

Draft Pending Adoption

Attachment --
Market Regulation and Consumer Affairs (D) Committee
8/12/22

Draft: 7/21/22

Market Regulation Certification (D) Working Group
Virtual Meeting (*in lieu of meeting at the 2022 Summer National Meeting*)
July 13, 2022

The Market Regulation Certification (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met July 13, 2022. The following Working Group members participated: Russell Toal, Chair (NM); John Haworth, Vice Chair (WA); Lori K. Wing-Heier represented by Sarah Bailey (AK); Doug Ommen represented by Kim Cross (IA); Erica Weyhenmeyer (IL); Chlora Lindley-Myers represented by Jo LeDuc (MO); Mike Causey represented by Tracy Biehn (NC); Martin Swanson and Robert McCullough (NE); Marlene Caride represented by Ralph Boeckman (NJ); Judith L. French represented by Don Layson (OH); Glen Mulready represented by Shelly Scott (OK); Don Beatty and Katie Johnson (VA); and Kevin Gaffney represented by Mary Block and Nick Marineau (VT). Also participating was: Pam O'Connell (CA).

1. Adopted its June 1 Minutes

Superintendent Toal said the Working Group met June 1. During this meeting, the Working Group took the following action: 1) adopted the Voluntary Market Regulation Certification Program scoring matrix; 2) reviewed the certification program implementation plan; and 3) reviewed the pilot state suggestions to the certification program.

Mr. Haworth made a motion, seconded by Ms. Weyhenmeyer, to adopt the Working Group's June 1 (Attachment xx) minutes. The motion passed unanimously.

2. Reviewed the Certification Program Implementation Plan

Superintendent Toal said the implementation plan provides for a three-year self-certification period in which any jurisdiction may use the guidelines and checklists to measure its compliance to the certification requirements. He said that during the self-certification period, recommendations for changes and improvements to the requirements would be received and considered.

Superintendent Toal said that after three years, any jurisdiction could choose to continue to self-certify, or it could apply to be fully certified. He said a Market Regulation and Certification Committee would be formed to review each jurisdiction seeking full certification. He said a review team would be formed to review applications and report to the Committee, and re-evaluations would be done every five years.

Superintendent Toal said fully certified jurisdictions may withdraw at any time and continue to self-certify. He said any self-certified jurisdiction would be considered provisionally certified.

Superintendent Toal noted that during the last Working Group meeting on June 1, Mr. Haworth addressed the process for peer review, the timing for moving from self-certification to full certification, and whether the use of contractors in the certification process should be allowed. Superintendent Toal noted that in their comments to the Working Group, two states proposed the Working Group re-evaluate the implementation plan in its entirety and then re-draft a plan for adoption. He said that was a good idea. He said some of what is currently in the original implementation plan can be retained, but the Working Group should draft a plan that it determines is the best way to implement and administer the certification program.

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Superintendent Toal asked for comments on the implementation plan to be sent to Randy Helder (NAIC) by July 29.

3. Reviewed Pilot State Suggested Revisions to the Certification Program

Superintendent Toal said the Working Group received three sets of comments. He said all the comments were helpful and will improve the certification program. He said his plan for the certification requirements is to ask a smaller group of state insurance regulators to meet a couple times in between each monthly Working Group meeting to review the recommendations on each requirement and report back to the Working Group on their progress. He said having a small group work on the certification requirements will also allow the Working Group time to work on the implementation plan.

Mr. Beatty said that requirement 2 requires jurisdictions to use the most current version of the NAIC *Market Regulation Handbook*, but there is no checklist question to affirm this. He suggested adding such a question. He said checklist question 3i asks about the staffing policies and procedures, and he said he is unsure how that relates to identifying market conduct issues. Regarding requirement 4, Mr. Beatty asked how a jurisdiction can support a claim that it encourages professional development. He also suggested that checklist item 4d should reference examiners in charge (EICs) to avoid confusion. Finally, Mr. Beatty said requirement 11 should provide the opportunity for a jurisdiction to indicate whether any of the companies chosen in the Market Actions (D) Working Group National Analysis Program wrote business in the jurisdiction since that would affect whether they participated.

Ms. O'Connell said her comments focused on correcting inconsistencies between the adopted scoring matrix and the certification program guidelines and checklist. She said she would be happy to work with the small group to discuss and incorporate appropriate suggestions.

Ms. LeDuc said her comments generally agreed with the comments of Ms. O'Connell. Ms. LeDuc said her comments noted some inconsistencies in the language used through the certification program requirement, guidelines and checklist, and identified areas that needed clarification. Her comments also pointed out some concerns with the requirements such as the blanket statement requiring the use of the most recent version of the NAIC *Market Regulation Handbook* rather than allowing for case-specific usage, especially for the application of standards to exams initiated prior to a new version. Ms. LeDuc volunteered to be on the small group to discuss the suggestions for revisions and make recommendations to the Working Group.

Mr. Swanson said hiring, training, and retaining employees is getting more difficult for departments of insurance (DOIs). He said that as the Working Group moves forward with the certification program, it needs to take into account the staffing difficulties. Superintendent Toal said that was a valid point and that most DOIs are experiencing the same hiring and retention issues. He said the Working Group needs to temper any unrealistic expectations of what a DOI can do and how quickly.

Superintendent Toal asked for volunteers to be on the drafting group for the requirements. Ms. LeDuc, Ms. O'Connell, Ms. Biehn, and Mr. Haworth volunteered.

Having no further business, the Market Regulation Certification (D) Working Group adjourned.

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Voluntary Market Regulation Certification Program Self-Assessment Guidelines, Checklist Tool and Implementation Plan

Revisions Recommended by Pilot Jurisdictions

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Commented [HR1]: MO - General Observations

The document is inconsistent in how it refers to a department. In some areas it is directed at the reader and uses terms such as ‘you’ and ‘your’. Other areas use more generic terms such as ‘the’. For consistency, we’d suggest replacing the references to ‘you’ and ‘your’ with the more general reference to ‘the’ department.

The document is also inconsistent in how it refers to participating jurisdictions, in that the terms state and jurisdiction are used interchangeably. For consistency purposes, we’d suggest that the broader term jurisdiction be used throughout the document and all references to a state or states be amended accordingly.

Several of the Checklist Items include generic statements such as ‘Briefly explain’. It would be helpful if these statements could be expanded on and provide more information about what should be explained. It may also be helpful to include the requirement for an explanation directly below the item to be explained, rather than grouping it into a single item at the end of the checklist.

Finally we noticed little consistency in how each requirement is organized. This makes it more difficult for the reader to interpret and apply. To aid in readability and understanding, we suggest standardizing the structure used for each requirement. Specifically, we recommend that each requirement be organized as follows:

Requirement - A statement of the requirement(s)

Objective - The objective(s) of the requirement

Measurement - Information on how the requirement will be measured

Guidelines - Guidance on how to interpret the requirements

Checklist - The checklist for jurisdictions completed to assess achievement of the requirement

Comments - An area for the jurisdiction to provide additional information related to its assessment of the requirement

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Purpose

The mission of the NAIC Market Regulation Certification Program is to establish and maintain minimum standards that promote sound practices relating to the market conduct examination, market analysis and related continuum activity functions performed for insurance consumer protection. Inasmuch as the program is anticipated to evolve and improve over time, it is anticipated that additional functions necessary for sound consumer protection may be developed in the future. The certification program is designed to provide an initial process that facilitates each jurisdiction's ability to conduct self-evaluation. An ultimate goal is to develop measurable and meaningful standards that can be independently evaluated and monitored.

Program standards, assessment checklist items and guidelines should:

- Provide a roadmap regarding resources, abilities and functions for jurisdictions wishing to build, maintain, or improve upon, their market conduct program.
- Promote consistency while respecting individual jurisdictional differences and circumstances by promoting use of NAIC resources.
- Demonstrate accountability and responsiveness to those impacted by the business of insurance, and to others that are charged with evaluating and assessing the effectiveness of state-based insurance regulation.
- Promote an environment of continuous process improvement for enhancing outcomes relating to insurance consumer protection.
- Improve predictability and understanding of processes for regulated entities.
- Enhance jurisdictional coordination and information-sharing.
- Enhance protection of insurance consumers through promotion of sound market conduct processes.

NOTE: When responding to checklist items for each requirement, if your response is N/A (not applicable), please provide an explanation for your "N/A" response in the comments.

Commented [HR2]: MO - We believe that the established shards should be viewed as minimum standards. To achieve this, we recommend amending the first sentence to read "to establish and maintain minimum standards...".
 The first bullet point provides that the guidelines should be used as a roadmap for building or improving on a department's market conduct program. We believe the guidelines would also be useful for maintaining a program. We suggest that the first bullet point be updated to read "...wishing to build, maintain or improve upon, ...".

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Voluntary Market Regulation Certification Guidelines and Checklists

Requirement 1 – Department’s Authority

The jurisdiction or department shall have the statutory authority to conduct market regulation activities, including market analysis; comprehensive and targeted market conduct examinations; the continuum of market regulation actions, including enforcement; and collaboration and coordination with other regulatory agencies. Additionally, the jurisdiction has adopted or is in the process of adopting or has substantially similar statutory authority for key insurance consumer protection laws and regulations as established by the NAIC.

Objective

Measurement

To evaluate whether your jurisdiction “passes” Requirement 1, the jurisdiction must have authority to coordinate with other jurisdictions. If the jurisdiction does not have the authority to coordinate with other jurisdictions, it will not pass this requirement. Additionally, a jurisdiction should have authority to conduct analysis, examinations and enforcement. Requirements to have reasonable cause to conduct an examination does not negatively impact the evaluation. Ability to perform these items without having the ability to perform continuum actions should be considered as “marginally passing but with strong recommendations for additional authority.”

Guidelines

[CA - Regarding requirement 1, Ms. O’Connell said the guidelines are not clear as to what standards a jurisdiction must meet in order to pass the requirement. She said the fourth paragraph of the guidelines for this requirement only describes one item as something a jurisdiction must have in order to pass, which is the authority to coordinate with other jurisdictions. The paragraph then says a jurisdiction should have the authority to conduct analysis, examinations and enforcements but does not say it must be able to. She said the paragraph then describes a jurisdiction with the “ability” to conduct analysis, examinations and enforcement, but not the ability to perform continuum actions as marginally passing. She said it is not clear whether the word “ability” is really intended to mean “authority.” She said “authority” seems to be the correct word, or else how would a jurisdiction’s “ability” to do continuums be measured?

Ms. O’Connell said it is not clear how a jurisdiction’s authority or ability to conduct analysis, examinations, enforcement and continuum actions relates to whether the jurisdiction has the authority to collaborate with other states, which is the only specified “must have” according to the guidelines. Ms. O’Connell said the guidelines should be precise with respect to what is required for a jurisdiction to pass this aspect of the requirement.

Ms. O’Connell said while the requirement says part of the evaluation pertains to whether the jurisdiction has adopted or is in the process of adopting key consumer protection laws and the guidelines list a series of key laws a jurisdiction should have, the checklist collects no information regarding the reporting jurisdiction’s consumer protection laws. She said it is unclear how it will be determined whether a jurisdiction meets this portion of the requirement.]

