Chapter 6—Collaborative Actions

This chapter offers guidelines and techniques that may assist states in determining the need to collaborate on regulatory response when an issue impacting multiple jurisdictions is detected. Additionally, the chapter explains how a Request for Review (RFR) can result in regulatory responses coordinated through the Market Actions (D) Working Group (MAWG) and identifies key players in a MAWG collaborative action. Although a variety of approaches among the continuum of regulatory responses may be appropriate and should be considered, the final portion of the chapter offers guidelines for conducting the collaborative regulatory response of multistate examinations.

A. Collaborative Action Guidelines

1. Goal

By collaborating—efforts, states that identify issues or concerns with regulated entities can respond in a more effective, efficient and expedient manner. By implementing market analysis techniques and sharing pertinent information with other states and the NAIC Market Actions (D) Working Group (MAWG), states can identify those regulated entities where there is a shared concern regarding the regulated entities’ market practices. The goal of this chapter is to establish procedures and guidelines for state Collaborative Action Designees (CADs) to use in facilitating the communication and coordination of regulatory responses between and among the states. Moreover, this chapter is designed to identify alternatives to performing a single state market conduct examination and assist the states in effectively addressing problem insurers or other regulated entities whose business crosses jurisdictional boundaries. Coordinated, collaborative regulation will benefit both regulated entities and the states.

Examples of some of the benefits of collaborating efforts instead of pursuing individual state responses include the following:

- States may address specific regulatory issues that cross jurisdictional boundaries more efficiently;
- States will benefit from sharing techniques, skills, resources and experience;
- States may achieve greater regulatory leverage to resolve multistate market regulatory issues or concerns;
- Fewer individual state market conduct examinations will result in less expensive market regulation oversight and will reduce the amount of regulatory intervention needed to resolve regulatory concerns;
- Corrective action may be enforced on a multistate or national basis rather than a state-by-state basis; and
- Greater consistency among state regulatory responses.

2. Definitions

Collaborative Action Designee (CAD): The one person appointed by the commissioner or each state to be their representative in market conduct collaborative matters.

Final Report: A final document prepared by the Managing Lead State in conjunction with the other Lead States in accordance with this handbook and issued by the Participating States upon completion of the response. Any recommendations for continued review or state-specific addenda should also be included in this document, if appropriate.

Initiating State: The state insurance department that determines the need for a response and brings it to the attention of other states, the regulated entity’s domestic state, or to MAWG.

Interested State: A state insurance department that expresses an interest in the concern or problem with said regulated entity.

Lead State: One or more states that assist in leading the collaborative regulatory response.
Managing Lead State (MLS): The state insurance department identified by MAWG or the Lead States to coordinate the collaborative regulatory response.

Market Actions (D) Working Group (MAWG): A group of regulators chosen for their market conduct expertise to act as a forum and resource for states on issues suitable for collaboration.

Market Analysis: The process by which a state reviews data and information to determine whether specific areas of regulatory concern are occurring in the marketplace.

Non-Participating State: A state that decides not to assume any role in regulatory response or does not have an interest in the area of review.

Participating State: An interested state that decides to participate in a regulatory response, but does not necessarily take an active role in the action.

Referring State: The state that submits a Request for Review (RFR) to MAWG.

Regulated Entity: Any person, firm or company engaging in, proposing, or attempting to engage in any transaction, kind of insurance or surety business; and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of a state insurance commissioner.

Regulatory Review Trigger: An event or identified concern that prompts a regulatory review.

State Addendum: A document containing state-specific findings and recommendations based on that state’s statutes and regulations.

3. Assumptions
These guidelines are based on several assumptions defined and agreed upon by the members of the NAIC.

a. Collaborative actions should be considered when there is an issue or area of concern that impacts multiple jurisdictions. Collaboration would not be appropriate when the issue involves compliance with a state-specific law if other states do not have similar statutes.

b. Collaborative actions can be conducted for both nationally significant and non-nationally significant regulated entities.

c. All impacted states are encouraged to participate in the collaborative regulatory response when possible.

d. The collaborative action, depending on the severity of the problem and the level of the response taken, can be handled by one designated state who reports to the other states, or by a group of Lead States, where one state is designated as the Managing Lead State, others are designated as additional Lead States and together the “Lead States” work collaboratively while the other states may passively participate in the process.

e. States retain the ability to choose to participate in a collaborative action and may designate another state to review the information on their behalf. However, if a Participating State does designate another state to review information on their behalf, it is the Participating State’s responsibility to outline their interpretation of their own laws they would like included in the review.

f. Participating States retain their authority to initiate their own regulatory response if a collaborative action does not cover the scope of an area of concern to that state.

g. The collaborative review should follow the guidelines and standards outlined in this handbook. Lead States should agree on the appropriate standards to be applied during the review.

h. Each Participating State must determine if state-specific recommendations and actions are needed at the end of the collaborative action process, based on the findings by the Lead States.

i. Verification that the regulated entity has complied with findings and recommendations of a final report is a separate administrative function that may or may not occur through either a collaborative or individual state follow-up effort, continuum response, examination or re-examination.
j. Regulator resources responsible for completing the work to review data and information must be available for any follow-up proceedings required. Each state participating in the collaborative action is responsible for any expenses associated with the appearance of regulators at a proceeding arising out of the regulatory effort.

k. If an examination is the collaborative action selected, Lead States will determine, and agree to use, computer software programs that will be employed in conjunction with the examination.

l. Whenever a regulatory response is taken collaboratively, the Managing Lead State (MLS) is obligated to provide a final report to Participating States and MAWG.

m. In the case of Market Actions Working Group (MAWG) actions, when selecting Lead States and the MLS, the MAWG chair will consider at least the following criteria:
   • The domestic regulator of the regulated entity;
   • The top five premium volume and/or market share states;
   • The referring states requested participation level;
   • A state in which the identified issue appears to be more problematic;
   • Geographic balance between zones;
   • Specialized experience of a state’s staff members;
   • A state’s experience in managing complex investigations or collaborative actions; and
   • The ability to perform the duties and responsibilities of a Lead State and/or Managing Lead State.

