating company level, not at the syndicate level. Lloyd's has reached an agreement with the IRS to be considered a qualified intermediary. Lloyd's will report its FATCA status via a single W-8 IMY. Unlike the typical W-8 IMY, the W-8 IMY from Lloyd's is not transition-specific. Other foreign insurers may also seek qualified intermediary status.

### How do these requirements achieve FATCA's purpose of stopping tax evasion schemes?

FATCA's requirements arguably make sense when applied to insurance and investment products that have cash value – e.g., annuities and whole life insurance policies. However, the requirements do not make sense when applied to property and casualty insurance policies, which have no cash value and very rarely, if ever, could be used to avoid U.S. taxation. FATCA's text gives discretion to the IRS to decide whether to apply FATCA's requirements to premiums paid on property and casualty insurance policies. Despite heavy (and continued) opposition from the insurance industry, the IRS and Treasury Department regulations place premiums paid on property and casualty insurance policies within FATCA's ambit.

**Do FATCA's requirements apply to placements of U.S. risk with a U.S. subsidiary of a foreign insurer?**

No. A U.S. subsidiary of a foreign insurer will provide a W-9.

Also, a foreign insurer may apply with the IRS for tax treatment as a U.S. company. If the request is granted, the foreign insurer would provide a W-9.

### Can an insured avoid FATCA's requirements by working without a broker?

No. An insured placing U.S. risk with a foreign insurer is required to verify that the foreign insurer is FATCA compliant or FATCA exempt before making the first premium payment. If the insured is unable to do so, the insured must withhold 30% of the premium payment.



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## Potential E&O Claim: Should I report it to my E&O carrier?

The decision whether an insurance agency reports a potential claim to its professional liability carrier brings with it a host of issues to consider. What effect does reporting a potential claim have on my agency's loss history?

How will it affect my agency's premium? What difference can it make? After all, it is a potential claim. My customer has not hired an attorney or filed a lawsuit against my agency. Am I only creating trouble for my agency by reporting this potential claim?

The best source to answer this question is the agency's professional liability policy. The policy

requires that an agency report potential claims to its carrier. But apart from that, there are additional, common sense reasons for doing so. The following example highlights those reasons.

An agency's most important and long-term customer owned an engineering business along with numerous commercial buildings. The agency handled all of the customer's insurance needs obtaining, among other coverages, commercial property coverage.

A pipe burst in one of the commercial buildings resulting in over \$200,000 in damage.

Unfortunately, the building was vacant for several years, a fact not shared by the customer with the agency. As a result, the commercial property coverage placed by the agency contained limitations on coverage for vacant buildings. Even though the agency suspected the carrier would invoke the vacancy provisions of the policy, the agency thought it was best, nevertheless, to report the claim to the carrier. The agency's suspicions were well-founded as the carrier denied coverage for the property claim because the building was vacant at the time of the loss and





## Potential E&O Claim: Should I report it to my E&O carrier?(Continued)

was vacant for several years.

The customer was outraged by the lack of insurance coverage though it did not take issue with the carrier's coverage position. Like many business owners, the customer believed that the significant premiums he paid each year entitled him to coverage in the event of a loss regardless of policy language.

The agency was worried about losing its most important customer though it knew it did not breach any duty owed to the customer. After all, the customer never told

the agency about the change in the building's status: from occupied to vacant. And the agency also agreed with the carrier's coverage position.

Faced with an angry customer who was litigious by nature, and a significant uncovered loss, the agency decided to report a potential claim to its professional liability carrier, Westport Insurance Corporation.

The Westport claim handler made his initial contact with the agency within 24 hours of the potential claim being received by Westport. After collecting the claim information, the Westport

claim handler and the agency worked together as a team to develop a strategy focusing on both the customer and the carrier.

The customer was assured that the agency would advocate on the customer's behalf with the carrier in an effort to identify any avenue of recovery for the customer. At the same time, it was explained to the customer that the agency did nothing wrong in placing the property coverage that included vacancy provisions. The customer's indulgence was sought so that the agency could have time to then discuss the situation with the carrier.



