Date: 11/22/16

Market Conduct Examination Standards (D) Working Group
Conference Call
November 2, 2016

The Market Conduct Examination Standards (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met via conference call Nov. 2, 2016. The following Working Group members participated: Bruce R. Ramge, Chair, Martin Swanson and Cindy Williamson (NE); Jim Mealer, Vice Chair (MO); Bruce Glaser (CO); Kurt Swan (CT); Debra Peirce (GA); Doug Ommen (IA); Lori Cunningham (KY); Richard Bradley, Rachel Davison and Christopher Joyce (MA); Tracy Biehn and Bill George (NC); Win Pugsley (NH); Peggy Willard-Ross (NV); Robert McLaughlin (NY); Rodney Beetch and Angela Dingus (OH); Brian Gabbert, Shelly Ondiak and Joel Sander (OK); Deborah Sweigard (PA); Julie Fairbanks (VA); Christina Rouleau (VT); Jeanette Plitt (WA); Diane Dambach, Susan Ezalarab, John Kitslaar, Jo LeDuc and Marcia Zimmer (WI); and Mark Hooker (WV). Also participating was: Frank Pyle (DE).

1. Adopted its Sept. 14 Minutes

Ms. Plitt made a motion, seconded by Mr. Mealer, to adopt the Working Group's Sept. 14 minutes (Attachment XXX-1). The motion passed unanimously.

2. Adopted the Report of the Standardized Data Request (D) Subgroup

Ms. Cunningham said the Standardized Data Request (D) Subgroup met via conference call Oct. 12 and Sept. 21 in regulator-to-regulator session pursuant to paragraph 6 (consultations with NAIC staff members related to NAIC technical guidance, including, but not limited to, annual and quarterly statement blanks and instructions, the *Accounting Practices and Procedures Manual* and similar materials) of the NAIC Policy Statement on Open Meetings. Ms. Cunningham said that during the calls, the Subgroup reviewed and discussed the life replacements standardized data request. Ms. Cunningham said the Subgroup contemplates that changes will need to be made to Chapter 13—Standardized Data Requests of the *Market Regulation Handbook* to correspond with the updates to the standardized data requests. Ms. Cunningham said the Subgroup plans to meet in November to conclude its review of the life replacements standardized data request.

Ms. Cunningham made a motion, seconded by Mr. McLaughlin, to adopt the report of the Standardized Data Request (D) Subgroup (Attachment XXX-2). The motion passed unanimously.

3. Adopted Draft Health Reform Market Conduct Examination Standards – Network Adequacy, Oct. 28 Draft for Inclusion in the *Market Regulation Handbook*

Director Ramge said extensive comments have been received regarding the April 26 draft of the health reform-related network adequacy examination standards. Director Ramge said the Working Group decided on its Sept. 14 call to use the NAIC consumer representatives', America's Health Insurance Plans' (AHIP) and Blue Cross and Blue Shield Association's (BCBSA) Aug. 15 revisions to the April 26 draft, as well as changes submitted Sept. 9 by New York to network adequacy Standard 6, as a basis for a revised working draft of the network adequacy examination standards.

Timothy Stoltzfus Jost (Virginia Organizing) said that because not all states have adopted the *Health Benefit Plan Network Access and Adequacy Model Act* (#74), the proposed revisions allow for flexibility, taking into account state statutes and regulations regarding health reform-related network adequacy, while recognizing federal standards/oversight with regard to health reform-related network adequacy issues. Marty Mitchell (AHIP) said the purpose of the collaborative work performed by the trade associations and the NAIC consumer representatives on the network adequacy draft is to make the draft more general in nature. David Korsh (BCBSA) said that because not all jurisdictions have adopted Model #74 in whole, or in part, the purpose of the revisions are to make the guidance in the examination standards flexible enough to allow for individual state-specific network adequacy requirements. Director Ramge said the general principle of the *Market Regulation Handbook* is that each state does tailor examination standards to each state's particular statutes and regulations.

Mr. Glaser made a motion, seconded by Ms. Plitt to replace the language "HHS/DOL/Treasury final regulations, to include FAQs and other federal resource materials," with "Federal regulations, including FAQs and other regulatory guidance" within the "Other References" section in the network adequacy examination standards draft, as well as within the "Other References" section of all examination standards in Chapter 20A—Conducting the Affordable Care Act (ACA) Related Examination in the *Market Regulation Handbook*, as the language to be replaced occurs within in all examination standards in Chapter 20A (Attachment XXX-3). The motion passed unanimously.

Mr. Glaser made a motion, seconded by Mr. Ommen to replace the last paragraph of each standard, which currently reads:

> "Note: With regard to conflict of state and federal law, examiners may need to review and base examinations upon applicable state statutes, rules and regulations, especially where state statutes, rules and regulations add state-specific requirements to the health reform requirements or create a more generous benefit, and thus not preempted, as set forth in federal law."

with the following new last paragraph within the network adequacy examination standards draft, as well as within all examination standards in Chapter 20A—Conducting the Affordable Care Act (ACA) Related Examination in the *Market Regulation Handbook*, as the paragraph to be replaced occurs within all examination standards found in Chapter 20A (Attachment XXX-4). The motion passed unanimously.

> "Note: With regard to conflict of state and federal law, examiners may need to review and base examinations upon applicable state statutes and regulations, especially where state statutes and regulations add state-specific requirements, and should seek legal advice and assistance from the state insurance department."

Mr. Hooker asked that the word "legal" be removed from the new last paragraph. Mr. Glaser subsequently amended his motion, seconded by Mr. Ommen, to remove the word "legal" from the new paragraph. The motion passed unanimously.

Ms. Wallace briefly presented editorial changes to the draft network adequacy exam standards "redlines accepted" document. Mr. Mitchell said the reference to applicable state statutes, rules and regulations, deleted from the "Documents to be Reviewed" section of each examination standard was incorporated into the first item of the "Documents to be Reviewed" section within each standard; therefore, the separate reference to applicable state statutes, rules and regulations can be removed from the "Documents to be Reviewed" section in each standard.

Mr. McLaughlin indicated his acceptance of the editorial changes to the language proposed by New York on Sept. 9 regarding sample testing of provider directories relative to network providers and residential treatment facilities for mental health treatment and substance abuse disorders. Mr. Jost asked that all occurrences of the phrase "substance abuse" in the draft standards be corrected to "substance use disorder" to more accurately align with federal law. Ms. Wallace said she would make this change to the draft document.

Mr. Jost said the NAIC consumer representatives prefer that the brackets enclosing the word "federal" be removed from the "Documents to be Reviewed" section. Mr. Korsh said it is the preference of both the BCBSA and AHIP that the brackets be included in the draft, enclosing the word "federal." Birny Birnbaum (Center for Economic Justice—CEJ) said that, using title insurance as an example, examiners review federal law as necessary (e.g., the federal Real Estate Settlement Procedures Act—RESPA), suggesting that any references to "federal" should not be enclosed in brackets. Mr. Mitchell said since the states have primary responsibility for network adequacy, states may choose to incorporate federal network adequacy language into their state network adequacy requirements, so that one body of law is applicable to network adequacy. Therefore, the language AHIP and the BCBSA proposes would include the word "federal" in brackets, for ease of application in the proposed exam standards.

