What Is an NRRA Exempt Commercial Purchaser?

By Richard A. Brown (https://www.insurancejournal.com/author/brownri/) and Jeffrey M. Klein | September 17, 2018

Article (https://www.insurancejournal.com/magazines/mag-ideaexchange/2018/09/17/500913.htm)

0 Comments (https://www.insurancejournal.com/magazines/mag-ideaexchange/2018/09/17/500913.htm/?comments)

Some larger commercial insurance brokers appear to be uncertain about how the Exempt Commercial Purchaser (ECP) feature of the Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), part of the Dodd Frank Act, effective July 21, 2011, works.

For sales of insurance products to a ECP, the broker is exempt from due diligence requirements.

The first issue is whether the ECP applies on a per placement basis rather than apply only per insurance buyer.

The second issue revolves around the length of qualification: once a commercial insurance buyer confirms to the producer that it is an ECP, how long does that status last? Only for a year or for a longer period?

An ECP is defined in the NRRA as a commercial insurance purchaser that:

- Employs or retains a “qualified risk manager” to negotiate procurement of the coverage. The risk manager may be an internal employee of the policy-holder/insured or be a third-party broker or consultant.
- The insured must have paid aggregate countrywide property/casualty premiums in excess of $100,000 in the preceding 12 months.
- The insured must meet one of the following criteria: (A) a net worth in excess of $20 million (now $22,040,000 as adjusted for the CPI); (B) generate annual revenue In excess of $50 million (now $55,100,000, as adjusted for CPI); (C). employ more than 500 full-time (or equivalent) employees per insured or be a member of an affiliated insurance group employing more than 1,000; (D) is a municipality with a population within its limits of more than 50,000; (E.) be a nonprofit organization or public entity with annual budgetary expenditures of at least $30 million (now $33,060,000, as adjusted for CPI).

It seems clear that the ECP designation applies per insurance buyer not per placement. The NRRA defines an exempt commercial purchaser as a “policyholder.” The ECP designation would be meaningless, not to mention an administrative nightmare, if it applied to coverages procured versus the insurance buyer.

It also seems clear that the ECP designation should be good for at least five years so long as the client confirms that it continues to qualify as an ECP.

“Effective on the fifth January 1 occurring after the date of the enactment of this subtitle and each fifth January … occurring thereafter, [the ECP criteria] shall be adjusted to reflect the percentage change for such 5-year period in in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor. Pub. L. 111-203, section 527(5).

The client is responsible for representing to the producer that the client meets the criteria for ECP status. Not difficult. Most major brokerage firms require that the client confirm annually, usually via a brief questionnaire, that it is eligible for ECP status.

All the producer needs to do is to update its ECP questionnaire annually and have the client confirm its ECP status to avoid possible regulatory compliance issues.

The producer, of course, is entitled to rely on the client's advice.

The ECP overrides state law to the contrary. But many states also have industrial insured exemptions, not all of which exempt the industrial insured from due diligence requirements, but which may provide lower thresholds for avoiding due diligence requirements in some states.

State industrial insured exemptions apply to insureds that are sited in the state where the exemption applies.

This is an emerging area of insurance regulation that is of import to brokers and insurance risk managers due to states' interest in due diligence and related requirements

This article does not provide sufficient space to list all of the state industrial insured exemptions, but the list is available from the authors upon request.

Brown is an insurance regulatory attorney who regularly represents surplus lines brokers and other surplus lines industry participants in a variety of regulatory and other insurance industry matters. Email: RAB@InsuRegulatory.com. Klein is of counsel to the Washington, D.C.-based McIntyre & Lemon firm and provides regulatory and government affairs counsel to carrier, broker and banking clients. Email: JKlein@mcintyrelf.com.

About Richard A. Brown

Brown is an insurance regulatory attorney who regularly represents surplus lines insurers, surplus lines brokers, and industry organizations in a variety of regulatory and other surplus lines matters. He has authored multiple articles about the NRRA and its implementation. E-mail: RAB@InsuRegulatory.com. Copies of his other NRRA articles are available at: www.InsuRegulatory.com.

More from Richard A. Brown (https://www.insurancejournal.com/author/brownri/)

About Jeffrey M. Klein

Klein is of counsel to the Washington