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## Potential E&O Claim: Should I report it to my E&O carrier?(Continued)

A commitment was made to provide frequent updates to the customer. The focus then turned to the carrier. As there was no dispute with the carrier's coverage position, the Westport claim handler and agency agreed on a two-part strategy that would leverage the agency's long-term profitable relationship with the carrier, and the customer's profitable account history. The agency appealed to the carrier using empirical data to prove that the carrier benefited throughout

the years by doing business with the agency and the customer. As a result, the carrier agreed to make a business accommodation by paying the customer \$100,000 on the uncovered claim. This decision was relayed to the customer.

The agency believed that the carrier would contribute more. After further discussions with the Westport claim handler, the agency made an additional appeal to the carrier resulting in an agreement to pay an additional

\$100,000 bringing the total recovery to \$200,000. The agency's contact with the carrier said that he had never seen a payment of this kind on a loss that was clearly not covered by the policy. The Westport claim handler and the agency had many conversations about not only what to say to the customer and carrier, but how to say it. Of utmost importance were creating and keeping goodwill with the customer.

While not every potential claim



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## Potential E&O Claim: Should I report it to my E&O carrier?(Continued)

is resolved on such favorable terms, this example shows what can be achieved when a thought-out, collaborative approach is taken by an agency and Westport. Without question, had this potential claim not been reported to Westport, the customer would have sued the agency and the carrier, and the agency would have lost its most important customer. The agency may also be concerned about whether the mere reporting of a potential E&O claim will have any adverse underwriting effect on their E&O. Each situation is unique and

each carrier is different. Westport will review the facts and circumstances of the individual situation, but as a general rule the mere reporting of a claim does not automatically result in any underwriting action or increase in premium. Because your E&O professional liability policy is claims made, it is imperative that you report any potential claims immediately to your E&O carrier. In fact, Westport recommends that you report them as soon as practicable to ensure that the claim is reported during your policy period so coverage can be determined. In

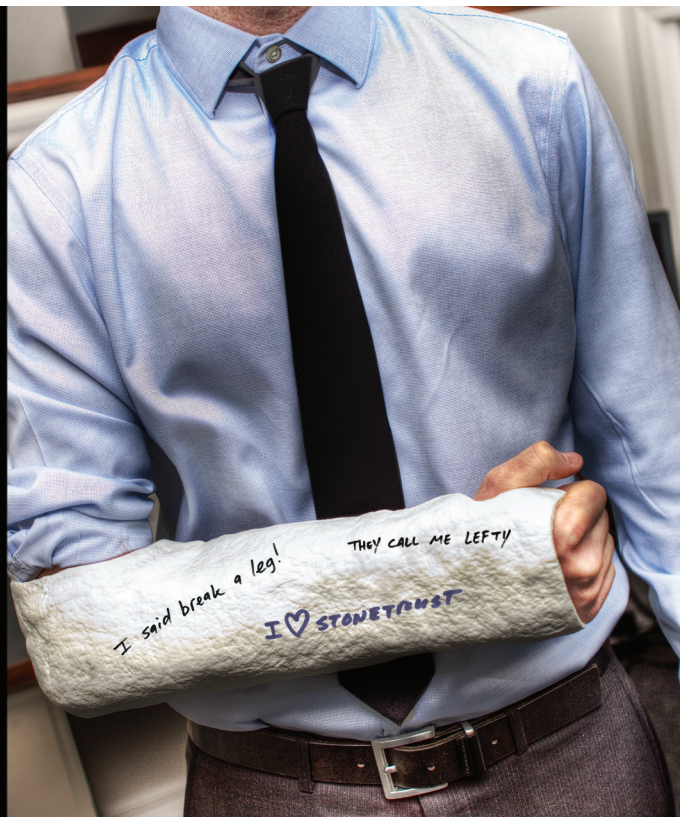
the situation described above, there generally would be no underwriting action taken or premium increase as a result of the potential claim. Not every potential claim will end up with a result like this one, but if you give yourself (and your E&O carrier) the opportunity to resolve things before they develop into something bigger, the probability of a positive outcome increases dramatically. And if you don't, the possibility is completely gone. By taking steps to report potential claims to Westport early, you may avoid actual claims and maybe even litigation.

