



LOUISIANA DEPARTMENT OF INSURANCE

JAMES J. DONELON  
COMMISSIONER

**BULLETIN NO. 2011-01  
(Revised)**

**TO: ALL INSURERS, BROKERS, PRODUCERS AND OTHERS INVOLVED IN  
SURPLUS LINES OR NONADMITTED INSURANCE IN LOUISIANA**

**FROM: JAMES J. DONELON, COMMISSIONER OF INSURANCE**

**RE: IMPLEMENTATION OF THE NONADMITTED AND REINSURANCE  
REFORM ACT WITH RESPECT TO SURPLUS LINES INSURANCE IN  
LOUISIANA**

**DATE: JANUARY 12, 2018**

Bulletin No. 2011-01, originally issued on July 21, 2011, is hereby revised and re-issued to address changes in state law subsequent to its issuance. Bulletin No. 2011-01 (Revised) includes the following specific revisions:

- Defines "surplus lines insurance" and provides for the types of surplus lines insurers provided for in Title 22 of the Louisiana Revised Statutes, pursuant to Act 193 of the 2015 Regular Session.
- Removes prior guidance regarding Louisiana's participation in the Nonadmitted Insurance Multi-State Agreement (NIMA), from which Louisiana withdrew on October 1, 2015, pursuant to Act 386 of the 2015 Regular Session.
- Removes prior guidance regarding the requirement for a producer to conduct a diligent search among admitted insurers prior to placing coverage with a surplus lines insurer. This requirement, imposed pursuant to LSA-R.S. 22:435(A)(3), was repealed pursuant to Act 203 of the 2013 Regular Session.

Bulletin No. 2011-01 (Revised) outlines the effect of the Nonadmitted and Reinsurance Reform Act of 2010 ("NRRA"), PL 111-203, Title V, Subtitle B (§ 511 et seq.), July 21, 2010, 124 Stat. 1589 (15 U.S.C. § 8201 et seq.), on surplus lines or nonadmitted insurance in Louisiana. The effective date of the NRRA is July 21, 2011. The NRRA assigns regulatory and premium tax jurisdiction to the home state of the insured, as defined in the NRRA.

## **Scope of the NRRRA**

As stated above, the NRRRA assigns regulatory and premium tax jurisdiction to the home state of the insured as defined in the NRRRA. 15 U.S.C. §§ 8201(a) and 8202(a). The term "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa. 15 U.S.C. § 8206(16).

The term "nonadmitted insurer" (A) means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State; but (B) does not include a risk retention group, as that term is defined in section 2(a)(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. 3901(a)(4)). 15 U.S.C. § 8206(11).

The term "nonadmitted insurance" means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance. 15 U.S.C. § 8206(9). Louisiana law defines surplus lines insurance as "any property and casualty insurance in this state on property, risk, or exposure located or to be performed in this state, permitted to be placed through a licensed surplus lines broker with a surplus lines insurer." LSA-R.S. 22:46(17). Surplus lines insurer means "an approved unauthorized insurer, eligible unauthorized insurer, or domestic surplus lines insurers." LSA-R.S. 22:46(17.1). As used throughout Bulletin No. 2011-01 (Revised), surplus lines insurance shall also mean nonadmitted insurance unless the context indicates otherwise.

The NRRRA makes the placement of surplus lines insurance subject to the statutory and regulatory requirements solely of the insured's home state. However, the NRRRA does not preempt any state law, rule, or regulation that restricts the procurement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans from a surplus lines insurer. 15 U.S.C. § 8202. In Louisiana, LSA-R.S. 23:1161 governs the procurement of surplus lines insurance for workers' compensation in certain circumstances. With regard to surplus lines insurance policies for which the home state of the insured is Louisiana, a surplus lines broker may only place a surplus lines insurance policy with a surplus lines insurer as defined in LSA-R.S. 22:46(17.1).

Subject to the NRRRA, Louisiana will continue to maintain the above referenced voluntary list of nonadmitted insurers (white list). All foreign and alien surplus lines insurers must file with the LDI an application verifying eligibility as a surplus lines insurer. Foreign surplus lines insurers must include a certificate of compliance from its domiciliary state which clearly indicates the line or lines of insurance that the applicant is authorized to write in its domiciliary state, evidence of satisfaction of the capital and surplus requirements of the NRRRA, and appropriate contact information. Alien surplus lines insurers must include a copy of the letter that advised the insurer of its placement on the NAIC Quarterly Listing of Alien Insurers, and appropriate contact information.

The NRRRA does not change the kinds of insurance that an insurer may write in the surplus lines insurance market and each state continues to determine the kinds of insurance, whether admitted or surplus lines, that an insurer may write in that state. Although the NRRRA preempts certain state laws with respect to surplus lines insurance, the NRRRA does not affect insurance written on Louisiana properties, risks, or exposures by insurers admitted in Louisiana.

