February 13, 2015

Mr. Tim Mullen
Director, Market Regulation
National Association of Insurance Commissioners
tmullen@naic.org

Subject: Preliminary, Proposed Market Regulation Accreditation Standards

Dear Mr. Mullen:

On behalf of our member companies, the American Council of Life Insurers (ACLI) submits preliminary, proposed Market Regulation Accreditation Standards (Accreditation Standards, or Standards) in connection with the efforts of the Market Regulation Accreditation (D) Working Group (Working Group) to develop a Market Regulation Accreditation Program (Accreditation Program, or Program) for consideration by NAIC membership. This submission is in response to a solicitation for proposed standards. The solicitation states that the Working Group will focus on other phases of program development once the initial Accreditation Standards are discussed, these other phases being processes for 1) State implementation of standards; 2) measurement of State compliance with standards; and 3) future revisions to the standards.

ACLI submits these preliminary, proposed standards for the purpose of advancing discussions regarding the Market Regulation Accreditation Program in a manner consistent with the projected timeline adopted by the Working Group. However, in recognition of the relatively short deadline for submissions and the evolving nature of a program development project with many stakeholders, ACLI emphasizes that the standards proposed herein are indeed preliminary and may be revised, augmented, or reconsidered by ACLI as this process moves forward.

The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association with 284 member companies operating in the United States and abroad. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers’ products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums. www.acli.com.

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Overview

The proposed standards below primarily are based on Core Competencies set forth in NAIC’s 2014 Market Regulation Handbook (Market Regulation Handbook, or Handbook). Core Competencies were intended to fulfill a need for uniform standards and solutions to effectively and efficiently address market regulatory issues. They represent essential areas of the market regulatory function. It is our understanding that many State insurance departments already have practices and procedures in place which allow, or would allow, them to comply with the majority of the Core Competency standards in the Handbook. It follows that a logical starting point in the development of Market Regulation Accreditation Standards should begin with the framework of the Handbook’s Core Competencies: 1) Resources; 2) Market Analysis; 3) Continuum; 4) Interstate Collaboration.

However, we respectfully note that, if every State followed the Handbook, market regulation would be a very different, more cost-effective, experience for regulators, the insurance industry, and consumers. We believe that emphasis should be placed on States adopting and adhering to the provisions of the Handbook, even if the current accreditation project does not result in material changes. This may result in some States, for purposes of accreditation, having to adopt the Handbook by administrative rule or regulation.

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Standard 1. Resources

A State Department of Insurance shall have the authority and resources to analyze, examine, or investigate entities that transact the business of insurance. This standard is comprised of three key elements, which are required of accredited State market regulation programs.

- **Regulatory Authority**—Necessary regulatory authority includes the following:
  - Statutory authority to perform the continuum of regulatory responses;
  - Ability to access records;
  - Ability to keep records confidential;
  - Ability to impose and enforce conflict of interest requirements;
  - An unfair trade practices act and unfair claims settlement act substantially similar to the NAIC model.

- **Staff and Training**—Department staff shall be sufficiently qualified to perform the continuum of regulatory options, including market analysis, market conduct examinations, and market conduct investigations—and prioritization of options— in accordance with the Market Regulation Handbook.

- **Contract Examiner**—Contract examiners (whether individuals or firms) shall have the education and professional experience comparable to Department staff and be capable of performing contractual duties in accordance with the Market Regulation Handbook. Processes and procedures shall be in place to oversee and monitor the work performance, expenses, conflicts of interest, resolution of examination disputes, and related activities and obligations of contractors.
Observations on Standard 1.

Regulatory authority is the starting point for determining the rights and obligations of a State Department of Insurance, insurers, and consumers. For the insurance market conduct function, regulatory authority is the basis of provisions in the Market Regulation Handbook and their enforceability. As a result, accredited State market regulation programs must demonstrate the specified capability to meet minimal, consistent standards of legal authority.

The importance of qualified Department staff cannot be overstated. Adherence to applicable laws and regulations of a jurisdiction, including those incorporated into the provisions of the Handbook, are vital. Rules can be complex and vary by size of insurer and the type of products that it sells. An inability of staff to understand the industry, the applicable laws and regulations, and to follow the Handbook can lead to severe penalties for both individuals and companies.

