

# Technical Advisory

TA 329

July 11, 2017

## **Subject: Study Shows Majority of UM Election/Rejection Forms in Louisiana Done Incorrectly**

**Background:** Louisiana uninsured motorist (UM) statutes provide that no automobile liability insurance shall be delivered in this state unless coverage is provided in not less than the limits of bodily injury liability provided by the policy. However, the coverage required under this Section is not applicable when any insured named in the policy either rejects coverage, selects lower limits, or selects economic-only coverage, in the manner provided in this Section. [22:1295(1)(a)(i).]

If an insured rejects UM coverage, or elects one of the reduced-coverage options, and later files a claim for UM limits equal to the BI liability limits, as provided in above statute, the insurer's primary, if not exclusive, defense will be the UM selection made by a named insured on the Uninsured/Underinsured Motorist Bodily Injury Coverage Form, as promulgated by the Louisiana Department of Insurance (LDI).

However, should a court find any defect or error in how the UM election/rejection form was completed, the rejection of UM, or selection of reduced coverage, shall be deemed invalid. Absent evidence sufficient to counter the errors in the election/rejection form, insurers would then be required to pay UM limits equal to BI limits. Subsequently, an insurer may seek recovery against the agency for the error.

**Main Points:** Progressive automobile insurance company recently conducted an audit of Louisiana UM selection forms and found that only 44% of the forms met all the criteria Louisiana courts have determined necessary to constitute a valid UM selection form. IIABL greatly appreciates Progressive's cooperation and assistance with this Technical Advisory, and their permission to reprint the material below from their study.

Here are the key points that the study recommended for agencies:

When completing the Louisiana UM form, be sure to follow these do's and don'ts so you and your customer can count on compliance with the state and continued coverage/support from Progressive.

### **DO**

- Have the named insured initial the selection or rejection of coverage chosen
- Fill in the amount of coverage selected for each person and each accident (or for combined single limits) in thousands of dollars

(e.g., 25,000/50,000) IF the named insured selects limits lower than policy limits

- Legibly print the name of the named insured or legal representative
- Ask the named insured or legal representative to sign the form
- Legibly fill in the policy number (if the number exists) at the time the form is completed
- Legibly fill in the date
- Add the correct company name (Progressive Security Insurance Company OR Progressive Paloverde Insurance Company) to the form if using a preprinted or handwritten form

### **DON'T**

- Use an "X" or "sign here" to denote where a customer should sign
- Allow anyone other than the named insured to complete the form without appropriate authorization
- Include the wrong policy number (e.g., a prior policy number or number with transposed digits)
- Forget to select a limit, or select a limit that is invalid
- Permit any stray marks, use correction fluid, or alter the form in any way

1. DON'T add stray marks or correction fluid anywhere

2. DON'T forget to initial the option selected

4. DON'T write 'X' or 'sign here'

5. DO write legibly

**STATE OF LOUISIANA**  
This form may not be altered or modified

**UNINSURED/UNDERINSURED MOTORIST BODILY INJURY COVERAGE FORM**

**Uninsured/Underinsured Motorists Bodily Injury Coverage**, referred to as "UMBI" in this form, is insurance that pays persons insured by your policy who are injured in an accident caused by an owner or operator of an uninsured or underinsured motor vehicle. Depending on the coverage purchased, UMBI Coverage can provide compensation for both economic and non-economic losses.

**Economic losses** are those that can be measured in specific monetary terms including but not limited to medical costs, funeral expenses, lost wages and out of pocket expenses.

**Non-economic losses** are losses other than economic losses and include but are not limited to pain, suffering, inconvenience, mental anguish and other non-economic damages otherwise recoverable under the laws of this state.

**By law, your policy will include UMBI Coverage at the same limits as your Bodily Injury Liability Coverage unless you request otherwise.** If you wish to reject UMBI Coverage, select lower limits of UMBI Coverage, or select Economic-Only UMBI Coverage, you must complete this form and return it to your insurance agent or insurance company. Economic-Only UMBI Coverage may not be available from your insurance company. In this case, your company will have marked options 2 and 3 below as "Not Available" or "NA."