### **The Home State of the Insured**

Louisiana is the insured's home state if the insured's principal place of business is in Louisiana, or, in the case of a natural person, the insured's principal residence is in Louisiana. If Louisiana is the insured's home state, only Louisiana's requirements regarding the procurement of surplus lines insurance will apply. If Louisiana is the principal place of business or residence and 100% of the insured properties, risks, or exposures are outside of Louisiana, the insured's home state is the state that receives the greatest allocation of the insured's taxable premium for that surplus lines insurance contract. The NRRRA defines "home state" at 15 U.S.C. § 8206(6).

Principal place of business means, with respect to determining the home state of the insured, (a) the state where the insured maintains its headquarters and where the insured's high-level officers direct, control and coordinate the business activities; or (b) if the insured's high-level officers direct, control and coordinate the business activities in more than one state, the state in which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or (c) if the insured maintains its headquarters or the insured's high-level officers direct, control and coordinate the business activities outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

Principal residence means, with respect to determining the home state of the insured, (a) the state where the insured resides for the greatest number of days during a calendar year; or (b) if the insured's principal residence is located outside any state, the state to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

If more than one insured from an affiliated group are the named insureds on a single surplus lines insurance contract, Louisiana will be the home state for that contract if Louisiana is the principal place of business of the member of the affiliated group that has the largest percentage of premium attributed to it under such surplus lines insurance contract.

### **Applicability**

The laws and regulations of Louisiana and other applicable jurisdictions will apply to new and renewal surplus lines insurance policies with an effective date prior to July 21, 2011 and to any modification to such policies during the policy period, such as all

endorsements (including risk-bearing and premium-bearing endorsements), installment payments and premium audits. The laws and regulations of Louisiana will apply to new and renewal surplus lines insurance policies with an effective date on or after July 21, 2011, and any modifications thereto, if Louisiana is the home state of the insured.

### **Premium Tax Allocation and Payment**

The term "premium tax" means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance. 15 U.S.C. § 8206(12).

On and after July 21, 2011, the NRRRA permitted only the insured's home state to require the payment of premium tax, fees, assessments, or other charges for surplus lines insurance.

### **License Requirements for Brokers**

Only the insured's home state may require a surplus lines broker to possess a license to sell, solicit or negotiate surplus lines insurance with respect to a particular policy. 15 U.S.C. 8202(a) & (b). The term "surplus lines broker" means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers. 15 U.S.C. § 8206(15). If Louisiana is the insured's home state, the surplus lines broker must possess a Louisiana surplus lines broker license.

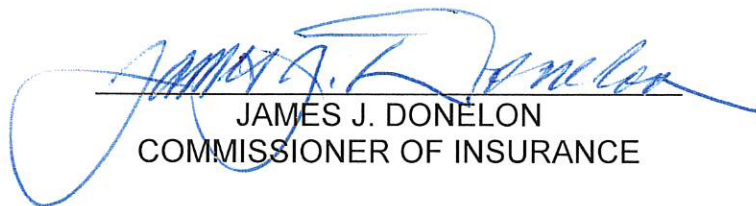
The NRRRA provides that Louisiana may not collect licensing fees for surplus lines brokers as of July 21, 2012, unless Louisiana participates in the NAIC's national insurance producer database or any other equivalent uniform national database. 15 U.S.C. § 8203. Louisiana is a participant in the National Insurance Producer Registry (NIPR), which provides such a database, such that Louisiana will collect licensing fees for surplus lines brokers who operate in Louisiana.

### **Eligibility Requirements for Surplus Lines Insurers**

The NRRRA restricts the eligibility requirements a state may impose on a surplus lines insurer. A surplus lines broker may place surplus lines insurance with an insurer domiciled in a U.S. jurisdiction authorized to write such business in the state of domicile and that maintains minimum capital and surplus of \$15 million. Pursuant to the NRRRA, a surplus lines broker may place business with a surplus lines insurer domiciled outside the U.S. when such insurer is on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC. 15 U.S.C. § 8204.

With regard to Bulletin No. 2011-01 (Revised), any questions regarding a surplus lines insurance tax issue should be directed to the Assistant Director, Surplus Lines/Insurance Premium Taxes, Office of Management and Finance, Louisiana Department of Insurance at (225) 342-1012 or any questions regarding a surplus lines insurer or broker licensing issue should be directed to the Assistant Commissioner, Office of Licensing and Compliance, Louisiana Department of Insurance at (225) 342-1252.

Baton Rouge, Louisiana, this 12th day of January, 2018.



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COMMISSIONER OF INSURANCE