Ms. Plitt made a motion, seconded by Mr. Glaser, to adopt the network adequacy exam standards: 1) to include the removal of "[and federal]", including the brackets surrounding the word "federal," from the first item in the "Documents to be Reviewed" section (i.e., "State ~~[and federal]~~ statutes and regulations and exchange requirements, addressing filing and approval of network adequacy or access plans"); 2) to add a new item in the "Document to be Reviewed" section (i.e., "Federal statutes and regulations as they pertain to network adequacy"); 3) to accept the editorial changes shown in the draft network adequacy exam standards; and 4) to include all edits made during the call to the network adequacy exam standards draft. The motion passed unanimously.

4. Adopted Draft New Producer, Marketing and Sales, Commission and Complaint Standardized Data Requests, Sept. 1 Drafts for Inclusion in the *Market Regulation Handbook* Reference Documents

Director Ramge said that standardized data requests were first discussed on the Sept. 14 call. The original standardized data request—the producer, commission and complaint standardized data request—was broken out into its four subparts for ease of review: producer; marketing and sales; commission; and complaint standardized data requests. Updates made to the standardized data requests were extensive; therefore, redlines are not shown within the documents and the standardized data requests can be considered as brand-new. West Virginia submitted comments regarding the commission standardized data request, suggesting that the field name "payee" be added. Mr. Birnbaum asked how the commission standardized data request

captures the type of product for which commission is being paid. Mr. Hooker said that the policy prefix or policy suffix typically delineates for what type of product a commission is being paid.

Mr. McLaughlin made a motion, seconded by Ms. Biehn, to adopt the producer, marketing and sales, commission and complaint standardized data requests, with the inclusion of the field name "payee" in the commission standardized data request (Attachment XXX-5). The motion passed unanimously.

5. Discussed a Process Review Methodology Proposal

Director Ramge said Don Koch (NorthStarExams, LLC) made a presentation on the Sept. 14 call outlining process review methodology. A draft document outlining the methodology was circulated to the Working Group, interested regulators and interested parties on Oct. 12.

In response to Mr. McLaughlin's question regarding whether Mr. Koch had successfully implemented the methodology in regulated entity examinations, Mr. Koch replied that NorthStarExams has used the methodology in at least five states, usually in conjunction with a conventional examination approach. Mr. Koch stated that the focus of process review methodology is to review the controls that are in place when a regulated entity indicates it has a process in place; examiner review of these controls indicates whether the controls are working as intended or if the controls are being utilized at all. If, in the process review methodology approach, it is found that there is an absence of controls, examiners can see where market conduct-related issues have a potential to occur, if they have not occurred already. With regard to sampling, Mr. Koch said sampling is performed in the process review methodology approach in the same manner as in a conventional market conduct examination (retrospective) approach; however, an examiner may not review certain data elements in the sample, based on the types of regulated entity controls that are in place.

Mr. Koch said that if there is a problematic issue (lack of appropriate regulated entity controls, or inadequate regulated entity controls) that is uncovered by regulators during a process methodology review, these issues are typically addressed in the form of a separate letter to management. A management letter is frequently not a public document; a management letter outlines the areas where there is a potential for market conduct violation and asks the regulated entity management team how the identified issues will be resolved, and provides the regulated entity with an opportunity to fix issues before they cause serious consumer harm.

Mr. Mealer asked how the process review methodology approach would apply in the following scenario: An examiner has identified an issue arising out of consumer complaints; however, the examiner is unable to do appropriate testing of the issue, because the regulated entity does not capture that specific data element in its computer systems. Mr. Koch said that, in this scenario, an examiner could first determine whether the market conduct issue is a violation of state statute. If so, the examiner could then ask the regulated entity if it has controls in place to address the issue, and, if the regulated entity does not have controls in place, an examiner should then ask why there are no controls in place. Mr. Koch said a conventional examination approach could then be used, and part of the communication that is ultimately presented to the regulated entity in a management letter can include language stating that: 1) processes, procedures and controls need to be in place regarding violation of [insert citation] state statute; and 2) the regulated entity will need to communicate to the state insurance department how the identified issues are resolved.

Mr. Koch said the process review methodology approach typically asks the regulated entity to provide answers to questions such as:

- What do you do with complaints?
- Are complaints forwarded to affected departments within the regulated entity?
- Are consumer complaints measured against some kind of regulated entity controls? If not, why not?
- Have you had to address this issue in any other jurisdiction?

Mr. Pyle said verification that a regulated entity has processes and controls in place is not mandated by many state statutes; for example, most states do not have requirements regarding how a regulated entity handles complaints. Mr. Birnbaum said he supports the use of process review methodology as a market regulatory tool to address problems identified in market analysis, as opposed to the use of process review methodology as an overarching approach to market conduct examinations. Director Ramge said discussion on the process review methodology will continue on the next scheduled Working Group call.

6. Discussed Proposed *Market Regulation Handbook* Revisions Received from the Market Information Systems Research and Development (D) Working Group

Mr. Hooker said the Market Information Systems Research and Development (D) Working Group recently reviewed the *Market Regulation Handbook* and identified updates that should be made in regard to the use of NAIC Market Information Systems (MIS) applications, as well as technical and editorial edits, to include updating language that is archaic and references to obsolete applications and tools. Mr. Hooker said the chair of the Market Information Systems Research and Development (D) Working Group asks that this Working Group review, discuss and consider the updates for adoption.

Mr. Hooker asked the Working Group to review the updates, and to specifically review Page 13 and Page 14 of the referral memorandum, which contain substantive areas that the Market Information Systems Research and Development (D) Working Group would like this Working Group to consider.

Director Ramge said the due date for comments on the proposed updates is Nov. 15, noting that this agenda item will be discussed on the next scheduled call of the Working Group. Director Ramge asked that the Working Group be ready to consider the proposed changes for adoption on that call.

7. Discussed Other Matters

Director Ramge said new content for the *Market Regulation Handbook* addressing closing continuum actions has been drafted and is currently undergoing a final review prior to exposure on the next scheduled call of the Working Group. Director Ramge said discussion will occur on the next call regarding the status of cybersecurity-related revisions to the *Market Regulation Handbook*. NAIC staff will provide advance email notice of the next Working Group call.

Having no further business, the Market Conduct Examination Standards (D) Working Group adjourned.

W:\National Meetings\2016\Fall\Cmte\D\MCES\11-02.docx

Conference Call

STANDARDIZED DATA REQUEST (D) SUBGROUP
November 9, 2016

Summary Report

The Standardized Data Request (D) Subgroup met Nov. 9, 2016. The meeting was held in regulator-to-regulator session pursuant to paragraph 6 (consultations with NAIC staff members related to NAIC technical guidance) of the NAIC Policy Statement on Open Meetings. During this meeting, the Subgroup:

1. Concluded its review of the life replacements standardized data request (SDR).

2. Discussed that updates to Chapter 13—Standardized Data Requests of the *Market Regulation Handbook*, would be needed, to correspond with changes made by the Subgroup to the SDRs.