A referring state is not required to serve as a Lead State and will not necessarily be named as a Lead State. If the domiciliary department of insurance so requests, that state will be given serious consideration to serve as a Lead State or MLS.

4. Determining the Appropriateness of a Collaborative Action
States should gather information from data currently available to the states, including any state surveys and required data reports, information collected by the NAIC, a variety of sources in both the public and private sectors and information from within and outside of the insurance industry. Such information should be analyzed in order to develop a baseline understanding of the marketplace and to identify practices that deviate from the norm or that may pose a potential risk to insurance consumers. States should refer to this handbook as one resource to use to perform analysis of a regulated entity’s market activities.

When further inquiry into a particular insurer or practice is necessary, the states’ CADs should consider collaboration when choosing from one of a number of possible regulatory responses available through the continuum of regulatory responses. If the regulated entity is one of national significance, CADs should report their findings to MAWG. Through MAWG, CADs will be able to identify all other states that may have similar issues or concerns with the market practices of a regulated entity.

MAWG takes steps to eliminate duplicative inquiries and to coordinate regulatory responses and findings with all impacted states.

5. Types of Collaborative Actions
There are several types of collaborative actions, each designed to produce information or results that would benefit multiple states. The type of effort will vary based on the number of issues being addressed, the number of entities involved in the review and the product lines being reviewed.

<table>
<thead>
<tr>
<th>States Involved</th>
<th>Issues</th>
<th>Regulated Entities</th>
<th>Resolution Level</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multiple-states</td>
<td>Similar issue</td>
<td>One-entity</td>
<td>Multiple-states</td>
</tr>
<tr>
<td>Multiple-states</td>
<td>Multiple issues</td>
<td>One or more entities</td>
<td>Multiple-states</td>
</tr>
<tr>
<td>Multiple-states</td>
<td>Single issue—Immediate action required</td>
<td>Multiple entities</td>
<td>Multiple-states</td>
</tr>
<tr>
<td>Single-state</td>
<td>State-specific issues</td>
<td>One-entity</td>
<td>Single-state only</td>
</tr>
<tr>
<td>Single-state</td>
<td>One-or multiple issues</td>
<td>One-entity</td>
<td>Single-state only</td>
</tr>
</tbody>
</table>
Regardless of the resolution level, if actions are recorded and shared properly, the information should be available to all of the states with similar issue(s).

64. Criteria for Determination Collaborations
States should gather information from data currently available, including any state surveys and required data reports, information collected by the NAIC, information shared on NAIC regulatory forums, a variety of sources in both the public and private sectors and information from within and outside of the insurance industry. Such information should be analyzed in order to develop a baseline understanding of the marketplace and to identify practices that deviate from the norm or that may pose a potential risk to insurance consumers in their state. States should refer to this handbook as one resource on how to perform analysis of a regulated entity’s market activities.

When further inquiry into a particular insurer or practice is determined necessary, the states’ CAD should consider collaboration as part of the continuum of regulatory responses. If the regulated entity is a small regional insurer then collaboration with one or more states may be beneficial. If the regulated entity is one of national significance, CADs should report their findings to MAWG. Through MAWG, CADs will be able to identify all other states that may have similar issues or concerns with the market practices of a regulated entity. In this way MAWG helps to eliminate duplicative inquiries and ensure more consistent consumer protection.

a. Interstate Determining Need for Collaboration
-The following questions are designed to assist state Collaborative Action Designees (CADs) to determine whether an issue is appropriate for collaboration. CADs are encouraged to review these questions when an issue of concern is raised that involves a regulated entity that does business in more than one state.

1. Is your state’s concern something that would be of concern to other states?
   -Yes    -No
   General issues such as the timely payment of claims or inappropriate marketing and sales practices could be an issue of concern to multiple states. If the issue is based on a specific state statute, such as the suitability of life insurance product sales or a specific state-mandated benefit for health plans, the CAD should determine how many other states have similar statutes. The NAIC Research Librarians Market Regulation Department can assist the CAD by providing a compendium or model law adoption chart to assist the CAD with this determination. If there is not a reference available from the NAIC Research Library or NAIC Market Regulation Department, the concern identified is not likely to impact other states.

2. Is this a high-profile issue that has the potential to impact multiple jurisdictions?
   -Yes    -No

3. Does the regulated entity have written premiums reported in two or more states for the previous calendar year?
   -Yes    -No
   If “Yes,” the CAD should contact all states where there is a new, open or called examination listed in the NAIC database and discuss whether there are common issues or the ability for the other state to assist with the review of your area of concern. Note: All new, open or called examinations should be reviewed and the calling state’s CAD contacted to consider collaborations, even if the examination is a financial examination or appears to be unrelated to the topic of concern.

