

Chapter 18

Adjusters

An adjuster is a person who investigates claims, determines coverage, examines relevant documents, and inspects property damage. An adjuster may also determine the amount of a claim, loss or damage payable under an insurance contract or plan. An adjuster often settles or negotiates settlement of the claim. In some states, the adjuster's authority is limited to a specialty area such as auto, homeowner, workers' compensation or crop insurance.

There are ~~three-two~~ kinds of adjusters: 1) public; 2) ~~independent~~; and 3) ~~company, sometimes called staff~~ adjusters. Public adjusters represent the insured, while ~~independent and staff~~ adjusters represent the insurer. More than 30 states require licensure of one or more of these types of adjusters.

Public adjusters directly contract with the person who is seeking coverage or benefits under an insurance policy or other kind of insurance plan. The role of a public adjuster is to represent an insured or claimant in the settlement of a claim. The NAIC has adopted the *Public Adjuster Licensing Model Act* (#228).

Under the model, a public adjuster is defined as:

"Public adjuster" means any person who, for compensation or any other thing of value, acts on behalf of an insured by doing any of the following:

1. Acting for or aiding an insured in negotiating for or in effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured.
2. Advertising for employment as a public adjuster of first-party claims or otherwise soliciting business or representing to the public that the person is a public adjuster of first-party claims for loss or damage to real or personal property of an insured.
3. Directly or indirectly soliciting the business of investigating or adjusting losses, or of advising an insured about first-party claims for loss or damage to real or personal property of the insured.

~~Staff~~ adjusters are typically salaried employees of an insurer or an insurer's affiliates and do not adjust claims for entities other than their employer or its affiliates. ~~Independent~~ adjusters are self-employed or associated with or employed by an independent firm. Independent adjusters may adjust claims on behalf of many insurers. The NAIC has adopted model guidelines for *Independent Adjuster Licensing Guideline* (#1224) adjusters that states are encouraged to adopt. The Appendices contain the model guideline.

Most states recognize one or more of the following exemptions to adjuster licensing:

1. Attorneys-at-law admitted to practice in this state, when acting in their professional capacity as an attorney.
2. A catastrophe situation officially declared by the insurance commissioner or governor, according to state law. Registration may be required, but no permanent license should be required of a nonresident adjuster who is sent on behalf of an insurer for the purpose of investigating or adjusting a loss or a series of losses resulting ~~2-3~~ from a catastrophe.
- 3.4. A person employed solely to obtain facts surrounding a claim or furnish technical assistance to a licensed independent adjuster.
5. An individual who is employed to investigate suspected fraudulent insurance claims but who does not adjust losses or determine claims payments.
- 4-6.
7. A person who solely performs executive, administrative, managerial or clerical duties, or any combination

Commented [GC(1): It is our opinion that only two Adjuster license types are required, public adjuster and adjuster. Both independent and company adjusters perform the same role and do not need to be differentiated by a third license type. The definition of Adjuster in DE Title 18 Section 17 is inclusive of all roles and employment type

Commented [GC(2): As previously stated, it is our opinion that whether the adjuster is employed or self-employed, their roles are the same and covered by the one adjuster license type as defined in DE statute

~~5.8.~~ thereof, and who does not investigate, negotiate or settle claims with policyholders, claimants, or their legal representative.

~~6.9.~~ A licensed health care provider or its employee who provides managed care services as long as the services do not include the determination of compensability.

~~7.10.~~ A managed care organization, any of its employees, or an employee of any organization providing managed care services as long as the services do not include the determination of compensability.

~~8.11.~~ A person who settles only reinsurance or subrogation claims.

Commented [GC(3)]: We do not agree that licensure is not required.

~~9-12.~~ An officer, director, manager or employee of an authorized insurer, surplus lines insurer, risk retention group (RRG), or attorney-in-fact of a reciprocal insurer.

~~10-13.~~ A U.S. manager of the U.S. branch of an alien insurer.

~~11-14.~~ A person who investigates, negotiates or settles life, accident and health, annuity, or disability insurance claims.

~~12-15.~~ An individual employee, under a self-insured arrangement, who adjusts claims on behalf of his or her employer.

~~13.~~ A licensed insurance producer to whom claim authority has been granted by the insurer.

~~14-16.~~ A person authorized to adjust workers' compensation or disability claims under the authority of a third-party administrator (TPA) license pursuant to [applicable licensing statute].

Drafting Note: This guideline is drafted to eliminate redundant licensure requirements with respect to the activities engaged in by a licensee. If licensed as an ~~independent~~-adjuster, TPA, or similar business entity (BE), licensees should not be required to obtain separate independent adjuster licenses, provided that the types of claims adjusted do not include life, health, annuity or disability insurance claims.

Commented [GC(4): We do not agree with this exemption

Commented [GC(5): Does this exempt the requirement for examination for lines of authority for claim types being adjusted?

