From: Birny Birnbaum [mailto:birny@sbcglobal.net]
Sent: Tuesday, July 01, 2008 1:21 PM
To: Mullen, Timothy B.
Cc: NAIC Consumers; Morrison, John
Subject: CEJ Comments on Market Regulation Accreditation Program Summary Draft

Tim,

The Center for Economic Justice supports the D Committee's efforts to improve state regulators' market regulation capacity and capabilities through a market regulation accreditation program. We agree with the four areas of competency: Resources, Market Analysis, Toolbox (Continuum) and Interstate Collaboration.

There has been discussion of domestic deference -- relying on the market regulation work of other states. We object to any such provision unless and until states whose work will be relied upon have demonstrated both sufficient resources and competency for market regulation and have also demonstrated independence from political pressures from or on behalf of domestic insurers. There is a huge difference in domestic deference for financial and market regulation issues. No state has any incentive to allow a domestic insurer to fail. Rather, each state has great incentive to maintain close financial scrutiny of its domestics to avoid insolvencies. The interests of insurers, consumers and regulators are generally aligned. But when it comes to market regulation issues, the interests of these stakeholders can diverge. A regulator may be subject to intense political pressure not to bring a major market regulation analysis, examination and enforcement action against a domestic insurer who may be a large employer in the state. A regulator may have an interest in protecting its domestic from market regulation actions brought by other states or brought via lawsuits. We are not sure what type of procedure or standard could be developed to ensure a state is not subject to political pressures regarding market regulation of a domestic insurer, but unless and until such standards are developed and implemented, we object to any form of domestic deference in market regulation. We continue to encourage increased interstate collaboration, but feel that safeguards must be in place to prevent a protective regulator from shielding a domestic during a multistate analysis, examination or enforcement action.

The change in market regulation is based on market analysis -- the analysis of data to evaluate insurance markets and the performance of market participants in order to target the most important problems and the worst players instead of routine comprehensive market conduct examinations. Such an approach will improve the effectiveness and efficiency of state-based market regulation. Clearly, the foundation for market analysis is data. Without meaningful data to analyze, market analysis is, at best, a limited exercise which can never support the new paradigm of targeted regulatory action. Consequently, any market regulation accreditation program must feature strong data collection and analysis as a core competency. The current core competencies on data collection and analysis are inadequate.

We are concerned about some comments that the proposed accreditation standards are too aggressive. In our view, the proposed standards are not nearly demanding enough. The bar should be set high for accreditation. No purpose is served by an accreditation program whose standards are set low enough for most or all states to achieve with no or modest change. Such an accreditation program would be primarily a public relations activity. State-based insurance market regulation must improve dramatically and an accreditation program which does not motivate such change is not worth the effort.

The core competencies for accreditation related to market analysis must include:

- participation in the market conduct annual statement program.
- increased number of data elements in the MCAS by specific dates. For example, collection of application, policy and claim level data should be in place by 2010.
- staff with the requisite skills for analysis of MCAS and other data. For example, staff with statistical analysis, data base and data mining skills should be in place by 2010.
- demonstrated ability to employ and demonstration of use of other data collection techniques, including market place testing, focus groups and other market data collection techniques by 2010. My colleagues Greg Squires and Connie Chamberlin have provided more detailed comments on the uses and acceptance of these types of marketplace monitoring tools.
- the accrediting staff must have statistical analysis, data base and data mining skills and part of the accreditation process must be an independent analysis of market data by the accrediting staff to provide an independent evaluation of the analysis of market data performed by the state insurance department.

The core competencies for enforcement capabilities and actions must include:

- an independent appraisal by the accrediting staff of the fairness to consumers and to regulated entities of enforcement actions completed by the state insurance department.

A critical part of market regulation accreditation is improved interstate collaboration. One of the major benefits of accreditation would be such improved interstate collaboration, which should improve both the efficiency and effectiveness of state-based market regulation. It would improve efficiency by allowing states to build on the work of others -- including identification of market issues and moving faster up the learning curve on key issues -- and effectiveness -- by better enabling states to identify and stop market problems with the help of other states' experience.

A market regulation accreditation program would also benefit from a longer-term vision and that vision should include staffing and resources for market regulation that equal or exceed the staffing and resources for financial analysis and solvency. As such, a market regulation accreditation program should have milestones in place over a period of years to move from where states are now to where states need to be to better protect consumers on marketplace practices.

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