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for Non-Exchange Entities) to the contract that every insurance agent and broker must sign before working with clients to purchase insurance on the federal exchange. The sample statement also generally conforms to the privacy and security standards set by state health care exchanges.

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**Q.** We're in a quandary about a situation that is probably not at all uncommon these days. When we are working on renewing personal lines accounts, we send each insured a short list of questions, asking if there have been any changes, new exposures, etc. One of the questions deals with any changes in who resides in the household. One of our personal auto insureds called us to say that her daughter graduated from college this past spring, now lives in another state, but still has custody of the auto she drove while in college. It is titled to both the daughter and her mom, and is still declared on the mom's Personal Auto Policy (PAP). The daughter is listed as a driver in the mom's policy.

Our insured added that her daughter's boyfriend has moved in with her, since he is having trouble finding a job.

We are concerned about potential coverage gaps, as well as how the PAP and Personal Umbrella underwriters will view this change. We want to get our ducks in a row in preparation for working with the insured, and the underwriters. The obvious solution to us is for the daughter to simply get her own PAP and have the car re-titled in her name.



## Ask Mike

**IIABL Director of Education, Mike Edwards is available to answer technical questions from IIABL members. To submit a technical question, contact**

**Mike Edwards, CPCU, AAI, at [medwards65@aol.com](mailto:medwards65@aol.com) or call (678) 513-4390.**

### **Subject: Kid's car jointly titled with parents**

However, the mom says the car is still financed. And if the daughter gets her own PAP with the title still in both names, that probably creates more problems than it solves. Since the mom has an umbrella, the PAP has \$500,000 liability limits, so if the daughter insures that auto while it is jointly titled, that could cause a coverage gap for her mom. Would the Joint Ownership endorsement solve the problem?

**A.** Call me Old School, but I think that joint titling anything is a bag of insurance snakes, and that goes double for jointly titling a car with a non-resident relative. Here are my thoughts on the coverage issues.

Assume Jill is your insured, Jillette is her daughter, and Bob is Jillette's live-in boyfriend. Jill has an ISO (Insurance Services Office) PAP, which insures Jill's Ford Explorer, and the jointly-titled Ford Taurus, which Jillette has. All coverage commentary and form excerpts below are ISO. Non-ISO proprietary forms may be different.

Excerpt from ISO Personal Auto Policy:

**PP 00 01 01 05  
Part A – Liability  
B. "Insured" as  
used in this Part  
means:**

- 1. You or any "family member" for the ownership, maintenance or use of any auto or "trailer".*
- 2. Any person using "your covered auto".*
- 3. For "your covered auto", any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.*
- 4. For any auto or "trailer", other than "your covered auto", any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family mem-*



ber" for whom coverage is afforded under this Part. This Provision (B.4.) applies only if the person or organization does not own or hire the auto or "trailer".

### **Situation #1: Jillette is driving Bob's car.**

#### Comments.

1. Jillette is an insured in Bob's PAP, as a permissive user.
2. If Bob's PAP is non-ISO, it may exclude undeclared resident operators. ISO has no such exclusion.
3. Jillette is not an insured in Jill's PAP, since she is no longer a resident family member. Therefore, Jillette only has Bob's limits available, and receives no coverage from Jill's PAP or umbrella. This applies for

## **Ask Mike**

**continued**

all coverages for Jillette under Jill's PAP, except when Jillette is in the Taurus.

4. Also, if Jill was struck as a pedestrian by an auto, she would have no Medical Payments or Uninsured Motorists coverage from Jill's or Bob's PAP, because she does not have "family member" status in either auto policy.