When determining your department’s authority for conducting market regulation activities, several different considerations should be evaluated. Direct legal authority may exist in the jurisdiction’s insurance code or within its regulations. Insurer examination acts, specific market regulation acts, acts that outline the authority and duties of the department are all potential

Commented [HR3]: CA - Requirement 1

The scoring matrix identifies Question 1.a. on the Checklist as being mandatory (i.e., it is coded red), and Question 1.b. as yellow. The narrative Guidelines do not align with these criteria. The first paragraph on page 4 under the Guidelines heading reads as follows:

“To evaluate whether your jurisdiction “passes” Requirement 1, the jurisdiction must have authority to coordinate with other jurisdictions. If the jurisdiction does not have the authority to coordinate with other jurisdictions, it will not pass this requirement. Additionally, a jurisdiction should have the authority to conduct analysis, examinations and enforcement. Requirements to have reasonable cause to conduct an examination does not negatively impact the evaluation. Ability to perform these items without the ability to perform continuum actions should be considered “marginally passing but with strong recommendation for additional authority.”

The passage I have highlighted yellow conflicts with what the scoring matrix says is mandatory (a “yes” answer to 1.a. on the Checklist – whether the jurisdiction has the general authority to collect and analyze information whenever it is deemed necessary). We recommend redrafting the Guidelines to replace these two sentences with the following, “To evaluate whether your jurisdiction “passes” Requirement 1, the jurisdiction must have general authority to collect analyze information whenever it is deemed necessary.”

Also, Question 1.b. on the Checklist asks, “Is the department’s authority broad enough to cover **these activities**? [emphasis added]”. In this question, it is not clear what activities are being asked about. Is it the collection and analysis of information (as referenced in 1.a.) or is it the activities listed in the portion of the Guidelines that I have highlighted in aqua (market analysis, exams, enforcement)? Or is it some other activities that need to be identified? Since a “yes” answer to Question 1.b. could help a state achieve a passing score overall based on its yellow coding on the scoring matrix, it would be helpful to know what activities we need to have broad enough authority to undertake. We recommend revising question 1.b. on the Checklist to specify the activities of interest to the working group.

Commented [HR4]: MO - The purpose of the Program “is promote sound practices relating to the market conduct examination, market analysis and related continuum activity functions performed for insurance consumer protection”. The purpose does not appear to extend to the need for a jurisdiction to have adopted specific consumer protections. In order to keep the Program in line with its stated purpose, we suggest that the requirement and any discussion related to the adoption of key consumer protection laws be deleted. However, if it is the intent of this program to ensure that a minimum level of key consumer protections are in place, we would recommend revising the purpose statement for the program itself and creating a separate requirement to cover the key consumer protection items.

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items to review. Generally such authority is cited when requesting documents from an insurer. Jurisdictions may also have broad oversight authority within other consumer protection laws.

Additional authority may be implied or may exist on a less direct basis. Examples could include insurance consumer protection-related insurance laws or regulations and their associated enforcement provisions. Other potential areas of authority are activities performed pursuant to the powers or orders of the insurance commissioner, director, superintendent or administrator (i.e., the applicable chief insurance regulator of your jurisdiction).

When evaluating checklist items for Requirement 1, it may be beneficial to look beyond the mere capability to perform the listed functions. If not directly addressed within the insurance code or regulations, consider whether direct authority for all mentioned items would be desirable (most continuum items would fall under examination, investigation or analysis categories). Having direct authority may provide valuable guidance on such issues as application of administrative procedure act requirements, status of examination, investigational or analysis records, handling of associated costs, etc.

~~To evaluate whether your jurisdiction “passes” Requirement 1, the jurisdiction must have authority to coordinate with other jurisdictions. If the jurisdiction does not have the authority to coordinate with other jurisdictions, it will not pass this requirement. Additionally, a jurisdiction should have authority to conduct analysis, examinations and enforcement. Requirements to have reasonable cause to conduct an examination does not negatively impact the evaluation. Ability to perform these items without having the ability to perform continuum actions should be considered as “marginally passing but with strong recommendations for additional authority.”~~

Consider which consumer protections model laws and regulations have been adopted in your jurisdiction. Investigation, subpoena, and cease and desist powers are found in most unfair trade and producer laws. Most commissioners also have a general powers statute that may contain similar enforcement authorities.

The key basic models or similar versions should include:

- *Unfair Trade Practices Act* (#880)
- *Unfair Claims Settlement Practices Act* (#900)
- *Health Carrier Grievance Procedure Model Act* (#72)
- *Uniform Health Carrier External Review Model Act* (#76)
- *Producer Licensing Model Act* (#218)
- *Suitability in Annuity Transactions Model Regulation* (#275)
- *Life Insurance Illustrations Model Regulation* (#582)
- *Life Insurance and Annuities Replacement Model Regulation* (#613)
- *Standard Nonforfeiture Law for Life Insurance* (#808)
- *Standard Nonforfeiture Law for Individual Deferred Annuities* (#805)
- *Unfair Discrimination Against Subjects of Abuse in Health Benefit Plans Model Act* (#895)
- *Unfair Discrimination Against Subjects of Abuse in Life Insurance Model Act* (#896)
- *Unfair Discrimination Against Subjects of Abuse in Disability Income Insurance Model Act* (#897)
- *Unfair Discrimination Against Subjects of Abuse in Property and Casualty Insurance Model Act* (#898)
- *Model Law on Examinations* (#390) or *Market Conduct Surveillance Model Law* (#693)

Checklist for Requirement 1

Please provide the statutory reference(s) your jurisdiction or department relies on for the following:

YES NO

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1a. Does the department have the general authority to collect and analyze information whenever it is deemed necessary? _____

REFERENCE _____

1b. Does the department have the authority to collaborate and coordinate with other regulatory agencies? Y N

REFERENCE _____

1c. Is the department’s authority broad enough to cover ~~these market regulation activities~~ market analysis, comprehensive and targeted market conduct examinations and the continuum of market regulation actions, including enforcement? Y N

If yes, provide the citation reference(s) in the table below

If the department has authority specific to any of these itemized activities, please provide the citation:

	Citation
Market analysis	
Comprehensive and targeted market conduct exams	
Continuum of market regulation actions (including enforcement)	
Ability to collaborate and coordinate with other regulatory agencies	

COMMENTS:

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Commented [HR5]: MO - Checklist Item 1b.: For clarity, we suggest that the item be revised to specifically list the activities of interest (i.e. market analysis, comprehensive and targeted market conduct examinations and the continuum of market regulation actions, including enforcement).

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Requirement 2 – Department’s Authority Regarding the *Market Regulation Handbook*

The department shall have sufficient authority by appropriate statute, regulation, rule, or other authority to utilize the most recent version of the *Market Regulation Handbook*. When a department initiates a market regulation examination, it shall be guided by the version of the *Market Regulation Handbook* in effect at the time the examination was initiated.

Objective

The objective of this item is to promote guidance and consistent handling of examination processes through the use of the *Market Regulation Handbook*.

Measurement

To evaluate whether your jurisdiction “passes” Requirement 2, the jurisdiction must at a minimum be able to demonstrate when conducting examinations or continuum activities their use of applicable *Market Regulation Handbook* review standards and related materials to the extent they are consistent with jurisdictional law. The department’s policies and procedures should properly reference the use of those materials set forth in the *Market Regulation Handbook* or its predecessor/successor. (draft additional language to complete)

Guidelines

When determining your department’s authority by appropriate statute, regulation, rule, or other authority to utilize the most recent version of the *Market Regulation Handbook*, the department should identify the statute, regulation, rule or other authority to use the *Market Regulation Handbook* within their response.

~~When evaluating checklist items for Requirement 2, remember the objective of this item is to promote guidance and consistent handling of examination processes within each jurisdiction through the use of the *Market Regulation Handbook*. Additionally, a jurisdiction should be able to demonstrate, on an individual basis, when it is deemed appropriate to deviate from or necessary to use an earlier version of, the *Market Regulation Handbook*. The jurisdiction should also be able to demonstrate that it has followed its own established policies and procedures for adopting processes that deviate from the *Market Regulation Handbook*, which at a minimum should include review and concurrence by a department’s legal staff member.~~

[CA- Ms. O’Connell said if the items in the second paragraph under the guidelines for requirement 2 are required in order for a jurisdiction to pass this requirement, they should be incorporated into the third paragraph, which begins, “To evaluate whether your jurisdiction passes Requirement 2 ...”.] - accepted

~~To evaluate whether your jurisdiction “passes” Requirement 2, the jurisdiction must at a minimum be able to demonstrate when conducting examinations or continuum activities their use of applicable *Market Regulation Handbook* review standards and related materials to the extent they are consistent with jurisdictional law. The department’s policies and procedures should properly reference the use of those materials set forth in the *Market Regulation Handbook* or its predecessor/successor.~~

Checklist for Requirement 2

	YES	NO
2a. Does the department have authority by statute, rule or other authority to utilize the most recent version of the <i>Market Regulation Handbook</i> or its predecessor/successor?		

Commented [HR6]: CA - Requirement 2
 The scoring matrix identifies a “yes” answer to question 2.a. on the Checklist as being mandatory (Does the department have authority by statute, rule or other authority to utilize the *Market Regulation Handbook* or its predecessor/successor?). However, this conflicts with the narrative Guidelines, which state the following:

“To evaluate whether your jurisdiction “passes” Requirement 2, the jurisdiction must at a minimum be able to demonstrate when conducting examinations or continuum activities their use of *Market Regulation Handbook* review standards and related materials to the extent they are consistent with jurisdictional law...”

The concept of incorporating *Market Regulation Handbook* review standards and materials into exam and continuum work is reflected in Question 2.b., which the scoring matrix does not have coded as mandatory (red). If the working group thinks both having specific authority to use the *Handbook* and incorporating review standards found in the *Handbook* in the state’s market regulation work are crucial, we recommend revising the sentence in the Guidelines to say, “To evaluate whether your jurisdiction “passes” Requirement 2, the jurisdiction must have authority by state, rule, or other authority to utilize the *Market Regulation Handbook*, and be able to demonstrate when conducting exams or continuum activities their use of...”, and revising the scoring matrix so that Question 2.b. is coded as mandatory (red).

Commented [HR7R6]: Reconcile with scoring matrix after the requirements are reviewed and revised.

Commented [HR8]: MO - This item requires that a jurisdiction have the authority to use of the most recent version of the *Market Regulation Handbook (Handbook)* and that the version of the *Handbook* in effect at the time an examination is initiated be utilized.

We agree that for ‘process’ related items (such as reporting writing, sampling, and exam planning processes) should be based on the version in effect at the time the examination is initiated. However, it isn’t always the best choice when it comes to applying individual examination

Commented [HR9R8]: resolved

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Commented [HR10]: VA - Requirement 2: The Guidelines require states to use the most recent version of the MR Handbo

Commented [HR11R10]: resolve

Commented [HR12]: MO - Checklist Item 2a.: The current draft removes the requirement to list the reference related to the authority. We are not in favor of eliminating this from the check

Commented [HR13R12]: resolved

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~~Does the department reference the Market Regulation Handbook by statute or rule? If so, identify the reference.~~

REFERENCE

2b. When conducting examinations or continuum activities, does the department incorporate applicable *Market Regulation Handbook* review standards and related materials to the extent they are consistent with state laws? _____

2c. ~~Does the department have examination~~ Are there departmental specific policies and procedures in addition to those guidelines set forth in the *Market Regulation Handbook* or its predecessor/successor? If Yes: _____

2c1 Is the jurisdiction able to demonstrate that it has followed its own established policies and procedures in adopting any process that deviates from the *Market Regulation Handbook*?
(The objective of this item is to promote guidance and consistent handling of examination processes within each state on an individual basis when it is deemed appropriate to deviate from the *Market Regulation Handbook*)

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Requirement 3 – Department Staffing

The department must have either, or a combination of:

- Its own staff sufficient to perform market regulation work, including market analysis, examinations and other continuum actions.
- Statutory authority sufficient to engage competent contractors on an as-needed basis and appropriate department staff to oversee and manage such contractors.

