The current discussion about Market Regulation Accreditation reflects the long-standing tension between state insurance regulators on the one hand and industry and state legislators on the other hand. Industry and state legislators seek more detailed guidelines as requirements for market regulation actions generally and more guidelines and hurdles for market conduct examinations, specifically. Industry argues that market regulation is inefficient and costly for them, but their proposals all involve more procedures layered onto the current market conduct exam-focused infrastructure. The inevitable result will be either less effective market regulation because of additional hurdles that regulators need to leap to protect consumers or greater cost to regulated entities or both.

Market regulators recognize that industry proposals will have the effect of limiting state flexibility and capability to identify and address market problems. That is why states rightfully reject “domestic deference” for market regulation. And why states seek a voluntary – and not prescriptive – market regulation accreditation program.

The tension between regulators and industry on market regulation stems from a system centered on market conduct examinations increasingly carried out by contract examiners because of limited state resources for market regulation.

If we define success of state-based insurance market regulation as

- improved state capabilities for market analysis and enforcement
- improved effectiveness at pro-actively stopping market problems
- improved efficiency through enhanced market analysis and targeted use of continuum tools, and
- improved collaboration and consistency among states, then

CEJ suggests that for a market regulation accreditation program to be successful, it must be a set of resources that appeal to states and, consequently, that states want to participate in because the resources improve their abilities and efficiencies without limiting their ability to protect consumers.
CEJ suggests that an accreditation program that attracts states to participate in has the following foundation:

1. **Enhanced collection of market outcome data.** This means collection of granular, transaction level data from insurers about sales and claims – Regulatory Big Data. By collection of such data through a centralized source – such as the NAIC (in the same manner that the NAIC collects financial data for the states) – states will have access to the timely and relevant data necessary for establishing market analysis as the foundation of insurance market regulation.

2. **Enhanced market analysis capabilities.** With the collection of Regulatory Big Data comes the requirement for state regulators to possess the skills to utilize the detailed data. These skills include data mining, predictive analytics and modeling. Just as the NAIC employs a staff of skilled financial analysts to provide baseline and sophisticated analyses of financial data, so can the NAIC develop the staff capabilities to provide baseline and sophisticated analysis of granular market regulation data to assist the states.

By establishing a centralized data collection program for granular market regulation data with analytic skills to assist the states in utilizing the data, the states and the NAIC create a resource that will lead to greater effectiveness and efficiencies of market regulation and a path towards greater uniformity through voluntary state participation.

Greater efficiency and effectiveness results from more sophisticated and detailed market analysis, allowing states to better focus on problem markets and problem regulated entities, devoting fewer resources to unnecessary regulatory inquiries into those regulated entities playing by the rules and achieving solid market outcomes.

Greater uniformity results from more consistent and more sophisticated market analysis across the states. While states should always maintain the ability to address problems specific to their jurisdictions, enhanced and centralized market analysis will lead to more consistent market analysis across states and more consistent identification of problems or lack of problems. It is critical to stress that enhanced and centralized market analysis does not preclude state-specific market analysis or state-specific employment of continuum tools. Rather, enhanced and centralized market data collection with enhanced and centralized market analysis is a resource for states to utilize. It will be such a powerful and attractive resource that states will seek to participate in such a program – a program of the states housed at the NAIC. This is the path to accreditation – create a powerful and essential resource for the states that leads to greater effectiveness, efficiency and uniformity by states simply making use of the resource.
Regulatory Big Data collection is practical, feasible and reasonable. State regulators, often through the NAIC as well as individually, already collect transaction-level data from insurers and insurers report additional transaction level to advisory organizations.

Examples abound. The NAIC is embarking on transaction-level data collection for life insurance, annuities, disability insurance and long-term care insurance as part of the principles-based reserving initiative. Some of this builds on the current transaction-level reporting by insurers to the Medical Information Bureau.

Many states collect transaction-level directly or indirectly. Texas collects transaction data from all homeowners insurers and from the largest auto insurers comprising over 80% of the market. Most states have promulgated (or adopted) statistical plans for transaction detail reporting of workers compensation experience as well as personal and commercial lines experience for insurers reporting to the Insurance Services Office.