4. Are there any entries in the NAIC Market Information Systems or the Market Regulation electronic bulletin boards?
   -Yes    -No
If there are, the CAD should contact CADs in states that appear to have common concerns, and/or where there is a new, open or called examination status. The CADs can discuss whether there are common issues, and the interest of other states to assist with regulatory responses to the area(s) of concern. Note: All new, open or called examinations, Level 1 or Level 2 Market Analysis reviews and initiatives should be reviewed and the state CAD contacted to consider collaborations, even if the examination is a financial examination or appears to be unrelated to the topic of concern.

5. Is this regulated entity already on the Market Actions (D) Working Group (MAWG) agenda?  
   □ Yes □ No

6. Was the regulated entity selected by any other states for Level 1 or Level 2 Analysis reviews and did at least one review recommend further analysis or referral to MAWG?  
   □ Yes □ No

If the answer to each of the above questions is “No,” this is probably not a good candidate for collaboration. If one or more responses are “Yes,” the CAD should consider collaboration and answer the questions in the next section to determine if the issue should be referred to MAWG.

b. Determining Level of Collaboration Through MAWG

Once the need for collaborative has been determined the questions below can assist in determining if the issue should be referred to MAWG or addressed on a regional level. To determine if the CAD should submit a Request for Review (RFR) to MAWG regarding the regulated entity, answer the following questions.

71. Is the regulated entity nationally significant?  
   □ Yes □ No

   If “No,” indicate the number of states where the regulated entity is licensed.

   Note: It is not necessary that a regulated entity be nationally significant for MAWG referrals. However, if a regulated entity is nationally significant, it is more likely that other states are interested in the regulated entity’s activities or engaged in contact with the regulated entity for other or related issues.

82. Has the regulated entity previously been included on the MAWG agenda for this issue or any other issues?  
   □ Yes □ No

   If this information is unknown, NAIC staff may be able to provide some assistance. If the documents are available, the CAD should review the closing report, final report or other documentation created from the previous MAWG action. If this is a related or similar issue that should have been resolved based on a prior collaborative effort, the CAD should submit the RFR to MAWG.

3. Has the regulated entity been chosen as part of MAWG’s National Analysis Project?  
   □ Yes □ No

94. Does the issue involve a significant amount of consumer harm?  
   □ Yes □ No

405. Does the issue lend itself to a multistate resolution?  
   □ Yes □ No
If the answer to any of these questions is “Yes,” the CAD should consider submitting a referral to MAWG.

If the answer to all of these questions is no, follow the Multistate Examination Process outlined later in this chapter.

### B. Responsibilities of Key Players in a Collaborative Action

The different roles played within a collaborative action are often driven by the domestic, the state that brought the issue forward and top premium states. In the case of the Market Actions (D) Working Group (MAWG), once members agree to a collaborative response, the Chair will determine Lead States and the Managing Lead State (MLS). The Lead States will also issue an invitation for additional states to participate. Below are the responsibilities that different individuals assume as part of their role in a collaborative action.

#### 1. Managing Lead State (MLS) Responsibilities

The MLS bears the overall responsibility to facilitate communication and coordinate activities in an efficient manner. The MLS is the key contact with the regulated entity under review. If necessary, the MLS will directly contract with and supervise any vendors hired. The MLS will carry out the collaborative action from the continuum of regulatory options as it is collectively determined by the Lead States. In addition to general Lead State responsibilities (see Section C2 below), MLS duties include:

- Determining the number of Lead States needed and recruiting additional Lead States, if needed, in collaboration with the MAWG chair if applicable;
- Convening the Lead States for initial strategy planning to determine the appropriate course of action and scope of issues to be addressed;
- Considering all options in the Continuum of Regulatory Responses and determining an effective course of action. An examination is only to be conducted if other regulatory options in the continuum are not considered sufficient;
- Organizing an initial meeting with the regulated entity to review collaboration or MAWG processes and discuss issues. Sample initial meeting notice letters are available to regulators through NAIC staff;
- Entering and updating the action in the appropriate NAIC database;
- Scheduling regular meetings and calls with the regulated entity to ensure that the process continues to be efficient and effective;
- Keeping the domestic state apprised of the status of the collaborative action and requesting any assistance from the domestic state as necessary, if the MLS is not the domestic state;
- Scheduling regular meetings with all Lead States, vendors and/or independent contractors;
- Closely monitoring all vendors and/or contractors for appropriate billing practices;
- If state staff is to be used as part of the collaborative action, communicating with CADs to obtain resources and schedule activities; and
- If the issue is a MAWG action:
  - Providing a presentation to MAWG outlining the general scope of the collaborative action prior to the initiation of the effort. The presentation shall include a preliminary timeline for various stages and completion of the regulatory effort;
  - Providing an update and revised timeline to MAWG within 30 days of the Lead States’ decision to change the plan, if the MLS determines that circumstances require a substantial change in the planned course of action;
  - Providing an update on the progress of the action to MAWG at each NAIC national meeting and, upon request, on MAWG conference calls. Providing details on action findings when they are available, and terms of proposed resolutions/settlements; and
  - Completing the MAWG Managing Lead State Post-Mortem Report Form.

#### 2. Lead State Responsibilities

The Lead States commit to serve as team members who share an equal responsibility to make all key decisions in the collaborative action. The Lead States shall work collaboratively to determine the following:
• If violations occurred and the extent of any violations found;
• An appropriate corrective action by the regulated entity that will help prevent further, similar violations;
• A plan of remediation, if necessary, and its scope;
• Post-collaborative action reporting by the regulated entity, if any;
• The scope of post-collaborative action monitoring necessary by the Lead States;
• An administrative sanction, as necessary, its scope; and
• Applicable use of the MAWG Best Practices for Multistate Settlement Agreements as needed.