Objective

To ensure the department has sufficient staff to meet the needs of the department's market regulation activities.

Measurement

Full-time equivalent (FTE)

Guidelines

Requirement 3 provides guidance on whether a jurisdiction has resources and capabilities to conduct market analysis, market conduct examinations and/or continuum activities. The standard recognizes that some jurisdictions use contracted services to perform these functions. In the event that contracted services are used, the standard inquires if the jurisdiction has the authority to hire contractors, established processes for selecting contractors and whether the jurisdiction engages in oversight of the contracted services. It is understood that jurisdictions vary in their usage of examinations versus continuum activities.

This requirement anticipates that some data will be obtained through the *Insurance Department Resources Report*. Those results should be reviewed in the event that classifications differ. Additionally, it is anticipated that each jurisdiction will evaluate changes in its level of resources from year to year.

To evaluate its own status regarding the checklist for Requirement 3, each jurisdiction determines its specific appropriate level of staffing and or use of contracted services. Levels will vary from jurisdiction to jurisdiction. Factors such as population size, premium volume, complexity of insurance issues with a particular jurisdiction, complaints, legal requirements, directives for conducting market conduct activities and ability to keep abreast of emerging market issues are valid factors when evaluating your jurisdiction's needs. Jurisdictions are encouraged to establish resource levels that permit them to meet their obligations or needs for market analysis, market conduct examinations and/or continuum actions.

During each jurisdiction's evaluation of its staffing levels, it may also be helpful to determine what NAIC resources are relied upon for market conduct functions and how the use of those resources has changed over time. If additional NAIC resources are identified that may be beneficial, it is a good idea to bring forth those suggestions to NAIC staff. This will help to provide opportunities and diagnostic tools for improvement.

Where independent contractors are used to fulfill staffing needs, the department must be engaged and responsible throughout the examination and be responsive to issues and concerns that might arise.

To evaluate whether your jurisdiction "passes" Requirement 3, the jurisdiction, initially, should be able to respond to one of the following combinations:

- "Yes" to checklist item 3a., item 3d. or 3e. and item 3i.
- If the answer to checklist item 3a. is "Yes," and the department ~~uses contractors to fulfill requirements of checklist item 3d~~ answers "Yes" to item 3.e., then a "Yes" response is required for item 3.m., item 3n., item 3op., and item 3pq. and item 3r.

Commented [HR14]: CA - Requirement 3

The narrative Guidelines conflict with the scoring matrix. The scoring matrix identifies having examiners on staff or the authority and ability to contract examiners (Questions 3.d and 3.e.) as the single mandatory item, with a number of additional items identified as primary goals (3.a. – analysts on staff or contracted, 3.d.- established staffing procedures, 3.k. and 3.m. – whether the state has done any targeted exams and if not, whether the state has sufficient resources to be able to do so if necessary, 3.o. – established process for hiring contractors, 3.p. and 3.q. – appropriate oversight of contractors). However, the Guidelines state the following about what is required to pass Requirement 3:

"To evaluate whether your jurisdiction "passes" Requirement 3, the department initially should be able to respond to one of the following combinations:

"Yes" to checklist item 3.a., item 3.d. and item 3.i.
 If the answer to Checklist item 3.a. is "Yes", and the department uses contractors to fulfill requirements of checklist item 3.d., then a "Yes" response is required for item 3.o., item 3.p., item 3.q, and 3.r."

We recommend modifying the narrative Guidelines so that they align with the scoring matrix, or vice versa. We also recommend that the working group revisit all references to checklist question numbers within other checklist questions to make sure they are referring back to the questions the working group intends, due to previous restructuring and renumbering of many of the items in this section.

Finally, I would also ask that you reconsider the comments I made in December 2019 about questions 3.c., 3.g. and 3.h in the Checklist. Those comments are displayed on the most recent Program document. Questions 3.c. and 3.h. ask for detail that is not relevant to any of the metrics for Requirement 3. 3.c. requires a breakdown of analyses performed by company type based on P&C vs. L&H and single-state vs. multi-state companies. This detail does not speak to or support whether a state has sufficient resources to carry out its market regulation duties, which is the

Commented [HR15]: MO - This requirement is aimed at having sufficient resources on staff and/or the ability to hire contractors. Requirement Number 4 applies to the qualifications of the resources. To clearly distinguish it from Requirement Number 4, we recommend changing the name of the requirement to "Department Staffing – Resources". We also suggest removing all references to the experience and/or qualifications of the resources in order to avoid overlap between the two requirements.

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Commented [OP16]: This is my suggested edit to this section BUT this may need to change further since we are still debating current 3.h. (list of all examiners and their qualifications) and in reading through the Checklist it seems like other changes might need to get made to further move all things having to do with QUALIFICATIONS being moved to Req. 4. Those changes might further change lettering that needs to be incorporated here.

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[Ms. O’Connell said that because the checklist for requirement 3 has been modified to create one question about staff examiners and a separate question about contract examiners, the second bullet point in the sixth paragraph of the guidelines needs to be revised to account for the new structure and for the new lettering of all of the other questions that follow the current question 3e. She said the original intent of these bullet points, when 3d addressed both staff and contract examiners, was to say if a jurisdiction uses contract examiners for exams and continuums, additional criteria surrounding contractor hiring practices and oversight must be met in order to pass. She said the second bullet point no longer tracks in this manner due to the changes to lettering.]

All remaining Requirement 3 checklist items should be collected and evaluated from year-to-year to evaluate the jurisdiction’s abilities.

Checklist for Requirement 3

Sufficient ~~Qualified~~ Staff and Resources (Market Analysis)

The department should have the resources to analyze effectively on a periodic basis the market behavior of insurers doing business in the state

General Guidance: Identified personnel who have the time and experience necessary to perform this function should be assigned to the analysis tasks, and the tasks should be satisfactorily completed in a timely manner.

Note: The following tables will be populated from the *Insurance Department Resources Report*.

	YES	NO
3a. Does the department have analysts on staff or under contract whose primary responsibility is to conduct market analysis of insurers doing business in the state?	_____	_____
3b. If the department utilizes contract analysts, please describe in a separate attachment the manner and extent of utilization in the department’s recent activities.		
3c. Indicate below the number of contract and staff analysts, and supervisors for each of the last three years.		

[CA- For checklist item 3c, Ms. O’Connell asked the reasoning behind separating the numbers of companies upon which market analysis is performed during the year between single-state/multistate and L&H/P&C. She said there is not any pass/fail metric tied to the mix of companies analyzed during the review period. She recommended removing the additional layer of detail in order to make the self-reporting for this item less time intensive.]

	Market Analysis In-house market analysts	Supervisor Contract Market Analysts
Current Year (CY)		
CY-1		

Commented [HR17]: MO - New Checklist Item: To provide clear documentation to support the need to respond to the current checklist item 3b., we recommend adding the following additional item before the current item 3b:
 Does the department have utilize contract analysts to conduct market analysis of insurers doing business in the jurisdiction?
 We support prior comments made by California related removing the requirement to report analysis activities broken down by single-state/multistate and L&H/P&C.

Commented [HR18R17]: resolved

Commented [HR19]: MO - Checklist Item 3c: Staff and/or contractor counts should be based on full-time equivalent (FTE) positions to take into account the variations in how departments are organized. For example, in Missouri team members responsible for doing market analysis have responsibilities in addition to market analysis. Reporting the actual number of team members tasked with market analysis would result an overestimation of the actual resources used to conduct analysis. Reporting on an FTE basis would provide for a more accurate representation of the resources.

Checklist Item 3c.: We are unclear what the ‘value-add’ would be for collecting the number of supervisors independently from the number of analysts. For consistency, we recommend that supervisors be counted in the same way they are being counted for examinations/continuum actions. We also recommend that the table used to report staff counts be structured the same as it is for examinations/continuum actions (staff vs contractors).

Commented [HR20R19]: START HERE

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CY-2		
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Indicate below the number of market analysis reviews for which market analysis was performed in the prior review period. Market analysis means formal review of a company through existing processes (e.g. Level One, Level Two).

	Multi-State L&H Companies	Single-State L&H Companies	Multi-State P&C Companies	Single-State P&C Companies	Total CompaniesReviews
Current Year (CY)					
CY-1					
CY-2					

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Sufficient Qualified Staff and Resources (Examinations and/or Continuum Actions)

The department should have resources to effectively examine and/or conduct continuum actions of insurers as deemed appropriate by the department based upon its market analysis or as prescribed by state laws.

(General Guidance: Identified personnel who have the time and experience necessary to perform this function should be assigned to the examination tasks, and the tasks should be satisfactorily completed in a timely manner.)

YES NO

3d. Does the department have a full-time staff of market examiners and/or utilize contract-examiners on staff whose responsibility is to examine and/or conduct continuum actions of insurance companies as indicated by the department's market analysis or as prescribed by state laws?

3d.3e. Does the department utilize contract examiners to examine and/or conduct continuum actions of insurance companies as indicated by the department's market analysis or as prescribed by state laws?

3e.3f. If the department utilizes contractual examiners, please describe in a separate attachment the manner and extent of utilization in the department's recent activities.

3f.3g. Indicate below the number of full-time market examiners, including supervisory personnel on the department's staff and/or the number of individual contract examiners used compared to the last three years. Convert the number of hours to a full-time equivalent employee position. Also list your jurisdiction's premium volume for any and all examinations or actions written in the most recently completed year.

	In-House Examiners	Contract Examiners	Total Written Premium Volume
Current Year (CY)			
CY-1			
CY-2			

3g. As a separate attachment, provide a list of market examiners that includes the following: name; professional designation(s); title; years employed by the department (include functional area); type of college degree; and prior regulatory or insurance experience. Also indicate those market conduct examiners that are contractual and whether each is full-time with the department.

In a separate attachment, please discuss the state's statutory requirement regarding the trigger for market conduct examinations and/or other continuum-type activities.

3h. 3h3h. Does the department have established goals/policies and procedures, subject to periodic review and updates, for identifying and addressing market conduct issues through the use of using market analysis and market conduct continuum activities, including examinations?

Commented [HR21]: MO - Checklist Item 3g.: Department staff should be counted in terms of full-time equivalent (FTE) positions to account for variations in how departments are organized.

Written Premium Volume: We echo the concerns expressed by California as it relates to the value and relationship written premium has to this process and agree that it should not be included.

Commented [HR22R21]: Make reference to IDRR and consistency with IDRR

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Commented [HR23]: MO - Checklist Item 3h.: We agree with California. Detailed information on staff/contractors and their qualifications is not pertinent in the context of determining if the department has sufficient resources.

Commented [HR24R23]: move this to 4

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Commented [OP27R26]: I agree with Virginia on this. This item and 3.j are very unclear as to what they mean.