3. Discussed potential updates to the life declinations SDR.

G:\MKTREG\DATA\D Working Groups\D WG 2016 MCES (PCW)\SDR Subgroup\Summaries To MCES WG\11-30 Summary To Working Group.Docx

National Association of Insurance Commissioners & The Center for Insurance Policy and Research

TO: Director Bruce Ramge, Chair
Market Conduct Examination Standards (D) Working Group

FROM: Brent Kabler, Chair
Market Information Systems Research and Development (D) Working Group

DATE: 7/12/16

SUBJECT: Market Regulation Handbook Proposed Changes and Recommendations

Earlier this year the Market Information Systems Research and Development (D) Working Group (MIS R&D) reviewed the *Market Regulation Handbook* for potential changes to reflect the retirement of the Examination Tracking System (ETS) and Market Initiative Tracking System (MITS) and the introduction of the Market Action Tracking System (MATS). During this review other, unrelated changes were also proposed. These are described in detail below. Included with some proposed changes are comments from Working Group members.

The first section contains system-related changes that the MIS R&D Working Group recommends that your Working Group consider. The second section contains other non-technical changes that are being referred for consideration.

I would be happy to answer any questions. Thank you for your consideration.

Recommended System-Related Changes

Chapter 11 – Automated Examinations Tools and Techniques

Recommended Change 11.1
Location: B. Automation Tools / 1. NAIC Systems

From:
d. Special Activities Database (SAD)
SAD is available to regulators only and has been operational since 1989. **This system records information regarding suspicious or investigative activities related to individuals and companies in the insurance industry.**

To:
d. Special Activities Database (SAD)
SAD is available to regulators only and has been operational since 1989. **The use of SAD has been somewhat limited in recent years. Plans are underway to eliminate SAD and develop a new 1033 State Decision Repository.**

Reviewer comment: As of 2015

Recommended Change 11.2
Location: B. Automation Tools / 1. NAIC Systems

e. State Producer Licensing Database (SPLD)
NAIC owns and NIPR helps maintain a comprehensive state producer licensing database called "SPLD" for the exclusive use of state regulators. This NAIC database contains all of the information in the Producer Database (PDB), plus all state submitted regulatory actions and confidential information available only to regulators. SPLD is a regulator-only database accessible through I-SITE, and is not subject to the Fair Credit Reporting Act (FCRA).
To search for producers via iSite+:

- Log onto myNAIC and select iSite+ from the login categories;

- Select the **Market Individual Search category;**
- Enter the known criteria for the entity (e.g., last name, first name) and select Search; and
- Select the **Producer Licensing** link next to the appropriate entity.

To:
To search for producers via iSite+:

- Log onto myNAIC and select iSite+ from the login categories;
- Select the **Search – Individual Entity under the Tool tab**;
- Enter the known criteria for the entity (e.g., last name, first name) and select Search; and
- Select the **Licensing** link next to the appropriate entity.

Proposed Change 11.3
Location: B. Automation Tools / 4. Spreadsheets

From:
4. Spreadsheets
Spreadsheet applications are computer programs for creating and manipulating spreadsheets. Data in a spreadsheet can be defined and formulas created for calculations, etc. **Examples of spreadsheet applications are made utilizing Microsoft Excel software. Lotus 1-2-3 is another popular spreadsheet package.**

To:
4. Spreadsheets
Spreadsheet applications are computer programs for creating and manipulating spreadsheets. Data in a spreadsheet can be defined and formulas created for calculations, etc. **The most popular spreadsheet application is Microsoft Excel®.**

Recommended Change 11.4
Location: B. Automation Tools / 5. Databases

From:
5. Databases
Database software provides for queries and reports to be created against a database. **Database examples are included utilizing Microsoft Access.**

To:
5. Databases
Database software provides for queries and reports to be created against a database. **One example of a database application is Microsoft Access®.**

Recommended Change 11.5
Location: B. Automation Tools / 9. Computer System Size Limitations

From:
If an email cannot be sent due to server limitations on file size, there are other options available to the examiner. Sending the file through File Transfer Protocol (FTP) is another option. The only drawback to this method **is having to acquire a password,** which can sometimes pose time restrictions. The best solution is to post the file on **an Internet website**. The examiner could send the file to a Web server, create a link to that file and other examination team members may be allowed access to the file. If the information is sensitive, the examiner will need to establish a secure site, with the file available only for people who have access to the secured site.

Another option available to examiners is **to burn a file to a CD; however, this option would be the slowest option compared to other available options.**

To:
If an email cannot be sent due to server limitations on file size, there are other options available to the examiner. Sending the file through File Transfer Protocol (FTP) is another option. The only drawback to this method **is acquiring a password**, which can sometimes pose time restrictions. The best solution is to post the file on **a secure Internet** website. The examiner

could send the file to a Web server, create a link to that file and other examination team members may be allowed access to the file. If the information is sensitive, the examiner will need to establish a secure site, with the file available only for people who have access to the secured site.

Another option available to examiners is **to copy the file to a portable electronic device**.

Proposed Change 11.6
Location: C. Reference Tools, Training and Assistance / 1. NAIC-Sponsored Training

From:
1. NAIC-Sponsored Training
The NAIC provides a variety of training opportunities and educational events which may prove beneficial to examiners. Available training includes classes for Introduction to ACL, Introduction to ACL—Market Conduct and Advanced ACL. In addition, Web-based instruction for NAIC systems is available, as well as regularly scheduled events such as the annual NAIC/NIPR Insurance Summit Conference. Information on technical training may be found on the Education and Training website *http://www.naic.org/education_technical_training.htm*.

To:
1. NAIC-Sponsored Training
The NAIC provides a variety of training opportunities and educational events which may prove beneficial to examiners. Available training includes classes for Introduction to ACL, Introduction to ACL—Market Conduct and Advanced ACL. In addition, Web-based instruction for NAIC systems is available, as well as regularly scheduled events such as the annual NAIC/NIPR Insurance Summit Conference. Information on technical training may be found on the Education and Training website *http://www.naic.org/education_technical_training.htm*. **Application technical training includes:**

- ***TeamMate Course Description:*** **Students will learn the basics of working a TeamMate™ Financial Exam with EWP.**

- ***Using Microsoft Access to Query NAIC Course Description*****: Students will gain exposure to the structure of the NAIC's Financial database and learn efficient query techniques in order to retrieve data and generate customized reports.**

Recommended Change 11.7
Location: D. Data Requests and Access / 2. Data Formats

From:
There are a number of different formats in which the data can be provided. Consideration should be given as to what format the company can provide, what software program the examiners will be using to view the data, how much space will be available on the examiner's hard drive and how the company will transfer the data to the examiners.

Recommendation— ASCII delimited, ASCII fixed length and text files are the best data formats to use when requesting information. Each of these can be used in any of the current software packages available. ACL, Microsoft Access, **Microsoft Excel and Lotus, etc.,** are the easiest formats for companies to provide. These formats require little to no additional formatting, compress well and most company mainframe computer systems can download directly into these formats. However, if the files are used in any software package besides ACL, duplicates of the file will be made when the files are saved in the corresponding software package's format. ACL will only make duplicates of ASCII files.