5. The fact that Jillette is declared as a driver in Jill's PAP has no effect on coverage.

### **Situation #2: Bob is driving Jillette's Taurus.**

#### Comments:

1. Bob is an insured in Jill's PAP as a permissive

user. While Jill probably did not give Bob expressed permission to drive the Taurus, this would not automatically prohibit Bob from being an insured. Note that the term "permissive user" is something of a misnomer. The actual coverage grant for non family-member drivers is "Any person using 'your covered auto'." [See "Insured B.2" in excerpt above.] And the exclusion applies to anyone "Using a vehicle without a reasonable belief that that 'insured' is entitled to do so. This Exclusion (A.8.) does not apply to a 'family member' using 'your covered auto' which is owned by you." So unless Jill has expressly told Bob he is not allowed to drive the Taurus, he is an insured

**continued on page 24**



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in Jill's PAP, and possibly her umbrella as well.

2. The fact that Bob is an insured in Jill's PAP is good news for Bob, but not necessarily good news for Jill. This highlights one of the biggest disadvantages of joint titling an auto, especially when the auto is not garaged at the named insured's residence: Jill has no control over who might operate the Taurus. And this could cause her to be named as a defendant in a lawsuit. But, at least Jill's PAP will provide coverage for her, although it could cause a large claim to be paid by her PAP.

3. Jill might ask your agency to run Bob's MVR, in part because he might

## Ask Mike

continued

drive the Taurus, which is a valid concern for Jill, and also because Jill might want to "check-up" on Bob, as most any parent would. However, because MVRs are protected under federal privacy laws (the Fair Credit Reporting Act - FCRA, for example), agencies must be very careful about pulling MVRs and similar protected information. In my view, I do not think the agency has a valid legal reason to run Bob's MVR. And even if they did, I absolutely do not believe they have any legal right to share it with Jill.

I have read about adverse

E&O cases where agency staff provided MVRs to third parties that had no legal right to them, such as in Jill's case. There have even been cases where agency staff people have run MVRs on people they were dating, or on ex-spouses during child custody proceedings. In one case, the agency had to pay a \$250,000 judgment.

Conversely, the insurer might have a right to review Bob's MVR, as a part of underwriting drivers on a vehicle they insure.

Here are some possible solutions.

**Option #1: Get the Taurus retitled into Jillette's name, and she gets her own PAP.**

continued on page 26

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I agree with you – this is by far the best option. Where the Taurus is still being financed, that presents a hurdle, but in many cases, refinancing can be arranged.

**Option #2: Write a PAP with both Jill and Jillette as Named Insureds.**

This is a plausible second choice, but one complication in this situation is that Jill also owns a Ford Explorer which she drives. So a PAP would have to be written on both the Explorer and the Taurus, naming both Jill and Jillette as Named Insureds. Where no market the agency has will do this, the only option would be to write a PAP

# Ask Mike

continued

in Jill's name covering the Explorer, and write a separate PAP in both their names, covering the Taurus. In this case, it would be critical to clone the limits, terms, and conditions, and preferable write both policies with the same insurer.

For insurers that follow ISO rules for PAP eligibility, autos owned jointly by non-resident relatives must be written on a separate policy, using the Joint Ownership endorsement.

**Option #3: Add Jillette as an Additional Insured to Jill's PAP.**

ISO has no Additional Insured endorsement for PAP. This is primarily because the definition of "insured" for liability includes broad coverage for omnibus insureds. For example, if Jill was using her Explorer on behalf of her employer and caused an at-fault accident, she is an insured under B.1., and her employer is an insured under B.3. [See PAP excerpt above.]

Some non-ISO auto markets have proprietary "additional insured" provisions or endorsements, while other markets have similar provisions for "additional interests." The coverage afforded the additional person varies with the specific form, and the extent of protection is often limited to vicarious coverage

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only. In essence, this is no substitute for Jillette being a Named Insured in her own PAP.

### Conclusions.

1. I commend your agency for contacting insureds during the renewal process. Procedures such as this are good for business, as well as good E&O loss control measures.

2. We know that getting the car titled in Jillette's name is the best option, but since it is financed, it cannot always be done. Therefore, the agency must be clear about possible gaps in coverage if other options are selected by the insured. And as always, maintaining good documentation about

## Ask Mike

continued

communication with the insured and the insurer is vital.

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