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	YES	NO
3i. 3i. <u>3i.</u> If the answer to item 3ji. is “Yes,” what quantitative and subjective measurements are available to evaluate <u>whether the department is adhering to its achievement of such goals/policies and procedures?</u>	_____	_____
3j. <u>3j.</u> <u>3h.</u> Has the department performed any targeted exams <u>or market continuum actions</u> in the prior two years?	_____	_____
3k. <u>3i.</u> If the answer to item 3jk. is “Yes,” please provide a list of such exams <u>or market continuum actions</u> and the scope of the exams/ <u>actions</u> .	_____	_____
3l. <u>3j.</u> If the answer to item 3jk. is “No,” does the department have the on-staff resources or the ability to contract additional resources to perform targeted exams/ <u>actions</u> , if deemed necessary?	_____	_____
<u>Sufficient Qualified Staff and Resources (Contractor Selection and Oversight)</u>		
3m. <u>3k.</u> Does the department have the authority to hire contractors as specialists to perform market regulation <u>and enforcement activities?</u>	_____	_____
3n. <u>3l.</u> If the department has authority to hire contractors, does it have either a statewide or departmental established process it follows for selecting contractors <u>for market regulation purposes?</u> Briefly explain.	_____	_____
3o. <u>3m.</u> Does the department oversee and manage contractors? <u>Briefly explain</u>	_____	_____
3p. <u>3p.</u> Does the department have the appropriate staff to oversee and manage contractors?	_____	_____

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Summary

~~3q.~~ 3n. Based on the review of staff resources, please provide an explanation of any significant changes in resources and/or workload over the three-year period covered in the data above.

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Requirement 4 – Department Staffing - Qualifications

With respect to qualifications, the department:

- Shall ensure market regulation staff and contractors are qualified by establishing qualifications consistent with the standards for experience, education (including designations) and licenses in the *Market Regulation Handbook Core Competencies* (“Appendix D – Core Competencies – Resources – Staff and Training, Standard 2” and Appendix D – Core Competencies – Resources – Contractor Examiner, Standard 2” or successor documents).
- ~~Should have a policy that encourages professional development for staff involved in market regulation 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.

Guidelines

Note to Evaluators:

- “Unqualified pass” means the requirement has been met with no comment or corrective action contemplated.
- “Provisional pass” means either marginally or not strictly meeting the requirement; however, certification will not be denied. Progress is recommended/expected during successive reviews.
- With the exception of criteria outlined in “unqualified pass,” equivalent substitutions may be considered with appropriate justification.

ICA - Ms. O’Connell said under the requirement 4 structure proposed for unqualified pass and provisional pass for the various subparts of the guidelines, a jurisdiction whose rules for hiring and establishing conditions of employment are subject to collective bargaining and specific civil service rules could only ever attain a provisional pass. In the note to evaluators, it says that for provisional pass items, progress is recommended and expected during successive reviews. She said it is not clear what progress the Working Group expects to see a jurisdiction, bound by collective bargaining, make from year to year when these items are outside the control of the DOI. She said it also is not clear what the consequence would be if a jurisdiction is not able to demonstrate the desired progress.

Ms. O’Connell said the core competencies section of the NAIC *Market Regulation Handbook* (Handbook) with which, according to requirement 4, a jurisdiction’s methods of ensuring qualifications of staff should be consistent, lists and describes a number of designations and credentials indicative of a high degree of proficiency in market regulation. She said, however, that it also very specifically says the designations listed are not intended to be exhaustive nor is it intended for designations to be required for qualification. She said California is not in favor of the current structure of the guidelines because they set a higher standard for passing than is called for by the language of the requirement and the Handbook. She recommended simplifying this set of guidelines to eliminate the unqualified pass and provisional pass distinctions and instead establish clear criteria to measure whether jurisdictions has hiring processes allowing them to select applicants with appropriate education, work experience, skills and abilities to perform market regulation work regardless of specific designations, and whether the jurisdictions have programs and procedures to encourage and promote professional development of staff.

- a. *Does the department have a policy or procedure in place on necessary credentials or minimum educational and experience requirements for selecting and hiring staff and contractors?*

Unqualified Pass:

- Does the department include in its job announcements/descriptions preference for relevant experience, education and credentials as outlined in item b. below?
- Does the department’s specification in requests for proposals (RFPs) include requirements that contracted personnel (*with emphasis on supervisory personnel*) have relevant experience, in addition to the following:
 - 1) either a certified insurance examiner (CIE), accredited insurance examiner (AIE), chartered life

Commented [HR28]: CA - Requirement 4

The questions contained in the scoring matrix do not match the questions in the Checklist for Requirement 4. The scoring matrix identifies 4.c as the only mandatory item in this section. However, the scoring matrix quotes an old version of 4.c. (“Does the department determine the composition of members of the examination team?”). Current item 4.c. in the Checklist is “does the department have a staff development program that encourages and supports educational and training pursuits...” As of the 10/14/19 revisions to the program, there is no longer a question in the Checklist about whether the department determines the composition of members of the exam team. The working group should revisit the scoring matrix and ensure it matches the questions that are currently part of the Checklist, and ensure the right item(s) are designated as mandatory or primary goals in the matrix, based on the current structure of the Requirement 4 Checklist.

Additionally, once the working group decides on which Checklist question items are mandatory vs Primary vs. supportive, I would ask that the working group also revisit the entire set of narrative Guidelines so that they align with the scoring matrix. The current Guidelines make use of an unnecessarily complex provisional vs. unqualified pass structure, and references characteristics and information needed to meet these thresholds that are not captured in the Checklist.

Commented [HR29]: MO - This requirement contains several references to the number of years of service and provides in some instances that the sheer number of years of service equates to some level of qualification or expectation of achievement. We believe the use of an unqualified number of years of service isn’t always appropriate. We often promote from within. A long term employee may have in excess of 5 years of service with the department; however, if all but one of those years were in an unrelated capacity it isn’t realistic to expect that individual would have the designations outlined or deemed qualified on the basis of overall service. We suggest that the years of service should only be considered if they are relevant to the position.

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underwriter (CLU), fellow, Life Management Institute (FLMI), chartered property casualty underwriter (CPCU), certified insurance counselor (CIC), fellow, Academy for Healthcare Management (FAHM), professional in insurance regulation (PIR) or chartered healthcare consultant (ChHC) designation; *and 2*) a market conduct management (MCM)¹ designation?

Provisional Pass:

- If collective bargaining or jurisdictional personnel policies prohibit such requirements, the department must show evidence that it has made good faith attempts to include such requirements.

b. Does the department have a staff development program that encourages and supports educational and training pursuits, including training, courses, webinars, and certifications offered by the NAIC?

(1) Staff Examiners/Analysts with More than Five Years of Service in Insurance Regulation

Unqualified Pass (Department Personnel):

- Rate as “unqualified pass” if all examiners and analysts with more than five years of service with the department have: 1) ~~either a juris doctor degree (J.D.), AIE designation or CIE designation;~~ *and 2*) an MCM designation. These personnel are “presumed qualified.”

Or

- Rate as “unqualified pass” if all examiners and analysts with more than five years of service with the department have: 1) either an AIE designation or CIE designation; and 2) an MCM designation. These personnel are “presumed qualified.”

Or

- Rate as “unqualified pass” if all examiners and analysts with more than five years of service in the position of market conduct analyst or market conduct examiner specialize in a particular line of business have: 1) either a CLU, FLMI, CPCU, CIC, FAHM or ChHC designation; *and 2*) an MCM designation. These personnel are “presumed qualified.”

Or

- Rate as “unqualified pass” if all examiners and analysts with more than five years of service in the position of market conduct analyst or market conduct examiner specialize in a particular line of business have: 1) a PIR; 2) an associate’s level designation from either The American College of Financial Services, The Institutes, America’s Health Insurance Plans (AHIP) or similar organization; *and 3*) an MCM designation. These personnel are “qualified.”

[ID - Ms. Nickel said the fourth bullet point under section b of the requirement 4 guidelines references “similar organizations.” She said this needs to be defined to specify whether it includes associate or higher-level designations from the Society of Financial Examiners (SOFE) or the Life Office Management Association (LOMA), which are already a requirement in other NAIC standards. She said Ms. O’Connell’s idea to be more general is the best solution.]

- Employees that have more than 20 years of service with the department or less than five years until retirement are exempt from this requirement.

Provisional Pass (Department Personnel):

If all examiners and analysts with more than five years of service do not have the above qualifications, rate a provisional “pass” if:

Commented [HR30]: START HERE

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¹ NAIC market conduct examination training may substitute for an MCM designation.

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- The department has a training policy and or job specifications that require completion and or experience to attain the next highest level in their job classification series.
 - If collective bargaining or jurisdictional personnel policies prohibit such requirements, the department must show evidence that it has made good faith attempts to include such requirements.
 - Employees that have greater than 20 years of service with the department or less than five years until retirement are exempt from this requirement.
 - The department must have a policy that allows voluntary access to NAIC designation programs and the department must show good faith attempts for encouragement and budgetary allowances to provide for voluntary training at other sources of professional education such as the Insurance Regulatory Examiners Society (IRES), The American College of Financial Services, The Institutes or AHIP.
 - Evidence of good faith activities include, but are not limited to, the following:
 - The department adopts procedures to include a statement encouraging professional education.
 - The department has made arrangements to be a testing location for organizations such as the Life Office Management Association (LOMA) or The Institutes.
 - The department attempts to secure funds for the professional development of market regulation personnel.

(2) Staff Examiners/Analysts with Less than Five Years of Service

Unqualified Pass:

- The department has a formal training program whereby new personnel have a clear requirement to attain qualifications outlined below within five years:
 - Either a CIE, AIE, CLU, FLMI, CPCU, CIC, FAHM, PIR or ChHC designation; *and* an MCM designation.
 - Personnel with a J.D. and five years of regulatory experience are exempt, with the exception they must earn an MCM designation or complete NAIC market conduct examination training.

Provisional Pass:

- If collective bargaining prohibits such requirements, the department must show evidence that it has made good faith attempts to include such requirements.
- The department must have a policy that allows voluntary access to NAIC designation programs and the department must show good faith attempts for encouragement and budget allowances to provide for voluntary training at other sources of professional education such as IRES, The American College of Financial Services, The Institutes or AHIP.
- Evidence of good faith activities include, but are not limited to, the following:
 - The department has made statements encouraging professional education in performance evaluations.
 - The department has made arrangements to be a testing location for organizations such as LOMA or the Institutes.
 - The department attempts to secure funds in budget proposals for the professional development of market regulation personnel.

Commented [HR31]: VA - In the Guidelines b.(2) Staff Examiners/Analysts with Less than Five Years of Service/Provisional Pass/3rd bullet-- How does a department provide evidence that is has made statements encouraging professional education in performance evaluations, when such evaluations would be private and confidential?

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~~e. Does the Examiner in charge possess or is making progress towards completion of noted designations Does the department determine the composition of members of an examination team?~~

Commented [HR32]: VA - Guideline c and Checklist 4d should reference "Examiners in Charge" to avoid confusion since some Departments have multiple.

Unqualified Pass:

- Examiners in charge examining companies will, when possible, possess or be making progress towards completion, as appropriate by line of business: 1) either a CIE, AIE, CLU, FLMI, CPCU, CIC, FAHM, PIR or ChHC designation; and 2) an MCM designation.
- ~~• Other members of the examination team, when possible, will have appropriate experience; cross-training personnel is an acceptable exception.~~

Provisional Pass:

- When ~~staff an EIC~~ with specific qualifications is not available, other qualifications are acceptable so long as the department is compliant with checklist item 4b. (development program).