In general, a Lead State should be prepared to do the following:
• Attend conference calls and in-person meetings to discuss the collaborative action;
• Carry out assignments related to the collaborative action in a timely manner; and
• Review all materials prior to meetings.

3. Replacement of a Lead State
In the event that a Lead State or MLS is unable to continue to serve, the Managing Lead, other Leads States by agreement will appoint a replacement. In the case of a MAWG action, the MAWG chair will appoint a new Managing Lead and if a team fails to make efficient progress to conduct or finalize the collaborative action, the chair has discretion to relieve any of the Lead States of their duties and appoint new Lead States. If any one of the Lead States believes that the conduct of a Lead State is detrimental to the collaborative action, that state should contact the Managing Lead State, or MAWG Chair if applicable, to discuss these concerns. The MAWG chair has discretion to remove and replace a Lead State at any time during a MAWG collaborative action.

4. Participating State Responsibilities
Any state may elect to participate in a collaborative action by executing the participation agreement form sent by the Managing Lead State at initiation of the action. The invitation and form will outline the major issues found and, in most cases, briefly outline the scope of the action. All Participating States will have access to confidential and privileged information, provided that the state has signed the NAIC Information Sharing and Confidentiality Agreement.

Participating States do not take an active role in the action; however they should contact the Managing Lead State to discuss any new issues of consideration for inclusion in the collaborative action. Participating States agree to provide interpretation of the Participating State’s laws if requested and respond to any requests for information. If the Managing Lead State finds that the state issue is not an appropriate part of the collaborative action, the state may then initiate a separate regulatory effort.

In some cases, only Participating States may be eligible to receive a portion of any monetary sanction imposed on the regulated entity. A Participating State is not required to accept the proposed resolution presented by the Lead States; however, a Participating State does agree to consider the proposed resolution.

BC. Coordination with the Market Actions (D) Working Group (MAWG)
MAWG is the forum for identifying and addressing issues of multistate concern. Members of MAWG are chosen for their experience and qualifications within the market conduct arena. Members meet at each NAIC National Meeting and hold periodic calls in the interim. Each state’s CAD is invited to attend calls and National Meetings and is able to participate but not vote on acceptance of actions. Once concerns are identified with particular companies based on Level 1 and Level 2 Analysis reviews, evaluation of annual statement data or a qualitative inquiry triggered by particular issues or events, further review is essential. The state’s Collaborative Action Designee (CAD), working closely with the Market Analysis Chief (MAC), may also follow up with the company. The resulting determination could be that no actual problem exists, or that an enforcement action or another of the responses from the continuum of regulatory responses is needed.

In addition to referring issues to MAWG and participating in its activities, CADs should remain cognizant of the issues that MAWG addresses by attending meetings and calls to determine their importance on should be
consulted regularly as to whether the members are aware of any issues affecting a regulator’s domestic insurers or the market in a regulator’s state.

MAWG has an interest in monitoring all multistate enforcement efforts and will work to assist collaboration and communication on all such efforts. However, MAWG must focus its efforts on projects and entities that will impact a significant number of NAIC members and consumers. Issues that impact only a few states will be monitored and, should a small group of states decide to conduct a collaborative action independent of MAWG, MAWG or NAIC staff will provide assistance upon request with communications, general information or other, similar resources.

Similarly, CADs in other states should be consulted when there are significant issues at a regional level or with a particular impact on one or more specific states. MAWG is the forum for identifying and addressing issues of multistate concern, therefore, the CAD should keep MAWG aware of any concerns a regulator’s state identifies with nationally significant insurers.

MAWG has developed the following procedures to follow when an issue of potential multijurisdictional impact has been identified.

1. National Analysis Project
   This annual project coordinated by MAWG members uses market conduct and financial annual statement information to identify companies that are exhibiting indications of current or potential concerns and then coordinates analysis of the identified entities. Issues found through this process may be handled on an individual state basis or eventually be referred to MAWG through the Request for Review process. The goal is to uncover issues sooner, decreasing consumer harm and reducing the number of duplicative actions.

2. Request for Review (RFR)
   The primary method in which MAWG receives suggested matters for response is through the RFR process.

   When a Market Analysis Chief (MAC) discovers an issue that impacts multiple jurisdictions, the MAC should consult with their state Collaborative Action Designee (CAD). Working together and answering the questions in subsection 4.a and 4.b, the CAD and MAC may determine that a referral should be made to MAWG using the RFR Form. This referral form is available to regulators and once completed, should be submitted to MAWG’s designated NAIC staff support. The RFR should include the results of Level 1 and Level 2 Analysis reviews, if available, as well as any other supporting documentation. NAIC staff will assist state regulators to ensure proper RFR procedures are followed.

MAWG will consider each RFR and determine whether to pursue the matter as a MAWG collaborative action. Among other criteria, MAWG members consider whether a material issue or pattern of conduct exists that demonstrates a systemic failure of the internal control systems of an entity that affects multiple jurisdictions. MAWG will also consider whether consumers are at risk of not receiving contracted benefits or of suffering other serious harm.

Prior to MAWG’s vote on acceptance, if the referring regulator is not the domestic, or has not previously contacted the domestic, the MAWG chair will contact the domiciliary state insurance department and request information concerning the RFR. The letter may include questions about the regulator’s awareness of and actions related to the alleged problem; and whether the state has any plan of action or monitoring in place.

