

CEJ Comments on 9/10/15 Market Regulation Accreditation Standards

Current Proposal

CEJ Suggestion

Discussion of CEJ Suggestion

1. The Department shall have sufficient authority by appropriate statute, regulation, rule, or other authority to utilize the most recent version of the *NAIC Market Regulation Handbook*. When a department initiates a market regulation examination, it shall be guided by the version of the *NAIC Market Regulation Handbook* in effect at the time the examination was initiated.
- 1. The Commissioner shall rely upon the *NAIC Market Regulation Handbook* for procedures utilized in conducting market conduct examinations. The Commissioner shall have authority for such reliance by statute, regulation, rule or other relevant authority. The Commissioner shall utilize the version of the *Handbook* in effect at the time the market conduct examination warrant was issued, unless the entity examined and the Commissioner agree to utilize a more current version of the *Handbook*.**

Discussion: While some standards appropriately reference the Department, some standards should reference the Commissioner because statutes provide specific authority to the Commissioner, not the Department. This is particularly important for standards related to the calling of and conduct of market conduct examinations. We also suggest using the terms “utilize” and “rely upon” instead of “guided by.” Finally, there should be an opportunity to utilize a more current version of the Handbook if examiner and examined entity agree.

2. The Department must have either, or a combination of:
 - Its own staff (sufficient in light of the size and complexity of the jurisdiction’s market) to perform market regulation work, including market analysis, examinations and other continuum actions; or
 - Statutory authority sufficient to engage competent contractors on an as-needed basis and appropriate Department staff to oversee and manage such contractors.

2. The Department shall have staff (sufficient in light of the size and complexity of the jurisdiction's market) and/or statutory authority sufficient to engage competent contractor on an as-needed basis with sufficient Department staff to adequately oversee and manage such contractors to conduct market regulation activities, including, but not limited to:

- **consumer service/consumer complaints;**
- **consumer education and outreach;**
- **producer licensing;**
- **market analysis;**
- **comprehensive and targeted market conduct examinations;**
- **the continuum of market regulation actions, including enforcement; and**
- **collaboration and coordination with other regulatory agencies.**

Discussion: The use of "shall" should be consistent through the standards. The current draft standard lists only three market regulation activities. While these first tier standards focus on market conduct examination issues and capabilities, it is important that the standards somewhere identify the broader set of activities associated with market regulation. By including the broader list, the accreditation standards make clear that market regulation is more than market conduct examinations and this is a vital message to convey to policymakers and stakeholders. Including the broader list of activities in this standard does not increase requirements for insurance departments because all insurance departments are responsible for and carry out these activities.

3. With respect to qualifications, the department:
- Should have market analysts and examiners, or qualified contractual resources with appropriate experience levels to perform necessary tasks. Although not required, credentials such as, but not limited to, Accredited Insurance Examiner (AIE), Certified Insurance Examiner (CIE), Market Conduct Management (MCM), Associate Professional in Insurance Regulation (APIR), Professional in Insurance Regulation (PIR), Senior Professional in Insurance Regulation (SPIR), Chartered Property Casualty Underwriter (CPCU), Fellow of the Life Management Institute (FLMI), AAI, AAM, AAPA, ACP, AIC, AIM, CFE, CRM, DHP, DIA, LTCP or similar designations, licensure or credentials may demonstrate expertise in insurance or the area of market regulation.
 - Should have a policy in place to ensure appropriate education and/or experience requirements are continually pursued by newly hired staff and accomplished within the first 5 years of employment through job-related college courses, professional designation programs, or other training programs.
 - Should have a policy that encourages the professional development of all staff involved with market regulation through job-related college courses, professional designation programs, or other training programs.

3. Department staff and contractors shall have appropriate qualifications whether by education, experience or training to conduct the continuum of market regulation activities. The Department shall rely upon recommendations in the NAIC Market Regulation Handbook for establishing specific qualifications, including designations, licensure or other education, experience or credentials for staff and contractors, to the extent the Handbook recommendations are relevant and applicable.