To:
There are a number of different formats in which the data can be provided. Consideration should be given as to what format the company can provide, what software program the examiners will be using to view the data, how much space will be available on the examiner's hard drive and how the company will transfer the data to the examiners.

ASCII delimited, ASCII fixed length and text files are the best data formats to use when requesting information. Each of these can be used in any of the current software packages available. ACL, Microsoft Access®, **and Microsoft Excel®, etc.,** are the easiest formats for companies to provide. These formats require little to no additional formatting, compress well and most company mainframe computer systems can download directly into these formats. However, if the files are used in any software package besides ACL, duplicates of the file will be made when the files are saved in the corresponding software package's format. ACL will only make duplicates of ASCII files.

Recommended Change 11.8
Location: D. Data Requests and Access / 2. Data Formats

From:
More Difficult to Use—Data files can also be requested in Microsoft Access, Microsoft Excel, **Lotus**, etc. These packages are more conducive to small populations, files without date fields and computers with larger hard drive space. There are also issues to deal with when using this requested data with ACL.

To:
More Difficult to Use—Data files can also be requested in Microsoft Access®, Microsoft Excel®, etc. These packages are more conducive to small populations, files without date fields and computers with larger hard drive space. There are also issues to deal with when using this requested data with ACL.

Recommended Change 11.9
Location: D. Data Requests and Access / 2. Data Formats

From:
Microsoft Excel—Using the Data Definition Wizard, Microsoft Excel data can be imported and defined directly, without the need for pre-processing. ACL maintains the integrity of the source data and lets the user specify whether to keep field header information. The user can also specify which Microsoft Excel worksheet to be utilized. Installation of Microsoft Excel on a computer to use files of these formats is not necessary. **Problems with Microsoft Excel include: Microsoft Excel tends to corrupt date fields, and Excel 2003 is limited to 65,536 rows or records in any one file.** Unless ODBC is used to read Microsoft Excel data in ACL, dates can display incorrectly. When Microsoft Excel data is imported, Microsoft Excel and the transferring technology use the system date format. If this format differs from the **Date Display Format** that the user sets in ACL, the dates from the Microsoft Excel data may display incorrectly in ACL. To avoid this problem, in ACL, select **Tools** » **Options**, then click the **Date** tab and enter a date display format to match the system date. To find the system date, select **Start** » **Settings** » **Control Panel** » **Regional Options**.

To:
Microsoft Excel—Using the Data Definition Wizard, Microsoft Excel® data can be imported and defined directly, without the need for pre-processing. ACL maintains the integrity of the source data and lets the user specify whether to keep field header information. The user can also specify which Microsoft Excel® worksheet to be utilized. Installation of Microsoft Excel® on a computer to use files of these formats is not necessary. **Problems with Microsoft Excel® include a tendency to corrupt date fields.** Unless ODBC is used to read Microsoft Excel® data in ACL, dates can display incorrectly. When Microsoft Excel® data is imported, Microsoft Excel® and the transferring technology use the system date format. If this format differs from the **Date Display Format** that the user sets in ACL, the dates from the Microsoft Excel® data may display incorrectly in ACL. To avoid this problem, in ACL, select **Tools** » **Options**, then click the **Date** tab and enter a date display format to match the system date. To find the system date, select **Start** » **Settings** » **Control Panel** » **Regional Options**.

Recommended Change 11.10
Location: F. Sampling / 2. Example of Pull Lists

From:
If utilizing Microsoft Excel, a pull list can be created as follows:

- From the Tools menu, select Data Analysis. A box will appear with a list of options; select Sampling. The Sampling dialog box will appear.
- Enter the input range. The input range should be a numeric field (i.e., policy number) from which the sample will be generated. In addition, the regulator should determine if periodic or random sampling should be utilized. If periodic sampling is selected, the regulator should enter the distance between files selected (i.e., every 10); and if random sampling is selected, the regulator should enter the number of samples desired. Enter the desired output range in the output options.
- Microsoft Excel will create a new worksheet providing a list of the sample.
- If manual files are required, the worksheet page then can be printed off and provided to the company.

To:
If utilizing Microsoft Excel, a pull list can be created as follows **(Note: this requires the Analysis ToolPak Excel Add-in)**:

- From the Tools menu, select Data Analysis. A box will appear with a list of options; select Sampling. The Sampling dialog box will appear.
- Enter the input range. The input range should be a numeric field (i.e., policy number) from which the sample will be generated. In addition, the regulator should determine if periodic or random sampling should be utilized. If periodic sampling is selected, the regulator should enter the distance between files selected (i.e., every 10); and if random sampling is selected, the regulator should enter the number of samples desired. Enter the desired output range in the output options.
- Microsoft Excel will create a new worksheet providing a list of the sample.
- If manual files are required, the worksheet page then can be printed off and provided to the company.

Recommended Change 11.11
Location: I. Marketing and Sales / 1. Advertisement Approvals

From:
1. Advertisement Approvals
The approach for determining advertising approval compliance will vary based on the method the insurance department uses for maintaining policy form approvals:

Assumption #1—Insurance department records **include hardcopy originals** of approved advertising and electronic tracking by form number and approval date.

1. Secure an electronic listing of approved form numbers and date of approval.
2. Secure from the company a corresponding electronic listing of advertising form numbers and dates first used.
3. Run a comparison that would produce a listing of all company-identified advertising forms, which do not match with the insurance department's listing.
4. Run a comparison that would produce a listing of all company-identified advertising forms which were utilized prior to the date of approval in the insurance department's listing.

To:
1. Advertisement Approvals
The approach for determining advertising approval compliance will vary based on the method the insurance department uses for maintaining policy form approvals:

Assumption #1—Insurance department records **pdf files** of approved advertising and electronic tracking by form number and approval date.

1. Secure an electronic listing of approved form numbers and date of approval.
2. Secure from the company a corresponding electronic listing of advertising form numbers and dates first used.
3. Run a comparison that would produce a listing of all company-identified advertising forms, which do not match with the insurance department's listing.
4. Run a comparison that would produce a listing of all company-identified advertising forms which were utilized prior to the date of approval in the insurance department's listing.

Chapter 12 – Scheduling, Coordinating and Communicating

Proposed Change 12.1
Location: R. Market Conduct Uniform Examination Outline / 1. Examination Scheduling

From:
b. States shall utilize the NAIC Market Action Tracking System (MATS).

1. As soon as scheduled, each state shall enter the examination into MATS, which is administered by the NAIC; and
2. Each state shall adopt a system for ensuring proper implementation and maintenance of the MATS system.