Once the MAWG chair determines there is sufficient information to make a decision, if there is a quorum, a vote is taken. A three-fourths majority is required to accept the RFR for a MAWG collaborative action. If an RFR is declined, NAIC staff will contact the CAD of the referring state and provide guidance and suggestions as to other steps that may be taken.

The steps in the RFR process are outlined in the flowchart on the following page.
MAWG Request for Review Workflow

RFR received by NAIC staff and evaluated for completeness

Yes

NAIC staff prepares Executive Summary

No

NAIC staff works with requestor to complete

Yes

MAWG sends a letter of inquiry to the domestic regulator

MAWG considers the RFR

Need more information?

Yes

MAWG chair decides method and sets deadline

Research finished and report made

No

MAWG Votes

RFR Accepted

RFR Declined

MAWG chair appoints Lead States, selects Managing Lead State, Domestic CAD informed and letter sent to regulated entity

Lead States conduct exam or continuum action and propose resolution

NAIC staff informs submitter and explains options
2. Consideration of RFRs by the Market Actions (D) Working Group (MAWG)

MAWG has an interest in monitoring all multistate enforcement efforts and will work to assist collaboration and communication on all such efforts. However, MAWG must focus its efforts on issues with regulated entities that will impact a significant number of NAIC members and consumers. Issues that impact only a few states will be monitored and, should a small group of states decide to conduct a collaborative action independent of MAWG, MAWG or NAIC staff will provide assistance upon request with communications, general information or other, similar resources.

MAWG will consider each RFR and determine whether to pursue the matter as a MAWG collaborative action. Among other criteria, MAWG members consider whether a material issue or pattern of conduct exists that demonstrates a systemic failure of the internal control systems of an entity that affects multiple jurisdictions. MAWG will also consider whether consumers are at risk of not receiving contracted benefits or of suffering other serious harm.

Prior to MAWG’s vote on acceptance, if the referring regulator is not the domiciliary, or has not previously contacted the domiciliary, the MAWG chair will contact the domiciliary state insurance department and request information concerning the RFR. The letter may include questions about the regulator’s awareness of and actions related to the alleged problem; and whether the state has any plan of action or monitoring in place.

Once the MAWG chair determines there is sufficient information to make a decision, if there is a quorum, a vote is taken. A three-fourths majority is required to accept the RFR for a MAWG collaborative action. If an RFR is declined, NAIC staff will send a letter to the CAD of the referring state. The letter will include guidance and suggestions as to other steps that may be taken.

C. Responsibilities of Key Players in a Collaborative Action

Once the Market Actions (D) Working Group (MAWG) members agree to a collaborative response, they will determine Lead States and the Managing Lead State (MLS). MAWG will also issue an invitation for additional states to participate.

1. Managing Lead State (MLS) Responsibilities

The MLS bears the overall responsibility to facilitate communication and coordinate activities in an efficient manner. The MLS is the key contact with the regulated entity under review. If necessary, the MLS will directly contract with and supervise any vendors hired. The MLS will carry out the collaborative action from the continuum of regulatory options as it is collectively determined by the Lead States. In addition to general Lead State responsibilities (see Section C2 below), MLS duties include:

- In collaboration with the MAWG chair, determining the number of Lead States needed and assisting the MAWG chair with recruiting additional Lead States, if needed;
- Convening the Lead States for initial strategy planning to determine the appropriate course of action and scope of issues to be addressed;
- Considering all options in the Continuum of Regulatory Responses and determining an effective course of action. An examination is only to be conducted if other regulatory options in the continuum are not considered sufficient;
- Organizing an initial meeting with the regulated entity to review MAWG processes and discuss issues. Sample initial meeting notice letters are available to regulators through NAIC staff;
- Entering and updating the action in the appropriate NAIC database;
- Providing a presentation to MAWG outlining the general scope of the collaborative action prior to the initiation of the effort. The presentation shall include a preliminary timeline for various stages and completion of the regulatory effort;
- Providing an update and revised timeline to MAWG within 30 days of the Lead States’ decision to change the plan, if the MLS determines that circumstances require a substantial change in the planned course of action;
• Scheduling regular meetings and calls with the regulated entity to ensure that the process continues to be efficient and effective;
• Keeping the domestic state apprised of the status of the collaborative action and requesting any assistance from the domestic state as necessary, if the MLS is not the domestic state;
• Scheduling regular meetings with all Lead States, vendors and/or independent contractors;
• Closely monitoring all vendors and/or contractors for appropriate billing practices;
• Providing an update on the progress of the action to MAWG at each NAIC national meeting and, upon request, on MAWG conference calls. Providing details on action findings when they are available, and terms of proposed resolutions/settlements;
• If state staff is to be used as part of the collaborative action, communicating with CADs to obtain resources and schedule activities; and
• Completing the MAWG Managing Lead State Post-Mortem Report Form.

2. Lead State Responsibilities
The Lead States commit to serve as team members who share an equal responsibility to make all key decisions in the MAWG collaborative action. The Lead States shall work collaboratively to determine the following:
• If violations occurred and the extent of any violations found;
• An appropriate corrective action by the regulated entity that will help prevent further, similar violations;
• A plan of remediation, if necessary, and its scope;
• Post-collaborative action reporting by the regulated entity, if any;
• The scope of post-collaborative action monitoring necessary by the Lead States;
• An administrative sanction, as necessary, its scope; and
• If the MAWG Best Practices for Multistate Settlement Agreements was followed.