Qualifications of an Adjuster

States that do require licensure assess the qualifications of potential adjusters in various ways. States use one or more of the following methods to determine that a person has the requisite knowledge to properly adjust claims:

1. Specialized or related education prior to licensure; i.e., prelicensing coursework.
2. A specified amount of experience that is relevant to the kind of adjusting work the applicant will be doing; i.e., property/casualty (P/C), workers' compensation or life/health.
3. A license examination.
4. Relevant professional designation such as the Chartered Property Casualty Underwriter (CPCU) or Associate in Claims (AIC).
5. Prior similar licensure in another state.

For states implementing a new regulatory scheme for adjusters, it is common practice to waive the initial exam for applicants with appropriate credentials and experience.

Commented [GC(6): We would not waive the initial exam requirement regardless of credentials or experience.

Fitness and Character Considerations

Like insurance producers, many states also evaluate an applicant's fitness, character and trustworthiness to engage in this aspect of the insurance business. State insurance regulators typically consider:

1. Criminal history.
2. Administrative actions taken by other state insurance regulators.
3. Civil judgments that may shed light on an applicant's character or fiscal integrity.

In some states, an adjuster must apply for a license by line of insurance, or line of authority (LOA), similar to the manner in which producers are licensed. Other states require adjuster licenses by categories such as motor vehicle physical damage, workers' compensation or crop.

States are encouraged to implement a fingerprint requirement for public and independent adjusters similar to what is required of producers. Additionally, if a state permits a nonresident adjuster to designate that state as its home state, fingerprinting of that nonresident should be required. States are encouraged to adopt the *Authorization for Criminal History Record Check Model Act* (#222) when evaluating and considering whether an applicant or licensee has met the character and trustworthiness requirements to obtain, maintain or renew a license.

Reciprocity

In almost every jurisdiction where licensure is required, it is the "home state" insurance regulator who assesses the qualifications of his or her resident adjusters. Based upon securing a license in one's home state, many states will grant a comparable or similar nonresident license to such an individual. This is not the case in all states, and varying

LOAs, qualification standards and license types have created barriers to nonresident licensure. In addition, an adjuster based in a state that does not license adjusters may be required to take exams in multiple states.

The New NAIC Public Adjuster Model Act (# 228) defines home state as:

“Home state” means Washington, DC and any state or territory of the U.S. in which the public adjuster’s principal place of residence or principal place of business is located. If neither the state in which the public adjuster maintains the principal place of residence nor the state in which the public adjuster maintains the principal place of business has a substantially similar law governing public adjusters, the public adjuster may declare another state in which it becomes licensed and acts as a public adjuster to be the “home state.”

Guideline #1224 defines home state as:

“Home state” means Washington, DC and any state or territory of the U.S. in which an ~~independent~~ adjuster maintains his, her or its principal place of residence or business and is licensed to act as a resident ~~independent~~ adjuster. If the resident state does not license ~~independent~~ adjusters for the line of authority sought, the ~~independent~~ adjuster shall designate as his, her or its home state any state in which the ~~independent~~ adjuster is licensed and in good standing.

There are a few states that will not grant nonresident licensure based upon a person having qualified and passed a license exam in the applicant’s home state. Instead, these states require the nonresident applicant to take an exam in the nonresident state even though the person has taken and passed the license exam in the home state.

Adjuster licensing processes were modeled on producer licensing processes, and in 2011, the NAIC adopted the *Independent Adjuster Reciprocity Best Practices Guidelines* paper, which provides jurisdictions with a model to meet reciprocity requirements, as well as take major steps toward reaching uniformity. The NAIC uniform licensing forms are designed to be used by applicants for adjuster licenses. Producer licensing for nonresidents is predicated on the producer satisfying the requirements for a home state license. Those producer requirements often include preclicensing education and examination. Since, at this writing, 40 states license public adjusters, 33 states license independent adjuster licenses, and only 15 states require company adjusters to be licensed, obtaining nonresident adjuster licenses becomes more complex because adjusters often do not have an underlying resident license. Until states adopt the provision that allows an individual to qualify for licensure by designating another state as the person’s home state or to designate the state in which the application is filed as the person’s home state, obtaining a nonresident adjuster license becomes more complex because adjusters often do not have an underlying resident license.

Some states do not license adjusters. In order for the use of electronic licensing systems, adjusters residing in states that do not license adjusters can select an Adjuster Designated Home State (ADHS). The ADHS is the state in which the adjuster does not maintain his, her or its principal place of residence or business, and the adjuster qualifies for the license as if the person were a resident.

A state whose laws permit a nonresident adjuster to designate that state as its home state will require the nonresident to qualify as if the person were a resident—exam requirements; fingerprinting, if required; and continuing education (CE). Once the individual has met the qualifications, the Designated Home State (DHS) will issue a nonresident license. The Producer Database (PDB) and DHS will list the record as nonresident DHS.