To:

b. States shall utilize the NAIC Market Action Tracking System (MATS).
    1. As soon as scheduled, each state shall enter the examination into MATS, which is administered by the NAIC; and
    2. Each state shall adopt a system for ensuring proper implementation and maintenance of the MATS system.
    3. **Regulators are encouraged to subscribe to the MATS Personalized Information Capture System (PICS) events**

Proposed Editorial Changes

Chapter 1 – Introduction

Proposed Change 1.1
Location: D. The Players and Their Tools / Core Competencies

From:
Core competencies were developed by regulators to meet expectations from consumers, the insurance industry and all interested parties for effective state-based regulatory oversight of the insurance marketplace. Core competency standards are uniform standards that measure an individual state insurance department's overall ability to effectively and efficiently regulate the insurance marketplace. The four broad categories of core competency are set forth below. The currently adopted core competency standards are contained within Appendix D of this handbook.

- Resources—Standards regarding a state's regulatory authority, staff and training, and standards relating to a state's utilization of contract examiners;
- Market Analysis—Standards regarding market analysis, data collection, the role and responsibilities of a state insurance department Market Analysis Chief (MAC) and required skills and knowledge of a market analyst;
- Continuum—Standards regarding the use of **continuum** options, market conduct examinations, investigations and consumer complaints; and
- Interstate Collaboration—Standards regarding the NAIC Collaborative Actions Guide document and the role and responsibilities of a state insurance department Collaborative Action Designee (CAD).

To:
Core competencies were developed by regulators to meet expectations from consumers, the insurance industry and all interested parties for effective state-based regulatory oversight of the insurance marketplace. Core competency standards are uniform standards that measure an individual state insurance department's overall ability to effectively and efficiently regulate the insurance marketplace. The four broad categories of core competency are set forth below. The currently adopted core competency standards are contained within Appendix D of this handbook.

- Resources—Standards regarding a state's regulatory authority, staff and training, and standards relating to a state's utilization of contract examiners;
- Market Analysis—Standards regarding market analysis, data collection, the role and responsibilities of a state insurance department Market Analysis Chief (MAC) and required skills and knowledge of a market analyst;
- Continuum—Standards regarding the use of **Market Action Tracking System** options, market conduct examinations, investigations and consumer complaints; and
- Interstate Collaboration—Standards regarding the NAIC Collaborative Actions Guide document and the role and responsibilities of a state insurance department Collaborative Action Designee (CAD).

Comment: The change from continuum options to MATS doesn't make sense in this instance. Suggest removing reference to MATS and replace with language similar to the following:

> ***Continuum Options - Standards regarding the use of focused inquiries, non-exam regulatory interventions, market conduct examinations, investigations and consumer complaints; and …***

Proposed Change 1.2
Location: D. The Players and Their Tools / NAIC Staff/Research Resources

From:
The NAIC offers financial, actuarial, legal, computer, research, market conduct and economic expertise. The NAIC Market Regulation Department supports state insurance regulators in fulfilling the state insurance departments' responsibility of

protecting the interests of insurance consumers by helping coordinate state market regulatory functions, such as consumer complaints, market analysis, producer licensing and regulatory **interventions**.

To:
The NAIC **staff** offers financial, actuarial, legal, computer, research, market conduct and economic expertise. The NAIC Market Regulation Department supports state insurance regulators in fulfilling the state insurance departments' responsibility of protecting the interests of insurance consumers by helping coordinate state market regulatory functions, such as consumer complaints, market analysis, producer licensing and regulatory **actions**.

Chapter 2 – Continuum of Regulatory Response

Proposed Change 2.1
Location: First paragraph
From:
Insurance regulators can access a broad continuum of regulatory responses when determining the appropriate regulatory response to an identified issue or concern. The continuum can be used to guide the decision-making process when regulators move from analysis to a regulatory response. This chapter will provide considerations for selecting regulatory responses to specific situations, as well as providing lists and descriptions of the categories of continuum actions.
"Insurance regulators can access a broad continuum of regulatory responses when determining the appropriate regulatory response to an identified issue or concern.

To:
Insurance regulators can access a broad continuum **or choice** of regulatory responses when determining the appropriate regulatory response to an identified issue or concern. The continuum can be used to guide the decision-making process when regulators move from analysis to a regulatory response. This chapter will provide considerations for selecting regulatory responses to specific situations, as well as providing lists and descriptions of the categories of continuum actions.
"Insurance regulators can access a broad continuum of regulatory responses when determining the appropriate regulatory response to an identified issue or concern.

Comment: The addition of the word "choice" is awkward. I'd recommend retaining the original phrase, or substitute something like "range of regulatory responses."

Proposed Change 2.2
Location: A. Considerations / 1. Questions to Evaluate

From:
Consumers
- How immediate is the concern? What is the likelihood or severity of any potential consumer harm?
- What is the nature and potential scope of the harm to consumers?
- How extensive is the issue? Does the concern involve one regulated entity or multiple regulated entities?

To:
Consumers
- How immediate is the concern? What is the likelihood or severity of any potential consumer harm?
- What is the nature and potential scope of the harm to consumers?
- How extensive is the issue? Does the concern involve one regulated entity or multiple regulated entities?
- **Is it confined to one state, one region, or is it nationwide?**

Proposed Change 2.3
Location: B. Regulatory Reponses

From:
The continuum of regulatory responses can be roughly divided into four categories: Contact, Examination, Enforcement and Market Actions (D) Working Group. The continuum is **not** a "ladder," whereby one step must be taken prior to advancing to the next. Rather, it should be viewed as a range of decision-making options.

A brief discussion of each category follows. Examples are provided only for clarity and should **not** be considered the sole use for each type of response. Note: The principles outlined in Section D Confidentiality in Chapter 8—Examination Introduction of this handbook can also be applied to the continuum of regulatory responses.

To:
The continuum **or choice** of regulatory responses can be roughly divided into four categories: Contact, Examination, Enforcement and Market Actions (D) Working Group. The continuum is **NOT** a "ladder," whereby one step must be taken prior to advancing to the next. Rather, it should be viewed as a range of decision-making options.

A brief discussion of each category follows. Examples are provided only for clarity and should **NOT** be considered the sole use for each type of response. Note: The principles outlined in Section D Confidentiality in Chapter 8—Examination Introduction of this handbook can also be applied to the continuum of regulatory responses.

Comment: The addition of the word "choice" is awkward. I'd recommend retaining the original phrase, or substitute something like "range of regulatory responses."

Proposed Change 2.4
Location: B. Regulatory Reponses / 1. Contact with the Regulated Entity

From:
The **continuum begins** with the contact category, dealing with various opportunities to connect directly with the regulated entity, such as:

- Correspondence;
- Interrogatories;
- Interviews with the entity;
- Contact with other stakeholders;
- Targeted information gathering;
- Policy and procedure reviews;
- Review of self-audits and self-review documents; and
- Review of voluntary compliance programs.

To:
The **choices begin** with the contact category, dealing with various opportunities to connect directly with the regulated entity, such as:

- Correspondence;
- Interrogatories;
- Interviews with the entity;
- Contact with other stakeholders;
- Targeted information gathering;
- Policy and procedure reviews;
- Review of self-audits and self-review documents; and
- Review of voluntary compliance programs.