In general, a Lead State should be prepared to do the following:
• Attend conference calls and in-person meetings to discuss the MAWG collaborative action;
• Carry out assignments related to the collaborative action in a timely manner; and
• Review all materials prior to meetings.

3. Replacement of a Lead State
In the event that a Lead State or MLS is unable to continue to serve, the MAWG chair will appoint a replacement. If a team fails to make efficient progress to conduct or finalize the collaborative action, the MAWG chair has discretion to relieve any of the Lead States of their duties and appoint new Lead States. If any one of the Lead States believes that the conduct of a Lead State is detrimental to the MAWG collaborative action, that state should contact the MAWG chair to discuss these concerns. The MAWG chair has discretion to remove and replace a Lead State at any time during the MAWG collaborative action.

4. Participating State Responsibilities
Any state may elect to participate in the collaborative action by executing the Participation Agreement discussed earlier. All Participating States will have access to confidential and privileged information, provided that the state has signed the NAIC Information Sharing and Confidentiality Agreement.

Participating States should contact the Managing Lead State to discuss any new issues of consideration for inclusion in the MAWG collaborative action. Participating States agree to provide interpretation of the Participating State’s laws, if requested and respond to any requests for information. If the Managing Lead State finds that the state issue is not an appropriate part of the MAWG collaborative action, the state may then initiate a separate regulatory effort.

In some cases, only Participating States may be eligible to receive a portion of any monetary sanction imposed on the regulated entity. A Participating State is not required to accept the proposed resolution presented by the Lead States; however, a Participating State does agree to consider the proposed resolution.
5. Conclusion of Collaborative Enforcement Actions

When a collaborative effort produces findings for which a regulatory penalty or sanction is contemplated, such action should be memorialized in a written consent order, voluntary settlement agreement or similarly titled settlement document. States may contemplate a collaborative enforcement action at the same time as a pending civil court action concerning similar issues, such as a class action lawsuit. Such an enforcement action may or may not occur simultaneously with a settlement of the civil action. Negotiations for coordinated regulatory and civil settlement should be the responsibility of the Lead State(s).

In the event a collaborative effort is challenged, or Lead States cannot reach a settlement, they should develop a resolution strategy. Lead States should outline their strategy and recommendations to ensure violations are appropriately addressed in the correct jurisdictions. Examiners from Participating States must be made available for follow-up proceedings, if required. Expenses associated with the appearance of any examiners at a proceeding arising out of the examination must be borne by the states conducting the action.

6. Best Practices for Multistate Settlement Agreements

A complete copy of the Best Practices for Multistate Settlement Agreements, adopted by the Market Actions (D) Working Group (MAWG), is available to regulators. The purpose of the document is to outline best practices that will meet the needs of multiple jurisdictions affected by the business practices of regulated persons/entities. It is important to recognize that, although state departments of insurance have the authority to perform multistate examinations and investigations of potential violations of insurance law, the states cannot require regulated persons/entities to participate in a multistate settlement agreement. Thus, multistate settlement agreements are commonly entered into by way of mutual agreement with the applicable regulated entity as a way to uniformly and efficiently resolve regulatory matters.

This document is intended to provide guidance to regulators with respect to engaging in multistate settlement negotiations and drafting multistate settlement agreements. It is recognized that the terms of the agreement may vary depending on the subject matter of the examination/investigation, the nature of the violation, the duration of noncompliance, the number of consumers affected, and the number of states in which the regulated entity is doing business, among other considerations. However, agreements should be negotiated and drafted in a manner that is intended to promote participation by regulators and effectively address the issues of concern to regulators. With this in mind, best practices have been developed to effectuate the greatest amount of participation among the states in multistate settlement agreements.

D. Multistate Examination Process

This section contains the steps to determine the need for, and how to best conduct a multistate market conduct examination. For purposes of this discussion, the proposed deliverable is assumed to have been met/achieved before moving on to the next section.

1. Document the Need for an Examination

The state Collaborative Action Designee (CAD) will work with the Market Analysis Chief (MAC) to determine which entities should be the focus of attention for the state. Through internal decision-making processes, the CAD and other state staff should ascertain that other choices from the continuum of regulatory responses are not adequate or appropriate. At the point of determining the need for an examination, the CAD should take the following steps.

Steps:
   a. Document the need for an examination based upon identified triggers;
   b. Prepare a justification memo; and
   c. Obtain necessary approvals and support from the commissioner and legal department.
Deliverable:
A justification memo, which documents the need for an examination, is prepared by the CAD.

2. Determine if Multistate Examination is Appropriate
Several jurisdictions may have a joint interest in the market performance of a company, and their collective concerns may be best met through a multistate examination of that company. In determining appropriateness of a multistate examination, the state CAD should consider the similarity of product(s) across jurisdictions, differences in state regulations of product(s) and location of the offices of the insurer, and any other factors that may apply. Multistate examinations are not appropriate when company behaviors are specific to one jurisdiction.

Steps:
- Follow Steps 1 through 6 in Subsection 64a of Section A of this chapter to determine if a collaborative action is appropriate;
- Follow Steps 17 through 405 in Subsection 46b of Section A of this chapter to determine if a Market Actions (D) Working Group (MAWG) Request for Review (RFR) is appropriate; and
- If yes, confirm commissioner support for a potential MAWG collaborative action, complete and submit the RFR to MAWG.
- If no, the issue is not appropriate for MAWG but is appropriate for collaboration.
- In either case the collaborative action itself will typically follow Step 3 below the path outlined below.