~~d. Does the department recognize licenses and other highly technical credentials of professionals and experts such as attorneys, actuaries, cybersecurity experts, certified public accountants, IT experts and other professionals and specialists as qualified to perform certain market regulation activities?~~

Unqualified Pass:

- Did the department retain appropriate contractors with highly technical credentials when appropriate?

Provisional Pass:

- No examinations that required highly technical specialties were conducted during the review period.

~~e. Does the department have a succession plan in place to ensure maintenance of skills and records?~~

- Does the department maintain written procedure manuals and cross train employees?

Checklist for Requirement 4

~~3o. As a separate attachment, provide a list of market examiners that includes the following: name; professional designation(s); title; years employed by the department (include functional area); type of college degree; and prior regulatory or insurance experience. Also indicate those market conduct examiners that are contractual and whether each is full-time with the department.~~

Commented [HR33]: MO - Checklist Item 3h.: We agree with California. Detailed information on staff/contractors and their qualifications is not pertinent in the context of determining if the department has sufficient resources.

	YES	NO
4a. Does the department have a policy or procedure in place on necessary credentials or minimum educational and experience requirements for selecting and hiring staff <u>consistent with the</u>	_____	_____

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~~detailed credentials listed in the Certification guidelines and contractors? (A provisional pass should be marked “yes”).~~

~~4a.4b. Does the department have a policy or procedure in place on necessary credentials or minimum educational and experience requirements for selecting and hiring contractors?~~

~~4b.4c. Does the department have a staff development program that encourages and financially supports educational and training pursuits, including training, courses, webinars and certifications offered by the NAIC?~~

~~4e.4d. Does the department determine the composition of members of an examination team? Examiner in charge possess or is the Examiner in charge making progress towards completion of noted designations?~~

4e. Does the department recognize licenses and other highly technical credentials of professionals and experts such as attorneys, actuaries, cybersecurity experts, certified public accountants, information technology (IT) experts and other professionals and specialists as qualified to perform certain market regulation activities?

4d.4f. Does the department maintain written procedure manuals to demonstrate a succession plan?

Commented [HR34]: VA - Guideline c and Checklist 4d should reference “Examiners in Charge” to avoid confusion since some Departments have multiple.

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Requirement 5 – Confidentiality and Information-Sharing

The department shall have the authority and capability to:

- Request, hold and produce examination workpapers on a confidential basis and protect it from subpoena, as permitted by jurisdictional law.
- Maintain confidentiality of confidential information shared by other jurisdictional or federal agencies; and only share confidential information with jurisdictional and federal agencies that agree, in writing, to adequately protect such confidential information.

Guidelines

The jurisdiction’s treatment of examination workpapers and information shared by or with other jurisdictions has a significant impact on the various jurisdictions’ ability to communicate and collaborate on confidential matters. The provisions within each jurisdiction’s laws, regulations or case law may vary regarding the extent to which workpapers are confidential or to timing which such information becomes a public document. Some laws may extend beyond workpapers and apply to examination reports, as well. Research and documentation of the applicable jurisdiction’s confidentiality provisions should provide clear guidance for individuals within the market regulation division. Checklist item 5a. does not anticipate a uniform confidentiality framework among jurisdictions, but rather is viewed as a necessity to adequately fulfill the requirements of checklist item 5c.

Entering into the Multi-State Information-Sharing Agreement with other jurisdictions and the NAIC is also a necessary part of being able to adequately maintain confidentiality of information shared by other jurisdictions.

To evaluate whether your jurisdiction “passes” Requirement 5, the jurisdiction must answer “Yes” to checklist item 5a., item 5b., ~~and~~ item 5c. and item 5d.

Information-sharing agreements with international jurisdictions may be handled either on a case-by-case basis or by way of properly executed memorandums of mutual understanding.

Commented [HR35]: CA - Requirement 5

The narrative Guidelines state, “To evaluate whether your jurisdiction “passes” Requirement 5, the jurisdiction must answer “yes” to checklist item 5.a., item 5.b., item 5.c., and item 5.d.”. The scoring matrix codes only items 5.a., 5.b., and 5.c. as mandatory. The working group should align the Guidelines with the scoring matrix by either coding 5.d. as red on the scoring matrix, or by editing the Guidelines so that they only require a “yes” for a., b., and c.

Commented [HR36]: MO - The first bullet of this requirement

applies strictly to examination workpapers. As states continue to increase their use of non-examination methods for investigating and resolving issues, we encourage the Working Group to consider expanding it to cover market analysis and continuum actions.

Checklist for Requirement 5

	YES	NO
5a. Does the jurisdiction have laws, regulations or case law that specify how the confidentiality of market conduct examination workpapers is to be handled?	_____	_____

REFERENCE _____

- 5b. Has the jurisdiction entered into the Multi-State Information-Sharing Agreement with other jurisdictions and the NAIC?
- 5c. Does the jurisdiction have written policies and procedures and has communicated such policies and procedures to employees relating to the protection of confidential information which includes PII and PHI, handling of public records requests and requirements for confidentiality agreements when it becomes necessary to share confidential information with other federal and international

Commented [HR37]: MO - Checklist Item 5b.: We would like to

see this item expanded or a new item created requiring departments to have written policies/procedures and to communicate such policies/procedures to staff related to the sharing of information under the multi-state agreement.

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regulatory or law enforcement agencies, not otherwise covered by _____
the multi-state agreement?

- 5d. Does the jurisdiction have a records retention schedule which outlines plans for secure storage and timeline for destruction of work papers?

COMMENTS:

Commented [HR38]: MO - Checklist Item 5d.: The requirement to have a records retention schedule does not appear to be addressed in the Requirement or the guidance provided. We believe all items in the checklist should be a part of the requirement and guidance be provided on how to meet the item.

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Requirement 6 – Collaboration with Other Jurisdictions

The department participates in collaborative actions with other jurisdictions.

The department follows the referral or reporting procedures outlined in the Market Actions (D) Working Group Policies and Procedures for any material action that has a potential for collaborative action. In order to determine if a referral or reporting to Market Actions (D) Working Group is necessary, the department will notify all other Collaborative Action Designees (CADs) via meeting, bulletin board, or other method, of proposed activities that have the potential for collaboration.

The department will consider joining called Market Actions (D) Working Group collaborative actions relevant to its jurisdiction and provide a response indicating whether or not it will join the collaborative action.

Guidelines

Collaboration with other jurisdictions helps to keep market regulation more effective and efficient by preventing duplication of effort. Sharing of key information among jurisdictions helps to identify market place issues as they arise. By encouraging a multi-jurisdictional response to issues when practical, jurisdictions can more effectively direct their resources.

The first portion of Requirement 6 relates to participation in the Market ~~Analysis~~Actions (D) Working Group and is followed by checklist item 6a., item 6b., item 6c. and item 6d. The second portion of Requirement 6 relates to how the jurisdiction joins or considers joining Market Actions (D) Working Group actions and is followed by checklist item 6e., item 6f. and item 6g.

For regulators to fully adhere with Requirement 6, especially as it relates to handling of referrals, it is important to become familiar with both the *Market Regulation Handbook*, Chapter 6—Collaborative Actions, and the Market Actions (D) Working Group Policies and Procedures.

To evaluate whether your jurisdiction “passes” Requirement 6, the jurisdiction must answer “Yes” to checklist item 6a., item 6b., item 6c., item 6e. and item 6f., unless there is an applicable explanation briefly explained in applicable checklist item 6d. or item 6g.

Examples of reasonable explanations for checklist item 6d. and item 6g. may include, but are not limited to, such justifications as:

- The issue has minimal or no consumer impact.
- The issue is not yet sufficiently defined, investigated or analyzed.
- There are no known laws or regulations to address the issue.
- There are reasons why expediency to address the matter in the jurisdiction is of utmost concern.
- Significant differences in the jurisdictions particular insurance laws or regulations.
- The matter has been previously addressed in a satisfactory manner by the jurisdiction.
- An executive decision made at the commissioner or general counsel level.

Checklist for Requirement 6

	YES	NO
6a. Are the department’s procedures for staff to follow when reporting potential collaborative actions to the department’s CAD. Has the department adopted the <i>Market Regulation Handbook</i> and the <i>Market Actions (D) Working Group Policies and Procedures</i> or are the department’s policies and procedures consistent with those in the <i>Market Regulation Handbook</i> and the <i>Market Actions (D) Working Group Policies and Procedures</i>?	_____	_____

Commented [HR39]: CA - Requirement 6
 Question 6.d. on the Checklist currently says, “If the response to item 6.a., Item 6.b., item 6.c., or item 6.d. is No, please provide a brief explanation”. The reference to 6.d. within 6.d. should be deleted.

Commented [HR40]: MO - Checklist Item 6a.: The requirement calls for departments to follow the referral or reporting procedures outlined in the Market Actions (D) Working Group Policies and Procedures. However the checklist item appears to set a higher standard by requiring departments to ‘adopt’ those procedures and the *Market Regulation Handbook*. We recommend revising this item to more closely align with the requirement itself.

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6b. If the department identified a potential collaborative action, did the department notify all CADs—via meeting, bulletin board or other communication—of the activities identified that may have the potential for collaboration? _____

6c. If the department received a positive response to its inquiries to other CADs regarding a potential collaborative action, did the department refer the action to Market Actions (D) Working Group using the reporting procedures outlined in the Market Actions (D) Working Group Policies and Procedures, including completing the Request for Review form and submitting the form to the designated NAIC support staff? _____

6d. If the response to item 6a., item 6b., item 6c. or item 6d. is “No,” please provide a brief explanation.

Examples of reasonable explanations:

- The issue has minimal/no consumer impact.
- The issue is not yet sufficiently defined, investigated, or analyzed.
- There are no known laws/regulations to address the issue.
- There are reasons why expediency to address the matter in the jurisdiction is of utmost concern.
- Significant differences in the jurisdiction’s insurance laws/regulations.
- The matter has been previously addressed in a satisfactory manner by the jurisdiction.
- An executive decision made at the Commissioner/General Counsel level.

6e. Does the department have written procedures for reviewing and evaluating its participation in potential collaborative actions brought to its attention, either through the Market Actions (D) Working Group or by another department?

6f. If the department declined to participate in a collaborative action, has the department provided a response to the Market Actions (D) Working Group regarding its decision?

6g. If the response to item 6e. or item 6f. is “No,” please provide a brief explanation.

Complete the following if this is an Interim Annual Review: YES NO
 Have there been any changes to your requirements since last year’s review?
 If “Yes,” please provide an explanation _____

ICA - Ms. O’Connell said for requirements 6, 7 and 8 at the bottom of each checklist, there is an unnumbered item that states, “Have there been any changes to your requirements since last year’s review. If “yes,” provide an explanation.” She said it is

Commented [HR41]: MO - Checklist Item 6d.: The example reasonable explanations provided in the guidelines do not appear applicable to all of the items covered by this item. We would like to see additional clarification added to the guidance to address this issue. In addition, Item 6d. should be removed from the list of items that require an explanation if the response is No.

Commented [HR42]: MO - Checklist Item 6e.: This item is unclear. We believe it is meant to cover all declinations, however, that isn’t clearly expressed. We recommend clarifying the item to indicate that a response needs to be provided to the Market Actions (D) Working Group for each action in which a jurisdiction declines to participate

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unclear what the phrase “your requirements” is in reference to. She said the question should be more specific to clarify what the jurisdiction should be reporting in the way of changes during the interim period.]