Chapter 6 – Collaborative Actions

Proposed Change 6.1
Location: A. Collaborative Action Guidelines / 3. Assumptions

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

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

b. Collaborative actions can be conducted for both nationally significant and non-nationally significant regulated entities.
c. All impacted states will be encouraged to participate in the collaborative regulatory response when possible.
d. The collaborative action, depending on the severity of the problem and the level of the response taken, can be handled by one designated state who reports to the other states, or by a group of Lead States, where one state is designated as the Managing Lead State, others are designated as additional Lead States and together the "Lead States" work collaboratively while other states may passively participate in the process.
e. States retain the ability to choose to participate in a collaborative action and may designate another state to review the information on their behalf. However, if a Participating State does designate another state to review information on their behalf, it is the Participating State's responsibility to outline their interpretation of their own laws they would like included in the review.
f. Participating states retain their authority to initiate their own regulatory response if a collaborative action does not cover the scope of an area of concern to that state.
g. The collaborative review will follow the guidelines and standards outlined in this handbook. Lead States should agree on the appropriate standards to be applied during the review.
h. Each Participating State will determine if state-specific recommendations and actions are needed at the end of the collaborative action process, based on the findings by the Lead States.
i. Verification that the regulated entity has complied with findings and recommendations of a final report is a separate administrative function that may or may not occur through either a collaborative or individual state follow-up effort, **continuum response**, examination or re-examination.

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

a. Collaborative actions will be considered when there is an issue or area of concern that impacts multiple jurisdictions. Collaboration would not be appropriate when the issue involves compliance with a state-specific law if other states do not have similar statutes.
b. Collaborative actions can be conducted for both nationally significant and non-nationally significant regulated entities.
c. All impacted states will be encouraged to participate in the collaborative regulatory response when possible.
d. The collaborative action, depending on the severity of the problem and the level of the response taken, can be handled by one designated state who reports to the other states, or by a group of Lead States, where one state is designated as the Managing Lead State, others are designated as additional Lead States and together the "Lead States" work collaboratively while other states may passively participate in the process.
e. States retain the ability to choose to participate in a collaborative action and may designate another state to review the information on their behalf. However, if a Participating State does designate another state to review information on their behalf, it is the Participating State's responsibility to outline their interpretation of their own laws they would like included in the review.
f. Participating states retain their authority to initiate their own regulatory response if a collaborative action does not cover the scope of an area of concern to that state.
g. The collaborative review will follow the guidelines and standards outlined in this handbook. Lead States should agree on the appropriate standards to be applied during the review.
h. Each Participating State will determine if state-specific recommendations and actions are needed at the end of the collaborative action process, based on the findings by the Lead States.
i. Verification that the regulated entity has complied with findings and recommendations of a final report is a separate administrative function that may or may not occur through either a collaborative or individual state follow-up effort, **non-examination regulatory intervention**, examination or re-examination.

Proposed Change 6.2
Location: A. Collaborative Action Guidelines / 4. Determinations / a. Determining Need for Collaboration

From:
4. Are there any entries in the NAIC Market Information Systems or the Market Regulation electronic bulletin boards?
❑ Yes ❑ No

If there are, the CAD should contact CADs in states that appear to have common concerns and/or where there is a new, open or called examination status. The CADs can discuss whether there are common issues and the interest of other states to assist with regulatory responses to the area(s) of concern. Note: All new, open or called examinations, Level 1 or Level 2 Market

*Analysis reviews and **initiatives** should be reviewed and the state CAD contacted to consider collaborations, even if the examination is a financial examination or appears to be unrelated to the topic of concern.*

To:
4. Are there any entries in the NAIC Market Information Systems or the Market Regulation electronic bulletin boards?
❑ Yes ❑ No

*If there are, the CAD should contact CADs in states that appear to have common concerns and/or where there is a new, open or called examination status. The CADs can discuss whether there are common issues and the interest of other states to assist with regulatory responses to the area(s) of concern. Note: All new, open or called examinations, Level 1 or Level 2 Market Analysis reviews and **continuums** should be reviewed and the state CAD contacted to consider collaborations, even if the examination is a financial examination or appears to be unrelated to the topic of concern.*

Proposed Change 6.3
Location: C. Market Actions (D) Working Group (MAWG) / 2. Request for Review (RFR) / MAWG Request for Review Workflow/ Last flow chart object

From:
Lead States conduct exam or **continuum action** and propose resolution.

To:
Lead States conduct exam or **non-examination regulatory intervention** and propose resolution.

Comment: For consistency's sake, in the last flow chart object, "continuum action" should be changed to "non-examination regulatory intervention;" also continuum action technically includes examinations.

Proposed Change 6.4
Location: D. Multistate Examination Process / 1. Document the Need for an Examination

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

Steps:
a. Document the need for an examination based upon identified triggers;
b. Prepare a justification memo; and
c. Obtain necessary approvals and support from the commissioner and legal department.

Deliverable:
A justification memo, which documents the need for an examination.

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

Steps:
a. Document the need for an examination based upon identified triggers;
b. Prepare a justification memo; and
c. Obtain necessary approvals and support from the commissioner and legal department.

Deliverable:
A justification memo, which documents the need for an examination.

Proposed Change 6.5
Location: D. Multistate Examination Process / 10. Finalize the Examination Report

From:
Examination Report
The state addendum details the state's specific examination findings and recommendations, based on that state's own statutes and regulations.
Steps:
a. Each Participating State CAD sends the state's final examination report to the company:
- Receive and evaluate company response; and
- Include company response as part of the report.

b. Each state CAD finalizes their state's examination report; and
c. Each Participating State should record the applicable administrative resolution for their state in the **appropriate NAIC database**.

To:
Examination Report
The state addendum details the state's specific examination findings and recommendations, based on that state's own statutes and regulations.
Steps:
a. Each Participating State CAD sends the state's final examination report to the company:
- Receive and evaluate company response; and
- Include company response as part of the report.

b. Each state CAD finalizes their state's examination report; and
c. Each Participating State should record the applicable administrative resolution for their state in the **Market Action Tracking System**.

Comment: Is use of MATS appropriate in this instance or should it be RIRS? My understanding is that only the state that entered an action in MATS can make changes to that item. Should there be a comment that the participating state would need to enter a separate MATS item or the lead state could insert a note in the main action on that state's behalf?

Chapter 7 – Market Regulation Investigation Guidelines

Proposed Change 7.1
Location: B. Guidelines for Conducting Market Regulation Investigations / Enforcement Options

From:
There are several enforcement options available to an insurance department. These options include, but are not limited to, the following:
- An administrative complaint may be filed against the licensed entity or individual who is the subject or target of the investigation. As with other administrative complaints, the respondent has 30 days to respond to the allegations and, in most cases, a hearing will then be scheduled.
    - Cease and desist order: In certain circumstances, it may be appropriate to issue a cease and desist order against the subject of an investigation;
    - The insurance department has the authority to enter into settlement agreements and/or issue a consent order with regard to violations of a state's insurance code which are uncovered during an investigation. A settlement agreement may be entered into after or before the filing of an administrative complaint, and the same is true for a consent order. It is important to remember that it is not necessary to file a formal complaint against the target of an investigation before a settlement agreement or consent order can be entered into to resolve any outstanding issues and violations;
    - Suspension or revocation of licenses;