Deliverable:
A possible MAWG RFR recommending a collaborative examination based on documented triggers.

3. Initiate Collaborative Examination
When an issue is of concern to less than five states, and the entity is not of national significance, a MAWG RFR is not the appropriate response. In that case, the state CAD will want to collaborate with other states that have the same concern.

Steps:
- Enter the examination call in the NAIC Examination Tracking System (ETS). Note: Please be sure to mark the Exam Category as M/C: Multistate/Collaborative Examinations;
- Contact the other interested states with an invitation to participate;
- Notify MAWG of the intended collaborative action. Include at least the following:
  - The list of anticipated Participating States; and
  - Possible assistance desired from MAWG or NAIC staff;
- Notify all states of the intended collaborative examination through the Market Regulation bulletin board.
- Interested states submit participation responses, including the following:
  - The state’s intended role;
  - Number of staff that will be dedicated by that state;
  - Staff availability dates;
  - The state’s statutory authority to examine company records;* and
  - An authorization to review records.

*The domiciliary state has authority to look at all records of their domiciled companies. Most states can authorize another state to review their own records.

Deliverable:
List of Participating States with desired participation level, resources available and authorization to review records. (All information entered into ETS as the examination proceeds.)
43. Work with Domiciliary State

At this point, the CAD of the initiating state (if it is not the domiciliary state) will begin working with contact the CAD of the domiciliary state to determine what that department of insurance may have done previously to uncover or address the issue.

Steps:

a. Initiating state CAD notifies domiciliary state of concerns and interest, and receives and reviews any response/input from domiciliary state;

b. Initiating state CAD and domiciliary state determine the scope of the problem; and draft notification to all states.

c. Initiating state CAD communicates with Participating State CADs:
   - Determine state-specific concerns of Participating States;
   - If other states have addressed the problem(s), collect information on findings; and
   - Assist in determining Lead State from the Participating States.

Deliverable:

A listing of all potentially affected states, and description of the issues of concern including communication to Participating State CADs summarizing discussions with the domiciliary state and all Participating States, which includes:

- Perceived problem (magnitude, multi-jurisdictional, level of seriousness); A clear understanding of the;
- Number of states with interest, related problems and concerns;
- Time frame recommendation (immediacy of the problem);
- Role of the domiciliary state; and
- Which state will lead the examination.

4. Initiate Collaborative Examination

The CAD of the Lead State, whether the initiating state, or domiciliary state (if different) will still want to use MAWG’s forum to provide information on the action and solicit other potentially impacted states.

Steps:

a. Notify MAWG and each state’s CAD of the intended collaborative action. Include at least the following:
   - A brief description of the issue;
   - A list of possibly affected states;
   - An invitation for any interested states to join the action;
   - A request for information from any other states that have addressed the issue; and
   - Possible assistance desired from MAWG or NAIC staff.

b. Interested states submit participation responses, including the following:
   - Whether the state intends a passive or lead role;
   - If the state wishes to take a lead role;
   - Number of staff that will be dedicated by that state;
   - Staff availability dates;
   - The state’s statutory authority to examine company records;* and
   - An authorization to review records.

c. Review invitation responses to determine:
   - Any state-specific concerns of Participating States;
   - If other states have addressed the problem(s), collect information on findings; and
   - Which states wish to be named a Lead State.

d. Enter the examination call in the appropriate NAIC tracking system, noting that that it is a multistate action;
The domiciliary state has authority to look at all records of their domiciled companies. Most states can authorize another state to review their own records.

**Deliverable:**
A list of Participating States with desired participation level, resources available and authorization to review records. (All information entered into NAIC systems as the examination proceeds.)

### 5. Plan the Examination

The **Managing Lead State Coordinator** assumes the role of coordinating and planning the examination. This function may be part of the state CAD’s responsibility, or another staff member may be designated. The CAD may still be responsible for any communications with MAWG or NAIC staff to request advice or assistance.

**Steps:**

a. The **Managing Lead State Coordinator (LSCMLS)** assigns the Examiner-in-Charge (EIC). Criteria for selecting an EIC include:
   - Minimum qualifications;
   - Expertise based on scope of the examination; and
   - A representative from the Lead State (recommended).

b. The **MLSLC** and EIC plan the examination in coordination with other Lead States, addressing:
   - Scope statement (market conduct areas to be covered);
   - Number of examiners and other resource requirements;
   - List of runs or records needed based on period of review;
   - Role Participating States will play;
   - Tasks that go into plan;
   - Tentative schedule (timeframe and sequence of examination events); and
   - Location(s).

   Note: The LSCMLS should consider input from other Participating States to prepare the examination plan.

c. The **MLSLC** and EIC set start date and date of pre-examination conference;

d. The **MLSLC** and EIC develop a confidentiality clause for the examination;

e. The **MLSLC** finalizes the examination plan. The examination plan, including confidentiality clause, should be distributed to and signed by all Participating State CADs; and

f. The **MLSLC** updates the appropriate NAIC database.

**Deliverable:**
A formal examination plan that has been agreed to by all Participating States. The plan should include details regarding:

- Statutory authority of Participating States;
- **Roles of Lead State** and roles of Participating States;
- Estimated number of examiners;
- Expected resources required;
- Resources available;
- Identity of EIC;
- Scope statement;
- Examination start date and estimated completion date; and
- List of runs, records and information required.
6. Notify Company
Let the company or companies know that an examination has been called.