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Requirement 7 – Market Conduct Annual Statement

The department participates in the centralized collection of the Market Conduct Annual Statement (MCAS).

Guidelines

The objective of utilizing the centralized collection of the MCAS is to enhance each jurisdiction’s market analysis process. By using the data collected in the MCAS process, departments are able to reduce expenses and resources that would have to be used if data was requested and companies had to submit data to multiple jurisdictions.

In order to successfully meet this requirement, jurisdictions must be able to verify that they utilize the data obtained from MCAS for market analysis. This verification can be accomplished by producing evidence of completed baseline analysis and Level 1s which pull data from MCAS. Documentation of completed analysis will ensure usage of the MCAS data.

Departments can provide written procedures that show that the use of MCAS data is a part of their market analysis process and assists in making decisions as to the next step in their regulation process.

The objective of participating in the centralized collection of the MCAS is to enhance each jurisdictions market analysis via a consistent process that has been vetted and agreed upon by the various jurisdictions. Use of a standardized system also reduces expense and resources that would otherwise be needed if multiple jurisdictions requested such data in a variety of formats.

When evaluating checklist item 7a., item 7b. and item 7c., a “Yes” answer may be assumed if your jurisdiction signs on to the annual data request that is sent annually by the NAIC. To answer “Yes” to checklist item 7d., a jurisdiction must review the resulting market analysis reports prepared by the NAIC for purposes of market analysis. To evaluate whether your jurisdiction “passes” Requirement 7, a “Yes” answer must be made for checklist item 7a., item 7b., item 7c. and item 7d.

In the event your jurisdiction participates, but does not require each line of insurance that is part of the MCAS program, consider a one-year “grace period” for newly adopted lines of insurance as being acceptable for a “pass.” Additionally, intention to perform analysis for newly adopted lines that have not yet been reported is acceptable for a “Yes” response to item 7d. If your jurisdiction participates in MCAS, but does not participate in all lines after the one-year grace period has elapsed, consider that your jurisdiction has passed with a strong recommendation to add the additional line(s).

In the event a jurisdiction conducts its own individualized MCAS program, consider that scenario as marginally passing with a strong recommendation to participate in the standardized NAIC program.

Commented [HR43]: CA - Requirement 7
 The Guidelines paragraphs for Requirement 7, with the most recent 10-14-19 revision, now focus on use of MCAS data (which can be demonstrated through a variety of analysis tasks) instead of centralized collecting of the MCAS data. Should the language of the Requirement 7 be revised to reflect this? The Requirement currently reads, “The department participates in the centralized collection of the Market Conduct Annual Statement (MCAS).”

Checklist for Requirement 7

	YES	NO
7a. Does the department require eligible companies to file the MCAS with the NAIC?	_____	_____
7b. Does the department require that the MCAS be prepared in accordance with the NAIC MCAS user guides and instructions?	_____	_____
7c. Does the department require such companies to file the MCAS in an electronic format acceptable to the NAIC?	_____	_____

Commented [HR44]: MO - Checklist Items 7a., 7b. and 7c.: We believe that for a department to be able to say that it participates in the centralized collection of the Market Conduct Annual Statement (MCAS) they must meet all three of these items. Therefore it does not seem necessary to break the items into three. We recommend amending item 7a to reflect this and deleting items 7b. and 7c.

 If the purpose of the separating the items into three steps is to allow states not participating in MCAS to achieve a ‘marginal pass’ the independent collection and utilization similar data in their market analysis process, a requirement a checklist items specific to that activity should be added to the checklist as an independent item.

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7d. Does the department utilize the data obtained from the MCAS for market analysis? (Examples of utilization include, but are not limited to, such activities as performing baseline or Level 1 analysis.)

Complete the following if this is an Interim Annual Review:

YES

NO

Have there been any changes to your requirements since last year's review?
If "Yes," please provide an explanation

COMMENTS:

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Requirement 8 – Electronic Data Entry with the NAIC

The department enters data no less frequently than on a quarterly basis (but preferably monthly) to all NAIC systems, including, but not limited to, the Complaint Database System (CDS) and the Regulatory Information Retrieval System (RIRS). Except for immediate concerns as defined in the *Market Regulation Handbook*, the department enters data into the Market Actions Tracking System (MATS) concerning upcoming examinations ~~at least 45 days prior to the start of an examination or~~ at least 60 days prior to the start of the on-site examination. Additionally, the department enters continuum actions into MATS when initiating the action.

JID - Ms. Nickel said the first paragraph of requirement 8 should be rewritten to be more in line with the objective statement and checklist of requirement 8. She suggested (suggested changes in italics): “The department enters data *as information is available for sharing into all NAIC systems, including, but not limited to, the Complaint Database System (CDS) and the Regulatory Information Retrieval System (RIRS). Except for immediate concerns as defined in the Market Regulation Handbook, the department enters data into the Market Action Tracking System (MATS) at least 60 days prior to the start of the on-site examination. Additionally, the department enters continuum actions into MATS as appropriate.*”

Ms. Nickel said the reporting of continuum actions should be “as appropriate.” She noted the objective statement of requirement 8 indicates the goal is to ensure other jurisdictions are timely informed of market conduct actions that “have occurred, are ongoing, or that are anticipated.” In the checklist, the entry into MATS for on-site examinations are required 60 days prior, but there is no other requirement for continuum activities entry to be 60 days prior. She said that is correct since it would be impossible to enter continuum activities 60 days prior if they were the result of a Market Analysis Review System (MARS) Level 1 or Level 2 recommendation, a referral from the consumer complaints section, a company self-reporting, or if there was an immediate concern.]

Objective: The goal of this requirement is to ensure that regulators in other jurisdictions are completely and timely informed of market conduct actions that have occurred, are ongoing, or that are anticipated. Any back-end system that auto-populates the referenced NAIC systems will meet this requirement. If a jurisdiction is using a back-end system which does not currently auto-populate the referenced NAIC systems, that jurisdiction must ensure that the information is entered in the NAIC systems. This may require dual entry until such time as the back-end system auto-populates the NAIC systems.

Notes to Requirements Measurement:

- The Market Information Systems Research and Development (D) Working Group report on reporting timeliness, accuracy and completeness will be attached.
 - Timeliness, accuracy and completion standards may be implemented upon consideration by the Market Regulation Certification (D) Working Group.
 - To evaluate whether your jurisdiction “passes” Requirement 8, the jurisdiction must answer “Yes” to checklist item 8a. and item 8b., unless there is an applicable explanation, briefly explained, in applicable checklist item 8f. With respect to checklist item 8c., further clarification of what continuum items must be entered will be forthcoming; however, any item resulting in a formal order must be entered into RIRS. Source documents should be reviewed in order to ensure timeliness. Only entries after the certification program is adopted should be measured.
 -
- ~~The goal of this requirement is to ensure that regulators in other jurisdictions are completely and timely informed of market conduct actions that have occurred, are ongoing, or that are anticipated. Any back-end system that auto-populates the referenced NAIC systems will meet this requirement. If a jurisdiction is using a back-end system which does not currently auto-populate the referenced NAIC systems, that jurisdiction must ensure that the information is entered in the NAIC systems. This may require dual entry until such time as the back-end system auto-populates the NAIC systems.~~

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Guidelines

Significant Market Actions:

The *Market Regulation Handbook* provides guidance on continuum actions in Chapter 2 and is further explained in Chapter 11 of the 2019 edition as “The continuum of market actions includes such initiatives as office-based information gathering, interview with the company, correspondence, policy and procedure reviews, interrogatories, desk audits, on-site audits, investigations, enforcement actions, company self-audits and voluntary compliance programs.” Such significant actions should be reported in MATS as determined by the department.

- If checklist item 8d. is answered “Yes,” ensure each examination is called 60 days prior to the start of the on-site examination unless there is reason (noted in item 8f. of “immediate concerns” as set forth in Chapter 12 of the *Market Regulation Handbook*). Examples of immediate concerns include, but are not limited to:
 - Fraud allegations.
 - Imminent consumer harm.
 - Blatant disregard of a department order.
 - Imminent solvency concern.
- Only entries after the certification program is adopted should be measured. De minimis variations (i.e., less than five business days) should be given a “provisional pass.”

To evaluate whether your jurisdiction “passes” Requirement 8, the jurisdiction must answer “Yes” to checklist item 8a. and item 8b., unless there is an applicable explanation, briefly explained, in applicable checklist item 8f. With respect to checklist item 8e., further clarification of what continuum items must be entered will be forthcoming; however, any item resulting in a formal order must be entered into RIRS. Source documents should be reviewed in order to ensure timeliness. Only entries after the certification program is adopted should be measured.

Acceptable explanations for checklist item 8a. and item 8b. in item 8f. include:

- ~~Delayed reporting due to implementation of a new back office system.~~
- ~~Technical issues with the NAIC database.~~

Either “Yes” or “No” in checklist item 8d. is acceptable.

- ~~If checklist item 8d. is answered “Yes,” ensure each examination is called 60 days prior to the start of the on-site examination unless there is reason (noted in item 8f. of “immediate concerns” as set forth in Chapter 12 of the *Market Regulation Handbook*). Examples of immediate concerns include, but are not limited to:~~
 - ~~Fraud allegations.~~
 - ~~Imminent consumer harm.~~
 - ~~Blatant disregard of a department order.~~
 - ~~Imminent solvency concern.~~
- ~~Only entries after the certification program is adopted should be measured. De minimis variations (i.e., less than five business days) should be given a “provisional pass.”~~

Checklist for Requirement 8

8a. Does the department enter or transmit data at least quarterly into the CDS?

YES

NO

Commented [HR45]: MO - We recommend clarifying that the requirement to enter continuum actions into MATS when the action is initiated applies to only non-examination actions. We support Maryland’s prior comments related to establishing and error tolerance ratio and a more clearly defined timeframe in which non-examination actions must be entered.

The Guidelines reference an explicit version and sections of the *Market Regulation Handbook*. We suggest that the guidelines be re-worded in such a way that the document does not need to be updated each time the *Handbook* is updated.

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8b. Does the department enter or transmit data at least quarterly into RIRS? _____

8c. Does the department enter continuum actions into the appropriate NAIC database (MATS/RIRS) when initiated and the resulting applicable final status reports or updates (if applicable) at least quarterly? _____

[ID - Ms. Nickel said the checklist item 8c reference to “appropriate databases” is unclear. She said if there are databases other than MATS, she suggested rewording 8c to say: “Does the department enter continuum actions into the other appropriate NAIC database, such as MATS, as recommended and the resulting applicable final status reports or updates (if applicable) at least quarterly?” However, if 8c is intended to be specific to MATS and continuum activities, and there is no quarterly reporting requirement, she suggested rewording 8c to: “Does the department enter continuum actions into MATS including the resulting applicable final status reports or updates as appropriate (or as recommended/required by the Department)?”]

[MD - For the requirement 8 checklist, Mr. Decker asked if a jurisdiction must be 100% compliant for items 8c and 8e. If not, he suggested incorporating error tolerance rates.]

8d. Did the department initiate an examination of a regulated entity during the most current certification period? _____

8d.8e. If the answer to item 8d. is “Yes,” was the examination entered into MATS at least 45 days before the start of the examination or at least 60 days before the start of the on-site examination as set forth in the *Market Regulation Handbook*? (Note: The start of the examination is the date the department began work on the examination materials received from the examined entity.) _____

8e.8f. If the answer to item 8a., item 8b., item 8c., ~~item 8d.~~ or item 8e. is “No,” please provide an explanation. _____

Commented [HR46]: MO - Checklist Item 8c.: We suggest that this item be updated to reflect that it applies to nonexamination continuum action items. In addition, we agree with Idaho’s earlier comments related to the NAIC systems that should be referenced in this item. The RIRS system contains finalized/adjudicated actions. It is not possible to report a continuum action into RIRS at the time it is initiated. The only system that should be referenced in this item is MATS.