- Corrective action plan;
- Referral to appropriate law enforcement or other regulatory agencies, if warranted and/or required by law;
- Restitution; and
- Information-sharing with other states.
  All states should report any significant findings to other affected states, through their Collaborative Action Designee (CAD) and through the Market Actions (D) Working Group. **Since an investigation is a separate and distinct process from an examination, the existence of an investigation may not be reported to MATS, nor are the findings of an investigation always reported to RIRS.**

- **Some entities will request that a department of insurance enter into what may be referred to as a confidential settlement to resolve any violations found during an investigation. Confidential settlements are not allowed under many state public record laws. Fellow regulators expect NAIC databases to maintain accurate information. All violations and monetary payments should be reported to the appropriate NAIC databases unless prohibited by law.**

To:
There are several enforcement options available to an insurance department. These options include, but are not limited to, the following:
…

- Information-sharing with other states.
  All states should report any significant findings to other affected states, through their Collaborative Action Designee (CAD) and through the Market Actions (D) Working Group. **Depending on the confidentiality of the investigation, the results may be entered into the MATS and/or RIRS databases, to demonstrate to other interested jurisdictions the material findings and monetary payments concerning the action.**

Comment: Why is this paragraph eliminated?

Chapter 10 – Types of Examinations

Proposed Change 10.1
Location: A. Types of Examinations / Target Examinations

From:
Target Examinations

Target examinations are a focused examination reviewing either a specific line of business or a specific business practice, such as underwriting, marketing or claims. Prompt-pay examinations are another example of a target examination.

Target examinations are specific as to the area of concern and may be called by any jurisdiction at any time, with or without notice to the insurer as circumstances dictate. In the event of a target examination, it is recommended that a review of the company's current complaints, as well as a review of its operations/management area be conducted.

To:
Targeted Examinations

Target examinations are a focused examination reviewing either a specific line of business or a specific business practice, such as underwriting, marketing or claims. Prompt-pay examinations are another example of a target examination.

Target examinations are specific as to the area of concern and may be called by any jurisdiction at any time, with or without notice to the insurer as circumstances dictate. In the event of a target examination, it is recommended that a review of the company's current complaints, as well as a review of its operations/management area be conducted.

Comment: Should the references to Target examinations in the text also be updated?

Proposed Change 10.2
Location: A. Types of Examinations/ Limited-Scope Examinations

From:
Limited-Scope Examinations
Limited-scope examinations usually involve alternative examination methods available other than, or in addition to, the traditional on-site market conduct examination.

Examples of a limited-scope examination are as follows:

- **Interrogatories—A compilation of written questions regarding a specific subject, procedure or product submitted to the company in order to obtain information. Verification of the information is accomplished by a review either in-house or during an on-site examination.**

- **Re-examinations or compliance examinations—These types of examinations confirm compliance with a previously issued order of the director/commissioner or other administrative action and serve to verify that the company has initiated corrective actions for adverse findings detailed in a prior examination report.**

- **Desk examinations—Used as a means of follow-up on an issue found during an examination that did not rise to the level of a clear violation, but still caused the insurance department some concern.**

- Small company examinations (small is defined as county mutual companies, fraternal organizations or a company that has written a predetermined premium volume)—An opportunity to review a small company's practices when the expense and time required for a traditional examination might not be warranted. Because of the potentially smaller field sizes, this is an opportunity to use ACL and other computer programs to conduct portions of the review.

To:
Limited-Scope Examinations
Limited-scope examinations usually involve alternative examination methods available other than, or in addition to, the traditional on-site market conduct examination.

Examples of a limited-scope examination are as follows:

- Small company examinations (small is defined as county mutual companies, fraternal organizations or a company that has written a predetermined premium volume)—An opportunity to review a small company's practices when the expense and time required for a traditional examination might not be warranted. Because of the potentially smaller field sizes, this is an opportunity to use ACL and other computer programs to conduct portions of the review.

Comment: Interrogatories are addressed in continuum chapter; Re-examinations or compliance examinations refer to a sequence; and Desk examinations are addressed in methods.

Proposed Change 10.3
Location: F. Use of Hierarchical Description

Delete:
F. Use of Hierarchical Description

An examination type will be reasonably precise if the user identifies the examination with a descriptive phrase from each of the six areas in this chapter. This creates a hierarchical description of the areas of an examination, describing the types of market conduct examinations that could be conducted by a state.

Selection of Type + Exam Sequence + Specialty Area (LOB) + Scope + Jurisdiction + Method. Some examples of usage of hierarcharical descriptions are noted below:

Type Selection	**Routine**	**Target**	**Target**	**Target**
Exam Sequence	**Subsequent**	**Initial**	**Initial**	**Follow-up**

Specialty (LOB)	P&C	Health	Title	Life
Scope	Limited (Undwr)	Limited (Clms)	Comprehensive	Limited (Undwr)
Jurisdiction	Single state	Single state	Single state	Multistate
Method	On-site	Desk	On-site	Combination

Chapter 11 – Automated Examinations Tools and Techniques

Proposed Change 11.1
Location: D. Data Requests and Access / 1. Example of a Data Request for ABC Insurance Company

From:
1. Example of a Data Request for ABC Insurance Company
Please provide the following data files for the examination period of Jan. 1, **2011** through Dec. 31, **2011**. The files will be used on a PC, so please provide the information on a CD. The files should contain fixed length records in the layouts shown. The file format requested, in the order of preference, is delimited (comma or tab) text files or a Microsoft Access database. If a company's computer systems use different field sizes, please submit the company's data files and send revised file layouts with the files.

Complaints—**P**lease provide a list of all complaints received from [state name] policyholders from the period of Jan. 1, **2011** through Dec. 31, **2011**. Please include both complaints received directly and those forwarded from the [state name] insurance department.

To:
1. Example of a Data Request for ABC Insurance Company
Please provide the following data files for the examination period of Jan. 1, **2016** through Dec. 31, **2016**. The files will be used on a PC, so please provide the information on a CD. The files should contain fixed length records in the layouts shown. The file format requested, in the order of preference, is delimited (comma or tab) text files or a Microsoft Access database. If a company's computer systems use different field sizes, please submit the company's data files and send revised file layouts with the files.

Complaints—**p**lease provide a list of all complaints received from [state name] policyholders from the period of Jan. 1, **2016** through Dec. 31, **2016**. Please include both complaints received directly and those forwarded from the [state name] insurance department.

Proposed Change 11.2
Location: I. Marketing and Sales / 2. Unfair Discrimination

Note: Currently the NAIC style guide for NAIC publications prescribes 'homeowners' (no apostrophe). A recommendation to modify that guideline can be made if appropriate.

From:
When performing the tests in the underwriting/rating and claims sections, the examiner should stay alert for potential cases where insureds were treated differently from other insureds. For example, in underwriting and rating, the examiner may discover a **homeowners** insurance application that had identical characteristics to a declined application that was located in a ZIP code with a high percentage of minorities, older homes, etc. The use of ACL will help the examiner segregate insureds who have the same characteristics as other insureds, but were treated differently.