**UNINSURED/UNDERINSURED MOTORIST BODILY INJURY COVERAGE**

You may select one of the following UMBI Coverage options (initial only one option)

<p>1. <u>JD</u> <small>Initial</small></p> <p>Not Available <small>Initial</small></p> <p>Not Available <small>Initial</small></p> <p>4. _____ <small>Initial</small></p>	<p>I select <b>UMBI Coverage</b> which provides compensation for economic and non-economic losses <b>with limits lower</b> than the Bodily Injury Liability Coverage limits indicated on the policy: \$ <u>25,000</u> each person <b>AND</b> \$ _____ each accident/occurrence \$ <u>50,000</u> each accident/occurrence</p> <p>I select <b>Economic-Only UMBI Coverage</b>, which provides compensation for economic losses <b>with the same limits</b> as the Bodily Injury Liability Coverage indicated on the policy.</p> <p>I select <b>Economic-Only UMBI Coverage</b>, which provides compensation for economic losses <b>with limits lower</b> than the Bodily Injury Liability Coverage limits indicated on the policy: \$ _____ each person <b>OR</b> \$ _____ each accident/occurrence \$ _____ each accident/occurrence</p> <p>I do not want UMBI Coverage. I understand that I <b>will not be compensated through UMBI coverage</b> for losses arising from an accident caused by an uninsured/underinsured motorist.</p>
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**SIGNATURE**

The choice indicated and initialed on this form will apply to all persons and/or entities insured under this policy. This choice shall apply to the motor vehicles described in this policy and to any replacement vehicles, to all renewals of this policy, and to all reinstatement, substitute or amended policies until a written request is made for a change to the Bodily Injury Liability Limits, the UMBI limits or UMBI Coverage.

John Doe  
Signature of Named Insured or Legal Representative

John Doe  
Print Name

3/11/17  
Date

Issued Per LDOI Bulletin 08-02, 09/29/06  
Form #089 LA 1126B

Policy number: #01234567-0  
John Doe

Progressive Paloverde Insurance Co.  
**PROGRESSIVE**  
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3. DO verify the limit is available and matches policy (e.g., 25,000/50,000 or 100,000 CSL)

6. DO check the number for accuracy

7. DO include correct company: Progressive Security Insurance Company OR Progressive Paloverde Insurance Company

The key points enumerated in this study provide agencies with an opportunity to review procedures and other related issues in dealing with UM coverage.

A very instructive and useful resource to understand the guidelines on completing the UM election/rejection form is Louisiana Department of Insurance (LDI) [Bulletin 08-02](#). It provides specific instructions on how to fill out the form.

In addition to properly completing the UM election/rejection form, another key issue is the question of how long UM election/rejection forms should be retained. The Louisiana UM statutes provide the following:

*22:1205.(1)(a)(ii) The form signed by the insured or his legal representative which initially rejects coverage, selects lower limits, or selects economic-only coverage shall remain valid for the life of the policy and shall not require the completion of a new selection form when a renewal, reinstatement, substitute, or amended policy is issued to the same named insured by the same insurer or any of its affiliates.*

In addition to this statutory requirement that UM election/rejection forms be kept for an indeterminate time, another statute (unrelated to UM) sets a one year/three year limitation on when an E&O claim can be filed.[9:5606.] See this IIABL Technical Advisory ["UM Election/Rejection Forms – Records Retention Guideline"](#)

Another issue related to retaining UM election/rejection forms is whether or not electronic records, such as scans of the signed original UM form, are valid and legally acceptable in court. In pertinent part, the Louisiana Uniform Electronic Transactions Act (LUETA) provides for the following:

*9:2612. Retention of electronic records; originals*

*A. If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record which:*

*(1) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise.*

*(2) Remains accessible for later reference.*

This IIABL Technical Advisory discusses the LUETA in detail:

["Guidelines for e-Signature and e-Delivery"](#)

**Necessary Action:** Circulate this Technical Advisory to all appropriate agency staff.

**Please note that this Technical Advisory is intended to be educational and is not legal advice upon which you should rely. Please seek any legal opinion you may need from a qualified attorney.**