Complete the following if this is an Interim Annual Review:

Have there been any changes to your requirements since last year’s review?
 If “Yes,” please provide an explanation

YES NO

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Requirement 9 – Participation in all NAIC Market Conduct and Market Analysis Working Groups

The department participates in or monitors NAIC market conduct and market analysis-related working groups as a member or interested regulator.

Guidelines

The objective of participating in or monitoring all NAIC market conduct and market analysis-related working groups as a member or interested regulator is to make sure jurisdictions are fully aware of market conduct and market analysis initiatives, assist in keeping abreast of what is happening in other jurisdictions and promote collaboration amongst jurisdictions.

NAIC market conduct and market analysis-related working groups provide a national forum for jurisdictions to share and coordinate efforts.

When evaluating checklist items for Requirement 9, it is important to remember participation in teleconferences are tracked through registration and attendance of conference calls through the NAIC's conference call vendor, as well as the roll call for regulators who are members of the different working groups and task forces.

To evaluate whether your jurisdiction "passes" Requirement 9, the jurisdiction must, at a minimum, be able to answer "Yes" to checklist item 9a. and item 9b., as well as document who in the department or jurisdiction participates in or monitors the Market Analysis Procedures (D) Working Group and the Market Conduct Examination Standards (D) Working Group and is able to accurately document a listing of other market conduct and market analysis-related working groups and/or task forces that your department participates in or monitors. In the absence of the ability to participate in every applicable meeting or conference call, it is anticipated that a passing jurisdiction will monitor the applicable working group activities through a review of available materials, minutes and regulator materials.

[CA - Ms. O'Connell said the requirement 9 guidelines are not clear with respect to expectations for participation in working groups and task forces beyond the Market Analysis Procedures (D) Working Group and Market Conduct Examination Standards (D) Working Group. She said the fourth paragraph of the guidelines, which begins "To evaluate whether your jurisdiction passes Requirement 9," lists three things the jurisdiction must be able to do at a minimum to pass—1) answer "yes" to 9a and 9b; 2) document who in the department monitors or participates in the Working Groups; and 3) accurately document a list of any other market analysis or market conduct related working groups or task forces the jurisdiction participates in or monitors. She said the third element conflicts with the last paragraph of the guidelines that says it is at the jurisdiction's discretion to participate in or monitor the Market Information Systems (D) Task Force or any other working group or task force that reports to the Market Regulation and Consumer Affairs (D) Committee. She said the Working Group should modify the guidelines to eliminate this conflict by either making participation in or monitoring of these other groups mandatory or discussing them in the guidelines as something the jurisdiction should consider being a best practice.]

[MD - Mr. Decker suggested a metric for measuring success in meeting requirement 9. He said the current measurement is subjective and would be improved by adding a percentage metric similar to the 50% attendance requirement that is used in requirement 10 checklist item 10c.]

At each jurisdiction's discretion, consideration may be given to monitoring the Market Information Systems (D) Task Force and applicable working groups and task forces reporting to the Market Regulation and Consumer Affairs (D) Committee.

Checklist for Requirement 9

YES NO

Commented [HR47]: MO - Missouri supports the desire expressed by both California and Maryland to clarify and better define what is meant by 'participate', including adding a quantitative metric for measuring success.

Commented [HR48]: Recommend that NAIC maintain documents to track who attended the calls.

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- 9a. Does the department participate in or monitor the Market Analysis Procedures (D) Working Group as a working group member or interested regulator either by conference calls or by attending meetings? _____
- 9b. Does the department participate in or monitor the Market Conduct Examination Standards (D) Working Group as a working group member or interested regulator either by conference calls or by attending meetings? _____
- 9c. Who in the department, by functional title, participates in or monitors the Market Analysis Procedures (D) Working Group?
- 9d. Who in the department, by functional title, participates in or monitors the Market Conduct Examination Standards (D) Working Group?
- 9e. List any other market conduct or market analysis-related working groups and/or task forces that your department participates in or monitors.

COMMENTS:

Commented [HR49]: CA - Requirement 9
 The scoring matrix does not identify any of the Checklist items for Requirement 9 as being mandatory. However, the narrative Guidelines say, "To evaluate whether your jurisdiction "passes" Requirement 9, the jurisdiction must, at a minimum, be able to answer "Yes" to questions 9.a. and 9.b." The working group should align the scoring matrix and the Guidelines.

 I would also ask that the working group reconsider previous comments I made about the Guidelines stating that the jurisdiction must also be able to accurately document a listing of other market conduct and market analysis working groups and/or task forces it participates in or monitors. If a jurisdiction is to be judged in part upon participation in other groups, those should be specified. If participation on other market regulation groups isn't mandatory but is instead "nice to have", the Guidelines should be rewritten so that it does not state this is mandatory.

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Requirement 10 – Collaborative Action Designee

The department appoints a collaborative action designee (CAD). The department’s Market Actions (D) Working Group member, CAD and/or CAD alternate attends at least 50% of the discussions, either telephonically or in person, of the Market Actions (D) Working Group every year. In addition, the MAWG member, CAD and/or CAD alternate shall actively monitor the Market Regulation and Market Analysis Bulletin Boards.

Guidelines

The objective of the department appointing a CAD is to promote collaboration with other CADs, as well as communication with other jurisdictions’ insurance departments via the NAIC Market Regulation and Market Analysis electronic forums (bulletin boards).

When evaluating checklist items for Requirement 10, it is important to remember that the CAD is the one contact identified by the insurance director/commissioner/superintendent of each jurisdiction to have full responsibility for all communications related to collaborative efforts, including, but not limited to, multi-jurisdictional issues. This includes participating, or assigning a designee to participate in, certain meetings or conference calls of the Market Actions (D) Working Group. While the market analysis chief (MAC) oversees the internal jurisdictional process of identifying entities with potential market regulatory issues, the CAD oversees the process of communicating about those entities and collaborating with other CADs, potentially through the Market Actions (D) Working Group.

The CAD is the person identified with authority to receive information regarding collaborative actions from the Market Actions (D) Working Group. Additionally, the department’s Market Actions (D) Working Group member, CAD or CAD alternate must attend at least 50% of the discussions, either telephonically or in person, of the Market Actions (D) Working Group every year.

To evaluate whether your jurisdiction “passes” Requirement 10, the jurisdiction must answer “Yes” to checklist item 10a., item 10b., ~~and item 10c.~~ and 10d.

Checklist for Requirement 10

	YES	NO
10a. Has the department appointed a CAD?	_____	_____
10b. Has the department appointed a CAD alternate?	_____	_____
<u>10c. Does the CAD <u>and</u>/or CAD alternate attend at least 50% of all meetings and conference calls of the Market Actions (D) Working Group?</u>	_____	_____
<u>10d. Does the Market Actions (D) Working Group member, CAD and/or CAD alternate actively monitor the bulletin board discussions?</u>	_____	_____

[MD - Mr. Decker said the requirement 10 checklist item 10d does not define how “actively monitor” will be measured. He said a metric should be added for item 10d. He also suggested adding “or their designee” to the individuals who monitor bulletin board discussions.]

COMMENTS:

Commented [HR50]: MO - It is our understanding that not all MAWG meeting are open to the CADs and/or CAD alternates. We suggest the requirement, guidelines and checklist be updated to reflect that the only meetings to be included in determining if the 50% attendance measure is met are those meetings open to the CADs and the alternates.

Commented [HR51]: CA - Requirement 10
 The scoring matrix does not align with the Guidelines for Requirement 10. The Guidelines say, “To evaluate whether your jurisdiction passes Requirement 10, the jurisdiction must answer “yes” to checklist item 10.a., item 10.b., item 10.c., and item 10.d.” The scoring matrix identifies only 10.a. and 10.b. as mandatory. The working group should revise either the scoring matrix or the Guidelines so that they align. Additionally, California agrees with Maryland’s comment that “or their designee” be added to item 10.d.

Commented [HR52]: MO - Checklist Item 10d.: We also support Maryland’s prior suggestion that ‘actively monitor’ be more clearly defined and that the CAD/alternate be allow to designate others individuals to monitor the discussions.

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Requirement 11 – Collaboration – National Analysis

The department participates* in the review of national analysis data annually and participates on one national analysis team at least every other year.

(*Participation means either performing analysis on one of the selected companies or participating in the selection process. Please note if none of the selected companies wrote business in your jurisdiction. It should be noted that the national analysis process has changed in the past. Therefore it is understood that in the future it may be necessary to revisit what it means to “participate.”)

Guidelines

[CA- Ms. O’Connell recommended modifying the requirement 11 guidelines and the criteria for what passes this requirement to mirror the current national analysis program process with the recognition that the process could change in the future, in which case the guidelines will be reevaluated and modified. She said the current structure of the national analysis program calls for: 1) a lead state for each line of business that is responsible for the selection process; 2) individual jurisdictions to perform analysis on selected companies; and 3) a summarizing jurisdiction responsible for compiling the results of all individual state analysis for a single company. She said a state currently gets no credit under the certification program for acting as a summarizing jurisdiction. She said the limited number of lead state spots per year will not allow all 56 jurisdictions to have the opportunity be a lead state every other year as needed to pass the requirement. She recommended restructuring the requirement, guidelines and checklist to allow a state to pass the requirement if it reviews national analysis data on an annual basis and on an every other year basis either acts as a lead state responsible for the selection process or acts as a summarizing jurisdiction.]

The objective of participating in the review of national analysis data annually and participates on one national analysis team at least every other year is to promote collaboration and the sharing of perspectives and approaches to analyzing data among the jurisdictions. This involves multiple jurisdictions conducting detailed analysis on companies that are shown as outliers. The approach to detailed analysis may differ among jurisdictions; therefore, participation encourages the sharing of ways to analyze data. The national analysis process is an evolving one that uses NAIC staff to provide information to the states. The states that participate in national analysis ultimately decide what to do with companies subject to their national analysis. Their results and recommendations are presented to the Market Actions Working Group.

When evaluating checklist items for Requirement 11, it is important to remember that participation means either performing analysis on one of the selected companies or participating in the selection process.

Additionally, it is important to know that the Market Action (D) Working Group’s annual national analysis process uses the Market Conduct Annual Statement (MCAS) and other existing data to identify companies of national (or multi-jurisdictional) interest that exhibit potential market conduct issues. The process includes the review of the following lines of business: 1) private passenger automobile; 2) homeowners; 3) individual life; 4) individual annuity; 5) group accident and health; and 6) individual accident and health. The lines of business are generally segregated into property/casualty; life and annuity; and health teams. The goal is to find and address issues common across jurisdictions, while reducing the strain on single jurisdictional resources.

The Market Actions (D) Working Group selects a team lead for each of the teams to facilitate the selection of a minimum of five companies for each of the six lines of business. Market Actions (D) Working Group volunteers can be chosen to work with the leaders to identify the companies that will require more in-depth analysis.

Overall, jurisdictions should work together to test the results of the market analysis process against their findings to refine the process. By doing this, the jurisdictions can develop a more efficient market analysis process that will provide more useful information about companies’ market activities. By working together in this manner, jurisdictions will achieve the goal referenced above.

