

RENA ANPR #1

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Responding to: Question A-1, B-1, C-1, C-2,
C-3, L-1A

Question A.1: The Agency invites stakeholders to comment on the relative merits of these approaches, and whether other interpretations of the interplay between RENP and eNotary commissioning are appropriate under G.S. 10B.

Option 2 would be the preferred method. There would be the possibility that a person prefers to simply be a Notary or to simply be a Notary and e-Notary. There should not be a requirement that the e-notary would automatically be required to qualify as a RENP. In their particular situation, they might not have the need or perhaps even the resources to become a RENP. There should be an order in this as described above, commissioned first as Notary, then e-notary, then RENP. The RENP should be required to receive additional training. As much as possible, keeping the same or similar requirements for the three types of status will assist the notary in being able to comply with all the rules and regulations for notaries. Once you start to introduce differences between the three and exceptions, the notary will become confused and make mistakes or missteps with one procedure or another. For the traditional notary, it is not required to keep a journal. With e-notary and RENP there will be a journal requirement. That requirement should be added to the traditional notary as well for consistency. As a former notary instructor, I know firsthand, how difficult it is when you start to introduce exceptions to the rule and you are able to see the confusion on the faces of the students. This is not a good situation.

Question B.1: Is there any legal basis to conclude that U.S. territories are “inside the United States”? Is there any other legal basis under which an RENP could perform an REN for a principal located in a U.S. territory? If yes to either of these questions, please explain and provide the legal basis for that conclusion.

It was the understanding of our Legislative Committee (NCNA) during the discussing leading up to the passage of the bill that RENP could perform for anyone inside the US including the Military bases, etc, and on US soil. I have no legal basis to support this. Only the knowledge of what was discussed during the stakeholders zoom meetings and conversations.

Question C.1: Does RENA permit the use of a credible witness in connection with a REN?

Question C.2: How important has the use of a credible witness been to establishing the identity of a principal when in the physical presence of notaries?

Question C.3: What are the policy reasons in support or against the use of credible witnesses to establish the identity of a remotely located principal?

My reply will address Q C1-C3 As a retired instructor, we spent a respectable amount of time on definition of Credible Witness in class. It is an different method of proving identify. A second rate method, if you will. In this case by definition, the credible witness must be "Personally Known" to the Notary. This means the notary has known this person for a respectable period of time to know that they are who they say they are and that they are reliable enough to provide that type of testimony. They must swear or affirm that the person (principal) is who they say they are. Likewise that would assume they (credible witness) has know the principal for a respectable period of time to be able to give that testimony. So how often is this going to happen?? Rarely. You will have someone who comes up with a principal signer who has NO ID and says, "I want to serve as a Credible Witness", but you the Notary do not know this person. It doesn't work..... So the signer would have to purposely try to find someone who knows them, who also knows you, the Notary. It just doesn't happen..... It will be even less likely to work in the case of the REN. You, the RENP are contacted by someone in Texas to notarize their signature, they have no ID, but this persons face shows up on the computer screen and says "I want to serve as a Credible Witness, I have ID I can show you!" You, the RENP, don't care because it doesn't work that way. And what are the chances you will know this person since they are also in TX? So, I would suggest that you leave it in as a method of identification, since it is in the regular and e-notary, just for consistency, but in training for the RENP make sure they understand the rules on WHO can serve as a Credible Witness. Review the original definitions.

Question L.1: Should the rules provide for an RENP who is not a lawyer to determine whether a prohibited document has been presented for remote notarization?

Question L.1.a: If yes, how can the rules accomplish this so that the non-lawyer RENP is not practicing law without a license?

At the beginning of the process, have a disclosure stating the different types of documents that cannot be notarized with RENA. Have the parties acknowledge that they have received the disclosure statement, understand it, and certify that the documents they are asking to be notarized by RENP are not one of those types of documents.