As with the need for qualified Department staff, the importance of qualified contract examiners cannot be overstated, and yet its importance is easily overlooked. Responsibility to the Department, insurers, and consumers requires contract examiners with an expertise in market regulation (and, in particular, the Handbook), cost estimation and controls, scheduling, sensitivity to conflicts of interest, and an understanding of differences among the laws of the States.

States are encouraged to consider leveraging existing designation programs already aligned with the above. Specifically, it is essential that all examiners have an appropriate level of experience (which the AIE and CIE designations focus on) as well as robust training on the Market Regulation Handbook (which the MCM and AMCM designations focus on), in addition to having detailed knowledge of the State’s specific rules and regulations.

The cost of examinations continues to be of great concern to insurers. Cost is a factor of the scope of the examination, the duration of an examination, and the rates charged for examiner salary and expenses. There is room for meaningful improvement in all three of these areas.

With regard to exam scope and duration, the consistent use of market analysis and the application of a continuum of appropriate actions must be key focuses of the accreditation program. Further, particular focus should be placed on domestic deference. Lastly, the DOI’s approach to sampling should result in robust sampling only when initial sampling has shown that a more in-depth review is warranted. Further, exam findings need to be evaluated with appropriate context. If statistical sampling is conducted, then statistically relevant findings should be included in an examination report, not every finding. There is a disconnect when statistical processes are applied on the front end of the process but not on the back end. There must be a brighter line between actions that are “required” vs. “recommended” and such recommendations need to recognize violations of law vs. deviations from company’s internal policies, as such deviations often do not result in a violation of law.

With regard to the rates charged for examinations, it should be noted that the insurance industry is the only financial industry in which regulators charge the regulated for an examination. This does not occur with SEC examinations, FINRA examinations, or State securities department examinations. Nor does it occur with OTS, IRS and other examinations. Despite the significant revenue provided to the States (in the form of premium taxes and fees), States continue to charge for nondomestic examinations.

Hourly rates and travel expenses have risen to extremely high levels and need to be subject to caps and/or controls. Further, there appears to be a growing trend with the use of contract examiners rather than DOI staff for examinations. To the extent a State DOI does not (or is not allowed to) budget for the appropriate level of internal resources for its examination program, insurers should not be penalized with higher exam costs, more frequent examinations, or less efficient examinations (if contract examiners do not have an in-depth knowledge of the laws of the State they are representing).
Standard 2. Market Analysis

A State Department of Insurance shall gather and analyze available data in order to develop a baseline understanding of the insurance marketplace and to identify for further review the regulated entities or practices that deviate significantly from the norm or that may pose a potential risk. This standard is comprised of five key elements, which are required of accredited State market regulation programs.

- **Data Collection**—Relevant data shall be collected prior to the initiation of, preparation for, and performance of the continuum of regulatory responses.

- **Avoidance of Duplication**—Departments shall make reasonable attempts to avoid duplicative and overlapping data collection whenever possible. Data to be considered available shall include, but not be limited to:
  - Existing market conduct and financial examinations;
  - Financial reporting and analysis;
  - Rates and Forms information;
  - Intra-department communications;
  - Information accessible via federal regulators and databases;
  - Information collected by other States, provided confidentiality protections are in place;
  - Rating agency data;
  - Public information sources

- **Analysis**—Data analysis should be conducted in conformity with the continuum of regulatory responses set forth in the Handbook. Regulatory concerns should be resolved at the lowest continuum level possible.

- **Market Analysis Chief**—A qualified Market Analysis Chief shall be designated to be principal liaison to pertinent NAIC Working Groups and staff and to be responsible for all market analysis-related communications with other work units within the Department. Specific, ongoing training (preferably, by NAIC) shall be required for individuals serving in this capacity. The Market Analysis Chief may also be the Collaborative Action Designee.

