# WSIA Uniformity Principles

*Affirmed May 8, 2018*

The WSIA Uniformity Principles serve as a model to achieve the desired uniform regulatory requirements governing surplus lines transactions in the state-based regulatory system. WSIA believes that if all states apply the following principles to the regulation of surplus lines, all parties—the customer, the State and the industry--will benefit from the efficiency brought about by uniformity. WSIA strongly supports the state-based insurance regulatory system and believes that these principles uphold that well-established system.

The surplus lines marketplace is an essential part of the national insurance market. It operates successfully in the state-based regulatory system where business is exported from one state to another. WSIA strongly supports the continuation of a state-based regulatory system for insurance over a federal system; however, the current state-based system must become more uniform and efficient.

The foundation for uniformity in the regulation of surplus lines has already been laid in the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA)[i]. Since its passage, the NRRA's national framework and establishment of home state regulation and taxation has produced tremendous benefits for the surplus lines industry by ensuring one state, the home state of the insured, governs multistate risks. This "home state" approach brings efficiency, clarity and uniformity to the regulation of surplus lines insurance by creating a modern and efficient regulatory framework. WSIA is dedicated to preserving the intent and clear mandates of the NRRA and the resulting uniformity and efficiencies in the regulation of multistate surplus lines transactions.

## **Principle 1:** All states should follow uniform procedures for the regulation and taxation of surplus lines brokers and insurers in line with the NRRA

In passing the NRRA, Congress sought to achieve a simpler and more efficient system of regulation and taxation of the surplus lines industry by establishing the insured's "home state[ii]" as the one and only jurisdiction to regulate and tax surplus lines transactions. Congress also clearly expressed its intent that states establish a uniform, nationwide approach to the regulation and taxation of the surplus lines industry. WSIA believes that there are opportunities for the states to bring about the full spectrum of uniformity and efficiency envisioned by Congress while maintaining individual state purview.

## **Principle 2:** Surplus lines transactions should be regulated by, and the premium tax remitted to, the insured's home state as specifically defined by the NRRA "home state" definition

### Home State Tax Calculation

WSIA commends the 47 jurisdictions (45 states plus the District of Columbia and Puerto Rico) where surplus lines taxes are retained and calculated at the home state's tax rate on 100% of the premium. Currently only five states (Florida, Hawaii, Massachusetts, New Hampshire and Vermont) tax multistate surplus lines premium based on the state surplus lines premium tax rate where the risk is located, however, these five states do retain the entire tax collected for the multistate risk. To achieve uniformity in the collection of surplus lines premium taxes, all jurisdictions must tax 100% of the surplus lines premium at their home state rate.

Further, to avoid any confusion and ensure uniformity, WSIA believes premium on any portion of a policy with risks located outside of the U.S. should be excluded from surplus lines premium tax.

### NRRA Home State Tax Definition

The definition of "home state" in the NRRA is the foundation of the regulation and taxation of the surplus lines market and is integral to the success of the reforms and modernizations the NRRA intended to achieve. The home state approach has significantly simplified and improved the regulatory and tax compliance process for our industry. The provision for "home state" in the NRRA has been successful in dramatically improving the premium tax payment process and reducing the cost of surplus lines compliance within the state based regulatory system. Therefore, WSIA believes it is crucial that all states adopt the NRRA definition of "home state" as adopted in the law. The adoption of a definition of home state that conflicts with the NRRA results in less uniformity and inevitably leads to disagreements among the states over which state regulates the transaction and is owed the tax.

## Principle 3: All states should uphold the NRRA definition of "insurer eligibility[iii]" and eliminate any additional criteria outside of the scope of the NRRA

The NRRA clearly defines criteria for carrier eligibility compliance requirements. States should not impose additional requirements beyond the NRRA. States that exceed the NRRA requirements should change their practice in accordance with the NRRA.

The WSIA membership benefits from strong carrier solvency, therefore WSIA supports strong solvency review by domiciliary states for U.S. domestic surplus lines carriers and by the NAIC International Insurers Department and its members for non-U.S. surplus lines carriers. However, states implementing voluntary listings with additional solvency review should be limited to information readily available through the domiciliary state or NAIC database. No additional information beyond data collected for domiciliary state solvency regulation should be required. U.S. domestic and non-U.S. carriers should have the same standard for doing business and demonstrate strong solvency history to support a strong surplus lines industry. U.S. insureds purchasing surplus lines coverage should feel confident in the strength and solvency of the surplus lines market.

## Principle 4: All states should limit surplus lines premium tax payment dates to eliminate confusion and inefficiencies

WSIA supports uniformity amongst the states regarding tax payment dates. WSIA members spend significant resources to comply with varying state requirements for payment of taxes. Increased cost of compliance adds additional costs to policyholders under their policies.

WSIA believes uniform tax dates on the first day of March, June, September or December would be appropriate. States may choose an annual, biannual or quarterly requirement but should be limited to these four potential dates throughout the year. States may require estimated quarterly tax payment for three dates and a "true up" on the fourth date. While decreasing costs to policyholders, this simple uniform approach would in no way decrease the sufficiency or timely delivery of desired information to the various states.