Steps:
- a. The Managing Lead State Coordinator (MLSLSC) sends examination notification to the company. Timing and content follow guidelines for regular examinations;
- b. The MLSLSC receives the company’s response, including identification of the company’s examination coordinator;
- c. The EIC assembles company’s response information:
  - Coordinator/contact name;
  - Location of documents; and
  - Other requested information.

Deliverable:
Examination notification is sent to the company.

7. Perform Pre-Examination Activities
Pre-examination activities for a multistate examination follow the guidelines outlined in this handbook. It is the responsibility of the MLSLSC to coordinate pre-examination activities and the responsibility of the Lead State CAD to ensure adequate communication activities among all Participating States.

8. Conduct Examination
Conduct the examination following the guidelines outlined in this handbook. It is the responsibility of the EIC to coordinate and conduct the examination and the responsibility of the MLS Lead State CAD to ensure adequate communication among all Participating States.

Steps:
- a. EIC is responsible for conducting the examination;
  - EIC is responsible for on-site coordination;
- b. EIC is responsible for addressing state-specific concerns of Participating States during the examination;
- c. EIC is responsible for communication with company management;
- d. Lead State CAD is responsible for communication with the Participating States;
- e. EIC is responsible for conducting the examination;
- f. MLSLSC and EIC coordinate a wrap-up session with the company; and
- g. All Participating States should continue to maintain applicable confidentiality until the conclusion of the examination and/or settlement.

9. Write the Multistate Examination Summary
Upon conclusion of the examination, a multistate examination summary is drafted by the EIC. The MLS Lead State CAD will help coordinate the communication of comments on the summary by Participating States.

No state-specific examination findings or recommendations are included in the multistate examination summary. These will be handled with state-specific addendums and will incorporate conclusions based on individual state statutes and regulations.

Steps:
- a. EIC coordinates the drafting of the multistate examination summary and state-specific findings (which are not included in the summary itself);
b. Lead State CAD exposes a draft of the multistate examination summary;
   • Distribute to all Participating States;
   • Gather Participating State responses; and
   • Resolve discrepancies.

c. EIC finalizes the multistate examination summary and obtains a sign-off from Participating States;

d. MLS LSC or EIC distributes the approved multistate examination summary to the company and the Lead State CAD distributes final copy to all Participating State CADs; and

e. Lead State CAD updates the appropriate NAIC database.

10. Finalize the Examination Report

Final examination report = Multistate Examination Summary + State Addendum

Each Participating State may issue an examination report, or choose to adopt the Lead State report that consists of the multistate examination summary. Alternatively, each Participating State may issue an optional state addendum, taken from the EIC’s report on findings related to state-specific issues.

Examination Report

The state addendum details the state’s specific examination findings and recommendations, based on that state’s own statutes and regulations.

Steps:

a. Each Participating State CAD sends the state’s final examination report to the company:
   • Receive and evaluate company response; and
   • Include company response as part of the report.

b. Each state CAD finalizes their state’s examination report; and

c. Each Participating State should record the applicable administrative resolution for their state in the appropriate NAIC database.

E. Conclusion of Collaborative Enforcement Actions

When a collaborative effort produces findings for which a regulatory penalty or sanction is contemplated, such action should be memorialized in a written consent order, voluntary settlement agreement or similarly titled settlement document. States may contemplate a collaborative enforcement action at the same time as a pending civil court action concerning similar issues, such as a class action lawsuit. Such an enforcement action may or may not occur simultaneously with a settlement of the civil action. Negotiations for coordinated regulatory and civil settlement should be the responsibility of the Lead State(s).

In the event a collaborative effort is challenged, or Lead States cannot reach a settlement, they should develop a resolution strategy. Lead States should outline their strategy and recommendations to ensure violations are appropriately addressed in the correct jurisdictions. Examiners from Participating States must be made available for follow-up proceedings, if required. Expenses associated with the appearance of any examiners at a proceeding arising out of the examination must be borne by the states conducting the action.

1. Best Practices for Multistate Settlement Agreements

The purpose of this document is to outline best practices that will meet the needs of multiple jurisdictions affected by the business practices of regulated persons/entities. It is important to recognize that, although state departments of insurance have the authority to perform multistate examinations and investigations of potential violations of insurance law, the states cannot require regulated persons/entities to participate in a multistate settlement agreement. Thus, multistate settlement agreements are commonly entered into by way of mutual agreement with the applicable regulated entity as a way to uniformly and efficiently resolve regulatory matters.

The Best Practices for Multistate Settlement Agreements document is intended to provide guidance to regulators with respect to engaging in multistate settlement negotiations and drafting multistate settlement agreements. It is recognized that the terms of the agreement may vary depending on the subject matter of the
examination/investigation, the nature of the violation, the duration of noncompliance, the number of consumers affected, and the number of states in which the regulated entity is doing business, among other considerations. However, agreements should be negotiated and drafted in a manner that is intended to promote participation by regulators and effectively address the issues of concern to regulators. With this in mind, best practices have been developed to effectuate the greatest amount of participation among the states in multistate settlement agreements. A complete copy of the *Best Practices for Multistate Settlement Agreements*, adopted by the Market Actions (D) Working Group (MAWG), is available to regulators.

G:\MKTREG\DATA\D Working Groups\D WG 2015 MCES (PCW)\Docs_WG Calls\MAWG Related\Chapter 6—Collaborative Actions 4-30-15.doc