



Property Casualty Insurers
Association of America

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DEIRDRE MANNA
VICE PRESIDENT, INDUSTRY,
REGULATORY AND POLITICAL AFFAIRS

October 24, 2008

Ms. Petra Wallace
Market Regulation
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108-2604

Dear Ms. Wallace:

The Property Casualty Insurers Association of America (PCI) appreciates the opportunity to comment on the August 25, 2008, Draft of the Market Regulation Accreditation Program Proposal. PCI is composed of more than 1,000 member companies, representing the broadest cross-section of insurers of any national trade association. PCI members write over \$195 billion in annual premium, 39.8 percent of the nation's property casualty insurance. Member companies write 51.4 percent of the U.S. automobile insurance market, 38.4 percent of the homeowners market, 32 percent of the commercial property and liability market, and 37.6 percent of the private workers compensation market.

PCI's comments in this letter focus on an overview of the proposal and provide additional technical comments.

Regarding market conduct accreditation, one of the largest concerns is the domestic deference issue. In terms of accreditation on the financial side, it is very straight forward, if an insurer is domiciled in a non-accredited state; other state insurance departments will not recognize or honor financial exams of the domestic regulator, which can lead to more financial examination activity for the insurer. PCI is concerned about the impact of this program on insurers. Is domestic deference contemplated for the market regulation accreditation program? If so, it may be a concern. Many states will not receive accreditation since they do not have a current market regulation program. This could result in more market regulation activity for insurers domiciled in those states. The current proposal is silent on this and PCI is uncomfortable with this aspect of the program.

Overall, with regard to setting accreditation standards, PCI has concerns surrounding the fact that the organization that writes the rules is also conducting the assessment.

Regarding the Market Conduct Annual Statement (MCAS), PCI continues to express concerns about the NAIC's direction with this project. PCI has written numerous letters and e-mails, testified and held discussions with regulators regarding our issues of confidentiality and process. The inclusion of the MCAS in this proposal is another example of the NAIC

getting ahead of itself where centralization of MCAS data is concerned. While a transition program was approved, PCI and NAIC members continue to raise concerns regarding MCAS. Therefore MCAS should not be included in this proposal until resolution to the issues that have been continually raised by the industry are addressed.

Specific Observations

Page 3 Category I Standard 1 – Use of this program by the states needs to be consistent and accurate. Currently, it's not, for example, states report complaints to the NAIC on a less than consistent basis.

Page 3 Category I Standard 2 – More transparency from the NAIC is needed on this process. For instance, the NAIC should let companies know if their exam frequency has pushed them into a higher risk area for future exams.

Page 5 Category II Standard 1 – “The Department of Insurance shall ensure that data collected for market analysis purposes, including data collected through the Market Conduct Annual Statement (MCAS), is considered in the market analysis process.” Why is this necessary? What else would be considered in the Market Analysis process?

Pages 6 and 7 Category III Standard 1 Part A - The NAIC and Insurance Departments' need to be proactive in sharing the “established criteria” for examinations. For market conduct to have more credibility departments should have conferences to educate about the exam criteria. The outcome would be productive for both the regulators and companies.

Pages 6 and 7 Category III Standard 1 Part B - “The Department of Insurance...where appropriate will share the reason/trigger for the examination with the regulated entity.” Why would the regulated entity not be informed of the reason/trigger for the examination in all instances? In addition, why should the regulated entity not receive the market analysis and its results that triggered the exam? This would provide a regulated entity with more insight into why the exam was called and what it was based upon.

Page 6 Category III Standard 2 – Regulators need to consistently provide work plans. Numerous departments do not provide work plans for exams.

Page 7 Category III Standard 4 – “The Department of Insurance shall develop a preliminary examination packet or handbook that shall be sent to the examination coordinator at least 30 days before the scheduled commencement of the on-site examination.” In most instances 30 days is not adequate time to acquire the requested data and make all of the arrangements for the exam. The exam packet needs to arrive at the company within ten days of the initial notice. This standard should just afford at least 60 or 90 days instead of 30 days. This needs as much time as possible, as everything else IT people are working on stops, and they have to shift gears quickly to respond to the DOI. This is vital if the state has unique items for the data call.

Page 7 Category III Standard 5 – Some education by the NAIC on what this includes would help companies to respond quickly and with greater accuracy.

Page 8 Category III Standard 12 – Although this is a great idea, it rarely works today. The department can be late on their date, without consideration of the company.

Page 9 Category III Standard 13 – “The Department of Insurance shall include the regulated entity’s response in the final examination report where allowed by law.” An insurer will almost always want their response included in the final examination report. Perhaps this standard should say “unless prohibited by law” instead of “where allowed by law.”

Page 9 Category III Standard 15 – Language “...and communicate to the regulated entities ...”needs to be added.

Pages 11 and 12 Category V Standard 1 A. and B. – “The Department of Insurance shall have established procedures to select contractors in accordance with applicable state laws and policies.” There is no mention in this standard about any attempt to minimize the cost of contract examiners. The concern is that since insurers typically pay the fees and expenses of contract examiners that the state should take into account that cost and factor it into the decision making of selecting the appropriate and most efficient contract examiner. This area on dealing with contractors needs to address the instances where contractors have abused the system, by adding unnecessary hours. While department’s have gotten better at controlling contractors, controls still need to be put in place.

Page 11 Category V Standard 2 – Language should be changed to read...examiners understand and comply...

Page 11 Category V Standard 3 Part A – Add at the end of the paragraph...The use and guidelines of contractors will be explained to the regulated entity before the start of the examination. The regulated entity will be provided a contact person within the DOI who can handle any contractor issues during the course of the exam, without fear of retribution. At the conclusion of the exam the DOI will provide the regulated entity with the opportunity to complete a post exam evaluation of the contractor and the examination process.

Page 13 Category VI Standard 1 – “The Department of Insurance shall have the ability to share and receive confidential and privileged documents, materials or other information with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information.” It would seem that most, if not all states, could not meet this standard without a change in state laws. Some states do not have the legal authority to keep the information confidential.

Additional Observations

Page 4 Category I Standard 5 – The Regulatory Information Retrieval System (RIRS) currently presents misleading information to users. When an insurer is examined by the DOI the exam could involve one or more companies. In those instances when an exam involves more than one company RIRS will list the exam multiple times (by company) in its data base including any penalty or fines. This leaves a user with the impression that an insurer was examined and fined multiple times for multiple exams when in reality it is one exam of multiple companies and one penalty or fine for the multiple companies in total not a fine for each individual company as is currently depicted in RIRS.

Between Category II Market Analysis and Category III Market Conduct Examinations there should be a category for the Regulatory Continuum. This new category would assure that states would use the Regulatory Continuum after Market Analysis rather than jumping right to a Market Conduct exam as often happens today. There could be some extreme exceptions to this but in the majority of cases the Regulatory Continuum should be followed and currently is not.

Finally, it appears as numerous states may have difficulty in achieving Market Regulation Accreditation. The proposal would require the addition of two staff (Market Analysis Chief and Collaborative Action Designee) and many additional staff hours for all of the various requirements in the program. The staffing and training alone could make it problematic for states and not make it a reality for those states for many years.

If you or members of the Market Regulation and Consumer Affairs (D) Committee have any questions about our comments, please feel free to contact me at your convenience (847.553.3613; e-mail deirdre.manna@pciaa.net). We look forward to discussing these issues with committee at the December Winter NAIC Meeting.

Sincerely,

Deirdre Manna

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