- **Market Analyst**—A qualified Market Analyst(s) shall be designated to work under the supervision of the Market Analysis Chief to assure a systematic approach to market analysis as set forth in the Handbook and to interact closely with various program areas in their respective Departments and, with due regard for confidentiality protections, with those of other States. Specific, ongoing training (preferably, by NAIC) shall be required for individuals serving in this capacity.

Standard 3. The Continuum

A State Insurance Department shall institute the Continuum of Regulatory Responses set forth in the Handbook as the means of moving from market analysis to regulatory response. This standard is comprised of three key elements, which are required of accredited State market regulation programs.

- **Market Conduct Examinations**—A Department shall have standards in place to determine when a market conduct exam is called for, with standards being in conformance with those of the Market Regulation Handbook.
  - Departments shall prioritize examinations;
  - Standard data calls shall be used whenever possible;
  - On-site examinations should be conducted only when remote access or desk audits are inappropriate or not practicable;
Examinations shall be subject to a standard planning process, with preparation of a written work plan executed prior to the examination. The plan shall include:

a. The scope of the examination;
b. The justification for the examination;
c. A time, duration, and cost estimate;
d. An identification of factors that will be included in the billing;
e. Communication of a-d shall be provided to the regulated entity prior to the examination.

Qualified contract examiners shall be retained with express contractual provisions that incentivize adherence to the written work plan and dis-incentivize work plan deviations.

Notice of examination shall be provided as soon as possible to a regulated entity but in no case less than 60 days prior to the estimated date of the examination, unless accommodation is needed for exigent circumstances or the schedule of the regulated entity.

The regulated entity shall be informed prior to the examination and provision of data/documents of the reason for the examination.

Examiners shall maintain an open line of communication with the regulated entity whenever possible.

Department and contract examiner communications with the regulated industry and with the Department and data/document management shall conform to recognized standards for secure communications and provide for encryption of document storage (laptop, USB or CD, hard drive), with the insurer's retention of all file sample, reports, and policies/procedures, etc. until the examination report has been finalized.

Examinations shall be conducted with regard to proportionality, materiality, statistical significance, and tolerable error rates.

The examiner shall assemble all findings, develop and document conclusions, and discuss preliminary conclusions with management.

Examiners shall document deficiencies. However, caution should be used if the deficiency noted results from a difference of opinion related to situations where the examiner and the regulated entity both assessed the same activity or process and came to different conclusions. Absent concrete evidence that a process or control will result in a material weakness, a difference of opinion should not be construed as a deficiency.

Examiners shall conduct a post-examination conference with the regulated entity. During discussions with management about examination conclusions, examiners shall include discussions of both strengths and weaknesses of the regulated entity's compliance and give management the opportunity to rebut examiner findings if management feels there has been a misunderstanding. Examiners shall document all relevant determinations and conclusions.

Departments shall establish procedures for addressing and appealing insurer concerns about proposed or incurred examination fees and expenses.

Departments shall provide regulated entities 90 days from the date of report adoption to implement any necessary corrections.
Publication of examination results shall include both the examination report and the regulated entity’s response.

- **Investigations**

A State Insurance Department shall establish standards for investigations of regulated entities. Regulated entities must be provided with a reasonable time period to respond to data/document requests with a minimum 30-day response time allocated and with extensions to be approved when circumstances warrant.

- **Consumer Complaints**

A State Insurance Department shall have standards in place to receive and handle complaints and inquiries in accordance with guidelines developed by the NAIC Market Analysis Procedures (D) Working Group. Standards shall be developed for complaint investigations, responses, referrals to law enforcement where appropriate, and reporting patterns and trends to the Market Analysis Chief and, where appropriate, NAIC.

**Standard 4. Interstate Collaboration**

A State Department of Insurance shall develop a program of interstate collaboration, which includes collaboration with the NAIC, that follows the procedures in the Collaborative Actions chapter of the Market Regulation Handbook, with active participation of the Market Analysis Chief in such a program of collaboration. A Collaborative Action Designee shall be appointed to have the responsibility for all communications related to interstate and multistate collaboration. The Designee may also be the Market Analysis Chief.

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Thank you for the opportunity to provide Proposed Market Regulation Accreditation Standards. Please let us know if you have any questions or need additional information.

Sincerely,

Lisa Tate