4. The Department shall have a policy in place to ensure appropriate education and/or experience requirements are continually pursued by newly hired staff and accomplished within the first 5 years of employment through job-related college courses, professional designation programs, or other training programs.

The Department shall have a policy that encourages the professional development of all staff involved with market regulation through job-related college courses, professional designation programs, or other training programs.

Discussion: We strongly disagree with the inclusion of a list of certifications in the accreditation standard for several reasons. First, not all certifications apply to all staff. For example, a Market Conduct Management certification does not qualify someone for market analysis. Second, the certifications change, which renders the list in the accreditation standard obsolete. For example, the MCM has been replaced by the AMCM. Third, market regulation activities can change rendering an existing certification no longer adequate for qualification to perform the market regulation activity. Fourth, this type of guidance – qualifications for the variety of market regulation activities – is precisely the reason there is a Market Regulation Handbook to provide implementation details for broader policy statements.

Finally, we suggest that qualifications (our standard 3) be separated out from ongoing education and personnel development (our standard 4) because they represent different types of action by the Department – establishing qualifications on the one hand and having a system of personnel development on the other hand.

7. The Department participates in collaborative actions with other jurisdictions such as the following:

- * The department participates in all NAIC systems for posting notice of proposed, ongoing and completed examinations (Examination Tracking System (ETS)).
- The department identifies jurisdictions that may have a mutual interest in their proposed activities and takes steps to collaborate with those jurisdictions.
- Except for emergency situations, the department enters data into ETS concerning upcoming examinations or continuum actions at least 45 days prior to the start of an examination.
- The department joins all proposed collaborative actions relevant to its jurisdiction.

- The department refrains from conducting independent examinations of issues that are the subject of proposed, current, or recent examination by another jurisdiction unless there is a compelling reason to conduct their own action. An example of a compelling reason would be that the state has a state specific law covering uninsured motorist claims that would not be captured in a multi-state action.

7. The Department participates in collaborative actions with other jurisdictions, including, but not limited to, the following:

- **The department participates in all NAIC systems for posting notice of proposed, ongoing and completed examinations (Examination Tracking System (ETS)).**
- **Except in situations for which a delay in Department action will lead to greater consumer harm, the Department shall provide at least 15 days' notice to all other states prior to issuing an examination warrant, with such notice stating timing, parties involved, areas of review and trigger.**
- **The department refrains from conducting independent examinations of issues that are the subject of proposed, current, or recent examination by another jurisdiction unless the examination of the issue would not be addressed by the multi-state action**

Discussion: While it is reasonable for a jurisdiction to provide notice of a proposed action to all jurisdictions, it is unreasonable to require a jurisdiction to “identify jurisdiction that may have a mutual interest.” Policy, procedures and systems should be (and largely are) in place to provide notice to jurisdictions that may have interest and the requirements of a jurisdiction should be to participate in those collaborative systems. Participating in collaborative systems is an objective standard; identifying other jurisdictions that may have interest is subjective and, consequently, not an appropriate accreditation standard.

If the goal is to notify other jurisdictions of a proposed examination, then the notification should be tied to the issuance of the examination warrant and such notice should be prior to the issuance of the examination warrant to allow other jurisdictions to indicate interest before the contours of the examination have been established in the warrant.

Given the limited resources of every Department, it is not reasonable to establish a standard that each state joins all collaborative actions relevant to its jurisdiction. Perhaps this standard can be modified to explain what “joining” a collaborative action means.

The last bullet can be shortened and made more clear.

8. The Department participates in the collection of Market Conduct Annual Statement and the centralized storage of the data at the NAIC.

8. The Department participates in the centralized collection of Market Conduct Annual Statement and utilizes the data for market analysis.

Discussion: The key concepts are, one, a state participating in MCAS; two, centralized collection of MCAS data; and, three, utilization of the MCAS data by the state for market analysis. Centralized collection involves centralized storage so the second part of the proposed standard is unnecessary. In addition, at some point, the states may opt to utilize a statistical agent other than the NAIC, just as states do now for other types of data collection. While there are good reasons for the NAIC to be the states' MCAS statistical agent, there is no need to include as an accreditation standard the NAIC as the statistical agent.