Commented [HR53]: MO - We echo California’s concerns regarding how this requirement is currently constructed and measured. The current national analysis process does not offer sufficient opportunities for jurisdiction to successfully pass this requirement, especially for jurisdictions that are not represented on MAWG.

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To evaluate whether your jurisdiction “passes” Requirement 11, the jurisdiction must answer “Yes” to checklist item 11a. and item 11c., in addition to providing a name of the individual (or individuals) who participate in the annual national analysis project and who participate on a national analysis team at least every other year. Please note that participation on a selection team qualifies as participating in the national analysis process for the year that the jurisdiction is on a selection team.

Drafting Note: Assumes at least one company to be reviewed is licensed or conducting business in your jurisdiction.

Checklist for Requirement 11

	YES	NO
11a. Does your state participate in the review of national analysis data on an annual basis? Has the department established procedures to ensure annual participation in national analysis projects?	_____	_____
11b. Who in the department, by functional title, participates in the annual national analysis project?	_____	_____
11c. Does your state participate in one national analysis team at least every other year? Has the department established procedures to ensure participation on a national analysis team at least every other year?	_____	_____
11d. Who in the department, by functional title, participates on a national analysis team at least every other year?	_____	_____

Commented [HR54]: VA - Should there be a checklist item specific to note if none of the selected companies wrote business in the department’s jurisdiction if the answer was NO to 11a and/or 11c?

COMMENTS:

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Requirement 12 – Interdivisional Collaboration

The Department of Insurance has established and follows a systematic procedure for interdivisional communication (as referenced in the *Market Regulation Handbook*).

Guidelines

The objective is to establish a systematic procedure for interdivisional communication, as well as specific guidance regarding which requirements govern or define interdivisional collaboration. This includes identifying warning signs that all staff should share with the market analysis chief (MAC). In particular, all insurance department staff should report to the MAC when information of concern that may result in consumer harm is received in the department.

Insurance department staff should effectively communicate and coordinate with various areas within the department. Such communication should consist of information shared by other areas of the department as well as key findings resulting from research conducted by the staff. Evidence of this communication should be clearly documented. The communication process should include a formal method that allows for pertinent information from other areas (e.g. legal, rates and forms, actuarial, etc.) within the department that could impact market conduct to be shared with the staff. Examples may include regularly scheduled department head meeting, department managers’ meeting, information requests to other areas of the department, etc.

As a means of improving the sharing of information among the jurisdictions, at the conclusion of an investigation that resulted from interdivisional communication, all jurisdictions are encouraged to contact the jurisdiction’s market analysis coordinator in an affected jurisdiction and inform them of the results of the investigation.

When evaluating checklist items for Requirement 12, it is important to remember that market conduct problems do not occur in a vacuum. Complaint activity, legal issues, financial concerns or irregularities in rate and form filings often accompany them. At the same time, market conduct problems may be an early warning sign of other problems with a company, so it is essential for information to be shared and discussed between the MAC and other department staff. This should be done on a systematic basis, including, at a minimum, a quarterly meeting or questionnaire requesting other work areas within the department to report unusual activity that may be of interest to the MAC, such as patterns of adverse financial data, consumer complaints, policy termination activity, producer misconduct or use of noncompliant forms or rates.

To evaluate whether your jurisdiction “passes” Requirement 12, the jurisdiction must answer “Yes” to checklist item 12a., item 12b., item 12c. and item 12d.

Checklist for Requirement 12

	YES	NO
12a. Has the department established procedures for the market analysis chief (MAC), or appropriate designee, to communicate interdepartmentally with the appropriate staff, <u>either through written channels or by sufficient demonstration of action (such as regularly scheduled department head meetings, department managers’ meetings, or information requests to other areas of the department)?</u>	_____	_____
12b. Does the MAC, or appropriate designee provide the appropriate interdepartmental staff with market concerns such as, but not limited to, financial data, consumer complaints, policy termination activity, producer misconduct or use of noncompliant forms or rates, related to the following functional areas:	_____	_____
i. Consumer Services	_____	_____
ii. Enforcement	_____	_____

Commented [HR55]: CA - Requirement 12
 The scoring matrix and the Guidelines do not align. The Guidelines say that a jurisdiction must answer “Yes” to all four Checklist items, but the scoring matrix does not make any of the items mandatory. The working group should revise either the Guidelines or the scoring matrix so that the two align. I also note that the scoring matrix is missing the question about whether the MAC monitors and communicates with other departments on the NAIC bulletin boards (item 12.d on the Checklist).

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- iii. Legal _____
- iv. Forms and Filing _____
- v. Financial _____
- vi. Market Analysis _____
- vii. Market Conduct _____

12c. On a quarterly basis, does the MAC, or appropriate designee, solicit information from the above functional areas regarding adverse patterns on, but not limited to, financial data, consumer complaints, policy termination activity, producer misconduct, or use of noncompliant forms or rates? _____

Does the MAC participate in communication with other insurance departments regarding market analysis by posting and responding to NAIC Market Regulation and Market Analysis Electronic Bulletin Board inquiries? _____

COMMENTS:

Commented [HR56]: MO - Checklist Item 12d.: The objective of this requirement is to establish a systematic procedure for internal, interdivisional communication. This checklist item does not further or support the stated purpose of internal communication amongst divisions within the department. As such, we recommend deleting it from this requirement. If the Working Group believes it should be a part of the Program, we'd suggest considering placing it under Requirement 6 – Collaboration with Other Jurisdictions.

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Voluntary Market Regulation Certification Program Proposal for Implementation

Current Charge of the Working Group

[CA- Ms. O'Connell said the years identified throughout the Proposal for Implementation need to be updated to reflect the current timeline. She said the Working Group should consider a more generic description, such as "two weeks before the Fall National Meeting of the first year following adoption by the membership" since it is not known when the Market Regulation and Consumer Affairs (D) Committee and the Executive (EX) Committee and Plenary will adopt the program.]

The Market Regulation Certification (D) Working Group will develop a formal market regulation certification proposal for consideration by the National Association of Insurance Commissioners (NAIC) membership that provides recommendations for the following:

- 1) Certification standards.
- 2) A process for the state implementation of the standards.
- 3) A process to measure the states' compliance with the standards.
- 4) A process for future revisions to the standards.

As per the charges adopted for the Market Regulation Certification (D) Working Group, the following is a draft proposal for charge 2 through charge 4.

Implementation Proposal

Three Year Self-Certification Program

- Upon adoption/approval of the First Tier Certification Standards, the *Market Regulation Certification Program Self-Assessment Guidelines and Checklist Tool* and the Implementation Plan by the NAIC membership, participating jurisdictions may begin self-certification. No later than two weeks prior to the 2017 Fall National Meeting, each participating jurisdiction may submit a self-certification report that outlines the progress achieved towards implementation of the first-tier market regulation certification standards. The self-certification will follow the formatted checklist designed and finalized by the Market Regulation Certification (D) Working Group. The self-certification report will be submitted to NAIC staff and reviewed by the Market Regulation and Consumer Affairs (D) Committee or a Working Group assigned to do so on its behalf. Each jurisdiction that submits a self-certification report will be provisionally certified.
- Prior to the 2018 and 2019 Fall National Meeting, each provisionally certified jurisdiction will submit its self-certification report to the Market Regulation and Consumer Affairs (D) Committee, which will monitor and assess its progress towards full compliance to the First Tier Certification Standards. Jurisdictions that did not previously submit self-certification reports in 2017 may do so prior to either the 2018 Fall National Meeting or 2019 Fall National Meeting in order to receive provisional certification.
- During the three-year self-certification period, the Market Regulation Certification (D) Working Group will regularly review feedback from jurisdictions concerning any issues or recommended changes to the First Tier Certification Standards and the *Market Regulation Certification Program Self-Assessment Guidelines and Checklist Tool* based on the use of the guidelines and checklist for self-certification.
- At any time, participating jurisdictions may request peer-review, guidance, and training. To the extent necessary to accommodate such requests, NAIC staff may work with seasoned regulators to assist in meeting the needs of such requestors.

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- In 2020, jurisdictions will have the option to continue self-certifying or to apply for full certification. (See *Full Certification Program* below.) Jurisdictions that decide to continue self-certifying will use the same process described above.

Full Certification Program

- The Market Regulation Standards and Certification Committee will determine whether jurisdictions that apply to be fully certified meet the certification standards. Members of the Committee shall be appointed annually pursuant to the NAIC Bylaws. An NAIC Review Team (similarly constructed as the Financial Regulation and Accreditation Standards Accreditation Review Team) will conduct the certification reviews.
- No later than two weeks prior to the 2020 Spring National Meeting (or no later than two weeks prior to any subsequent Spring National Meeting), any participating jurisdiction may decide to continue to self-certify or apply for full certification by submitting an application for full certification with its self-certification report to NAIC staff. The jurisdiction's application will be reviewed by the NAIC Review Team, which will provide its recommendation to the Market Regulation Standards and Certification Committee. For jurisdictions applying for full certification, the Committee will use applicable monitoring tools to verify the self-certification information reported by the participating jurisdictions. NAIC staff may use additional forms of verification deemed necessary, such as interviews or on-site visits. Each fully certified jurisdiction will be reviewed every five years to assess the jurisdiction's ongoing compliance with the certification standards.
- The applications for full certification will be reviewed in the order in which they are received. No more than 12 reviews will be conducted in each of the first five years (2020 through 2024) of the certification program. Beginning in 2025 and in each subsequent year, jurisdictions that request to have full certification must submit their application with its self-certification report to NAIC staff two weeks prior to the Spring National Meeting. The NAIC Review Team will conduct the five-year re-assessments and review all the applications. Recommendations for full certification and re-certifications will be provided to the Market Regulation Standards and Certification Committee prior to the Fall National Meeting of the same calendar year. The Market Regulation Standards and Certification Committee will make its decision regarding certification or re-certification by the end of the calendar year.
- In the first five years (2020 through 2024) of the full certification program, all jurisdictions that submit an application for full certification will be provisionally certified by the Market Regulation and Consumer Affairs (D) Committee (as per the process described in the *Three Year Self-Certification Program* above) until their application for full certification is reviewed and a decision on the application is made by the Market Regulation Standards and Certification Committee.
- In the years between each five-year re-certification review, fully certified jurisdictions will submit annual self-assessment audits to NAIC staff at least two weeks prior to the Summer National Meeting.
- A jurisdiction may withdraw its application for full certification at any time. A jurisdiction that is fully certified can exit the full certification re-assessment cycle and choose to be either provisionally certified (per the process described in the *Three Year Self-Certification Program* above) or to not participate in the Market Regulation Certification Program.
- A fully certified jurisdiction may qualify for financial incentives. (Details will be determined and approved by the Executive (EX) Committee.)

Future Revisions

- Future revisions of the market regulation certification standards will be made from time to time by the Market Regulation Certification (D) Working Group with approval of the Market Regulation and Consumer Affairs (D)

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Committee and NAIC membership. New standards will be added only as necessary and added no more frequently than once per year. Revised sets of standards will constitute a new “certification tier.” An effective date will be specified for each new requirement within a tier. Self-certified

and fully certified jurisdictions that comply with a previous tier of requirements will not be measured on compliance to new tier requirements until the first annual self-assessment audit or the five-year re-certification review (whichever occurs first) after the effective date of the new requirement.

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