If the resident state of the adjuster does not require an adjuster license, adjusters cannot use the National Insurance Producer Registry (NIPR) ADHS module unless they declare another state to be the home state. NIPR has recently added a new Nonresident Adjuster Licensing (NRAL) application that allows an individual to designate a state other than the resident state as the home state. NIPR contains functionality to allow adjusters that have designated another state as the home state to renew online. Adjusters with any license can update contact information through the NIPR Contact Change Request (CCR) tool.

Continuing Education

Approximately 18 states have CE requirements for their resident adjusters. Reciprocity exists among a majority of these states, but not all, in part as a result of the inconsistency among LOAs granted within each state’s adjuster

licensing scheme. It also becomes problematic when the resident adjuster's home state does not have any CE requirements.

Model #228 and Guideline #1224 contain a CE requirement that the home state shall require 24 hours of CE every two years, with three of the 24 hours covering ethics. It is recommended that a state accept an adjuster's satisfaction of its home state's CE requirements as satisfying that state's CE requirements, provided that the home state recognizes CE satisfaction on a reciprocal basis. For a state that permits a nonresident adjuster to designate that state as its home state, the home state will require and track CE compliance for that adjuster.

Commented [GC(7): This would require a change to DE statute as we only require 9 general and 3 ethic CE credits for Adjusters

Commented [GC(8): We cannot accept this if it would require us to be reciprocal with a home state which does not have CE requirements. Per DE statute if the adjuster's home state has no CE requirements then DE CE requirements would need to be met

Emergency/Catastrophic Adjusters

A state that offers temporary licensure or registration for emergency/catastrophic adjusters are encouraged to follow Guideline #1224 and develop an automated notification or registration procedure that allows for an immediate, streamlined and efficient filing process for adjusters who are seeking authority to adjust claims in the event that an emergency or catastrophe is declared.

Non-U.S. Adjusters for Limited Lines Portable Electronics Insurance Products

Many states license, or are considering licensure for, limited lines portable electronics insurance producers. Because some major portable electronics insurance companies provide claims adjustment services via non-U.S. entities, the issue of licensing adjusters who do not reside in the U.S. has gained increased prominence. Guideline #1224 and Model #228 are silent on the licensing of non-U.S. citizens beyond the requirement to designate a home state. Some states, however, have tax laws or other laws that require licensees and applicants for licenses to submit and maintain a Social Security number (SSN). State license laws that allow for the licensing of non-U.S. adjusters must take this possible barrier to licensure into consideration. States should also require non-U.S. citizens to comply with all necessary qualification requirements, such as passing the resident license examination, if applicable.

Recommended Best Practices for State Insurance Regulators

- Adopt Model #228.
- Adopt Guideline #1224.
- Use the NAIC uniform applications and develop a mechanism for electronic submission and electronic bulk submissions.
- Use the definition of "home state" as defined in Model #228 as the basis of reciprocity.
- Provide resident and nonresident adjuster licensing requirements on forms, websites, and the State Producer Licensing Database (SPLD).
- Allow electronic payment for residents and nonresidents for authorized submitters, as well as individual adjusters.
- Post applications and license status information on websites and the SPLD
- Eliminate perpetual licenses, eliminate the word "perpetual" from issued licenses, and adopt a biennial renewal process tied to the uniformity standards.
- Adopt the *Independent Adjuster Reciprocity Best Practices Guidelines* paper.
- Use the definition of "home state" as defined in Guideline #1224.
- Participate in the NIPR ADHS application.
- Participate in the NAIC Personalized Information Capture System (PICS) to receive alerts or monitor actions against existing licensees.
- Use the Attachments Warehouse/Reporting of Action (ROA) system to receive electronic notifications to alert a state when an adjuster has added information into the Attachments Warehouse since their initial entry regarding administrative, criminal or civil actions. For nonresidents that designate your state as the "home state," a nonresident license should be issued.
- For nonresidents that designate your state as the "home state," develop internal data fields that will allow the tracking of CE compliance.
- Include a provision in law that prohibits simultaneous licensure as both an independent adjuster and a public adjuster.

Commented [GC(9): We do not agree to adopt Model #228 as currently written

Commented [GC(10): We do not agree to adopt Guideline #1224 as currently written

Commented [GC(11): We do not agree if it requires a change to DE statute regarding biennial renewal every Even or Odd year on the last day of February

Commented [GC(12): We do not agree to adopt Independent Adjuster Reciprocity Best Practices Guidelines paper as currently written

- If your state requires a license examination, require applicants for a resident license to pass your own state's examination, not simply use passing results from another's state's examination. However, recognition of an exam taken in another state may be given where a nonresident license is being requested.
- Grant an exemption from the license examination requirement to applicants for the crop LOA who have satisfactorily completed the National Crop Insurance Services (NCIS) Crop Adjuster Proficiency Program (CAPP) or the loss adjustment training curriculum and competency testing required by the Federal Crop Insurance Corporation (FCIC) Standard Reinsurance Agreement (SRA).
- If your state allows non-U.S. citizens to receive a license, ensure that other laws in your state, such as tax laws, do not require every licensee or applicant for a license to submit a SSN or Individual Taxpayer Identification Number (ITIN).