## Principle 5: All U.S. jurisdiction should utilize one uniform definition of "taxable premium"

The NRRA encourages states to adopt uniform procedures and requirements regarding multistate surplus lines premium taxes. However, states currently have individual definitions and requirements that define what taxable premium is for purposes of the broker calculating surplus lines premium tax. States should adopt one uniform definition for determining taxable premium so taxes are calculated and treated the same in each state in a uniform manner consistent with the intention of the NRRA.

## Principle 6: States should adopt uniformity in the treatment of surplus lines fees

### Broker Policy Fees

All U.S. jurisdictions should allow reasonable broker policy fees in the placement of surplus lines policies. Surplus lines placements are often unique and require additional work initially and throughout the policy period. Broker policy fees should be excluded from premium for tax calculation purposes.

### Taxation of Fees on Surplus Lines Policies

All U.S. jurisdictions should be uniform in requirements related to taxing fees associated with surplus lines policies. WSIA believes states should either (1) include all fees as part of the premium and tax all fees associated with the policy or (2) exclude all fees associated with the policy from the premium such that the fees are not taxable.

## Principle 7: All states should eliminate Zero Premium Report requirements

The NRRA "home state" approach clarifies that only one state can require a tax payment, and surplus lines brokers must identify a home state for every policy and remit the taxes to that state. This simplified home state requirement means that "zero reports" are obsolete, because the pre-NRRA system requiring the broker to remit a portion of the tax to each exposure state has been eliminated. Further, WSIA believes existing state requirements to file a "zero report" create unnecessary work for surplus lines brokers with no apparent benefit to the industry or regulatory community. For these reasons, WSIA believes "zero report" requirements should be eliminated. Information regarding state requirements for zero premium reporting can be found on the WSIA Tax Filing and Reporting Procedures compliance chart.

## **Principle 8:** All states should accept electronic filings

Electronic filing offers efficiency and consistency for both the state and the surplus lines broker. It increases the timeliness of transactional reporting for states and reduces costly errors. WSIA members encourage states to accept all required reports and filings electronically.

## **Principle 9:** States should adopt uniform forms and reports formats

WSIA members direct considerable resources to complying with varying state reporting format requirements. and information to be included in the required reports is not uniform. All states should adopt one uniform form and report for surplus lines premium tax with the same data requirements applied uniformly for all states. All states should allow electronic filing, but in states unable to immediately implement electronic filing, the electronic and hard-copy form should be the same.

## **Principle 10:** States should eliminate Carrier/Broker reconciliation practices

The NRRA directs the taxation of all surplus lines premium to the home state of the insured where the full amount of tax paid can be directly and effectively audited by the state. States should rely on broker filings, with brokers remitting 100% of the tax to the home state on 100% of the premium for the home state of the insured. Additional auditing and comparisons of broker and carrier information is unnecessary.

## **Principle 11:** A Uniform Notice to Insureds is preferable to individual state notices

Most states require surplus lines notices to be sent to the insured, indicating the insured has purchased a surplus lines policy, that it is not covered by a guaranty fund and to contact the Department of Insurance or the broker for questions or concerns. The required information and presentation in the notice varies from state to state. WSIA supports the adoption of one uniform notice to the insured.

WSIA suggests the uniform notice to insureds should be provided at the time of delivery of the policy and as a separate document attached to the policy. The notice should state:

An insurer that is not licensed in this state is issuing the insurance policy that you have applied to purchase. Although the insurer is not licensed in this state, it is permitted to be placed with the "nonadmitted" or "surplus lines" insurer. The insurer is not subject to the financial solvency regulation and enforcement that applies to licensed insurers in this state. These insurers generally do not participate in insurance guaranty funds created by state law. These guaranty funds will not pay your claims or protect your assets if the insurer becomes insolvent and is unable to make payments as promised. For additional information about the above matters and about the insurer, you should ask questions of your insurance general agent, broker or surplus lines broker. You may also contact your insurance department consumer help line.

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[i] 15 U.S.C.A § 8201 et. seq. (**Title V, Subtitle B** of Dodd-Frank Wall Street Reform Act of 2010)

[ii] 15 U.S.C.A § 8206(6) defines "home state" as:

(A) In general

Except as provided in subparagraph (B), the term "home State" means, with respect to an insured--

i. the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

ii. if 100 percent of the insured risk is located out of the State referred to in clause (i), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated

(B) Affiliated groups

If more than 1 insured from an affiliated group are named insureds on a single nonadmitted insurance contract, the term "home State" means the home State, as determined pursuant to subparagraph (A), of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

[iii] 15 U.S.C.A. § 8204 defines the uniform standards for surplus lines eligibility as:

A State may not—

(1) Impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with such requirements and criteria in section 5A(2)(a) and 5C(2)of the Non-Admitted Insurance Model Act*, unless the State has adopted nationwide uniform requirements, forms, and procedures developed in accordance with section 8201(b) of this title that include alternative nationwide uniform eligibility requirements or:

(2) Prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

*NAIC Nonadmitted Insurance Model Act states each insurer must (1) be authorized to write the type of insurance in its domiciliary jurisdiction (Section 5A(2)(a)); and (2) has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction which equals the greater of (1) the minimum capital and surplus requirements under the law of this state; or (2) $15,000,000