Regulatory Big Data collection is reasonable and necessary for regulators to monitor market outcomes in an era of insurer use of Big Data. The current data collection and rate regulation framework among the states was established during a period when regulators had extensive oversight of what went into insurer pricing – data collection by advisory organizations licensed and supervised by regulators with filing and review of rating manuals and risk classifications tied to the data collection of insurer experience. With such a regulatory regime, regulators could reasonably believe that effective oversight of what went into rates and underwriting could assure fair outcomes for consumers. But the world has changed and regulators no longer have the ability to meaningfully identify – let alone review – what goes into insurer marketing, pricing, claims and other activities. This is because of insurer use of Big Data – tapping into all manner of non-insurance databases of personal consumer information for data mining, predictive analytics and modeling. Again, example abound, from price optimization-based pricing based on consumer willingness to pay to other black-box scoring models used for marketing, identifying fraudulent claims, pricing and claims settlement. In an era when regulators do not have the resources to monitor insurer use of Big Data, it is imperative for regulators to monitor the market outcomes of insurer practices and such monitoring requires regulatory Big Data.

Regulatory Big Data collection and analysis creates regulatory opportunities which do not exist today. These opportunities include better and more sophisticated identification of market problems which will allow more refined and sophisticated regulatory intervention. Regulatory Big Data collection will allow states to develop exponentially-improved information for consumers to enhance consumer market power in an era when insurers’ market power has increased because of asymmetric information and knowledge. Today, insurers can instantly obtain detailed personal information about any applicant or policyholder, yet consumers have no greater knowledge of insurer market performance or practices today than 20 years ago.
Regulatory Big Data collection will drive efficiencies and uniformity in market conduct examinations. First, Regulatory Big Data will allow and compel states to focus on problem entities, reducing the regulatory burden on entities with good market outcomes for consumers. Second, Regulatory Big Data will expedite market conduct examination because regulators will already have the vast majority of data needed for sampling policies and claims. Stated differently, regulators will be able to do more exam preparation before initiating an exam and will be able to reduce the initial exam data request. Third, Regulatory Big Data will dramatically reduce the number (and cost on insurers) of ad hoc data calls. Fourth, Regulatory Big Data will dramatically improve the quality of data collected because it will be collected routinely. Routine data collection produces far more accurate and complete data than ad hoc requests both because insurers can fix problems over time and because the regulatory data collector has greater ability to check data for reasonableness and accuracy. Fifth, more consistent market analysis of a regulated entity’s across states will lead to more consistent conclusions about market performance and, consequently, more uniformity in regulatory response. Sixth, Regulatory Big Data will enhance and facilitate multi-state cooperation because of states’ use of common resources. The critical takeaway from this discussion is that the efficiencies and greater uniformity will occur by states wishing to participate in centralized Regulatory Big Data collection and analysis and not from prescriptive requirements on states.

Regulatory Big Data works hand-in-hand with the development and implementation by states of Core Competencies. One of the core competencies, however, must be improved capability for data collection (which might be satisfied with centralized data collection) and improved analytic skills. Just as insurers have turned to statisticians, economists and physicists to implement their Big Data initiatives, so must regulatory core competencies include sophisticated data analytics capabilities to make full use of Big Data Collection?

Regulatory Big Data also with process improvements for market conduct examinations and other continuum activities. But, making Regulatory Big Data collection and analysis the focus of a market regulation accreditation program places those process improvements in the proper context – refinement of ongoing procedures as opposed to establishing regulatory hurdles which do not improve the efficiency or effectiveness of market regulation.
In conclusion, a market regulation accreditation program based on a Regulatory Big Data initiative will take time – a five-year time horizon is reasonable – but will actually lead to greater effectiveness, efficiency and uniformity of insurance market regulation not because of unachievable prescriptions for the states but because of a path to essential resources that states will embrace. There is no quick fix to the problems facing insurance market regulation today, but Regulatory Big Data is a strategy to move market regulation towards the goals that all stakeholders seek. The problems facing insurance market regulation today are significant and won’t be solved by tinkering around the edges. Regulatory Big Data represents an initiative significant enough to address the big problems of insurance market regulation and secure the future of state-based insurance regulation.