To:
When performing the tests in the underwriting/rating and claims sections, the examiner should stay alert for potential cases where insureds were treated differently from other insureds. For example, in underwriting and rating, the examiner may discover a **homeowners'** insurance application that had identical characteristics to a declined application that was located in a ZIP code with a high percentage of minorities, older homes, etc. The use of ACL will help the examiner segregate insureds who have the same characteristics as other insureds, but were treated differently.

Proposed Change 11.3

Location: I. Marketing and Sales / 2. Unfair Discrimination

Note: Currently the NAIC style guide for NAIC publications prescribes 'homeowners' (no apostrophe). A recommendation to modify that guideline can be made if appropriate.

From:
When performing the tests in the underwriting/rating and claims sections, the examiner should stay alert for potential cases where insureds were treated differently from other insureds. For example, in underwriting and rating, the examiner may discover a **homeowners** insurance application that had identical characteristics to a declined application that was located in a ZIP code with a high percentage of minorities, older homes, etc. The use of ACL will help the examiner segregate insureds who have the same characteristics as other insureds, but were treated differently.

To:
When performing the tests in the underwriting/rating and claims sections, the examiner should stay alert for potential cases where insureds were treated differently from other insureds. For example, in underwriting and rating, the examiner may discover a **homeowners'** insurance application that had identical characteristics to a declined application that was located in a ZIP code with a high percentage of minorities, older homes, etc. The use of ACL will help the examiner segregate insureds who have the same characteristics as other insureds, but were treated differently.

Proposed Change 11.4
Location: K. Underwriting and Rating / 1. Comparison of Insurance Department/Company Records

From:
Data File Supplied by the Company:
Homeowners New Business Written—List of all new business **homeowners** policies issued in this state during the exam period, provided in the following format:

and

ISO protection class codes should be kept in a database format. Both of the ISO protection class codes and the company's **homeowners** new business can be analyzed using Microsoft Access or ACL. By comparing or linking the policies' City, County, Township/Village (if applicable) and ZIP Code fields to the corresponding ISO City, County, Township/Village (if applicable) and ZIP Code fields, it can be determined if the Protection Class Codes match. A separate list can be generated for the policies where the Class Codes do not match. The company or the examiner can then determine by looking at the policy file if the class code is correct or in error.

and

Data File Supplied by the Company:
Homeowners New Business Written—List of all new business **homeowners** policies issued in this state during the examination period, provided in the following format:

To:
Data File Supplied by the Company:
Homeowners New Business Written—List of all new business **homeowners'** policies issued in this state during the exam period, provided in the following format:

and

ISO protection class codes should be kept in a database format. Both of the ISO protection class codes and the company's **homeowners'** new business can be analyzed using Microsoft Access or ACL. By comparing or linking the policies' City, County, Township/Village (if applicable) and ZIP Code fields to the corresponding ISO City, County, Township/Village (if applicable) and ZIP Code fields, it can be determined if the Protection Class Codes match. A separate list can be generated for the policies where the Class Codes do not match. The company or the examiner can then determine by looking at the policy file if the class code is correct or in error.

and

Data File Supplied by the Company:
Homeowners New Business Written—List of all new business **homeowners'** policies issued in this state during the examination period, provided in the following format:

Chapter 16 – General Examination Standards

Proposed Change 16.1
Location: A. Operations/Management / 2. Techniques / e. Antifraud Plans

From:
The guidelines set forth in the NAIC *Antifraud Plan Guideline* (#1690), adopted by the NAIC in March 2011, are intended to provide a road map for state fraud bureaus, insurers' Special Investigative Units **(SIU)s** or contracted SIU vendors for preparation of an antifraud plan.

To:
The guidelines set forth in the NAIC *Antifraud Plan Guideline* (#1690), adopted by the NAIC in March 2011, are intended to provide a road map for state fraud bureaus, insurers' Special Investigative Units **(SIUs)** or contracted SIU vendors for preparation of an antifraud plan.

-----Original Message-----
From: Birny Birnbaum [mailto:birny@cej-online.org]
Sent: Monday, November 21, 2016 5:51 AM
To: Wallace, Petra
Cc: Kabler, Brent
Subject: CEJ Comments on MARD Memo

Petra,

The Center for Economic Justice offer the following comments on the July 12, 2016 proposals by the MISRD WG.

CEJ supports all the proposed changes in Section 1 -- Recommended System-Related Changes. In item 11.9, it might be useful to mention, after "corrupt data fields," that, while Excel versions 2010 and later have a row or record limit of over one million, computer memory effectively limits the number of records to a smaller number depending on the amount of data per record/row.

CEJ supports all the proposed changes in Section 2 -- Proposed Editorial Changes.

In Proposed Change 2.2, we suggest adding another bullet: "How vulnerable are the consumers?" We suggest this addition because insurance product markets vary considerably in the amount of market power consumers wield and vulnerability of consumers to unfair practices. For example, consumers in credit-related insurance markets, particularly force-placed insurance, have less market power than consumers in, say, private passenger auto markets.

In section 2.3 (and others), the proposal is to change "the continuum"
to the "the continuum or choice" of regulator responses. We suggest the word "toolbox" or "spectrum" may fit a little better than "choice."

In section 2.4, we suggest adding a sentence before the text. "The continuum of regulatory responses comprises a set of regulatory tools ranging from least intrusive to most intrusive to the insurer, licensee or market. The least intrusive end of the continuum starts with the contact category.

Question -- Doesn't the continuum start with evaluating existing and other public data and information before any contact with the insurer or licensee?

In section 6.2, the addition of "continuums" doesn't seem to fit.
Continuum refers to a set of tools, not a specific tool.

In section 6.3, we suggest "Lead states conduct continuum actions" since both exams and non-exam activities are included in continuum actions.

In section 6.4, we suggest, "state staff should determine that continuum actions other than an examination are not adequate or appropriate"

The table is section 10.3 is a bit difficult to follow because of the formatting. Use of borders would help.

We hope you find these comments helpful.

Birny Birnbaum
Center for Economic justice

G:\MKTREG\DATA\D Working Groups\D WG 2016 MCES (PCW)\Docs_WG Calls 2016\MIS R&D WG Recommendations\CEJ 11-21-16 Comments.docx

CHAPTER 29
PROCESS REVIEW METHODOLOGY

This chapter describes a process review methodology that may be utilized in a market conduct examination as an alternative process or as a supplement to the methodology described in other chapters. It is focused on a review of the process and controls utilized by an examinee in the management of its operations. Each of the standards described in Chapters 16 through 24 of this *Handbook* are applicable under either methodology. The methodology described in those chapters will be referred to as conventional market conduct examination methodology.

The Sections in this chapter describe the process review approach and include interrogatories, process testing and suggestions for reviews conducted utilizing this methodology. The contents of this chapter include:

A. General

The material that follows is a substantial departure from what is viewed as a conventional market conduct examination methodology as described in Chapters 16 through 24 of this *Handbook*. Several states have acted as laboratories to develop these concepts. The methodology discussed in this chapter requires the increased use of an examiner's analytical skills. The testing suggested here does not necessarily result in a pass or fail, yes or no, or black or white response. Nevertheless, it represents a potential for the acquisition of better information pertinent to a regulated entity's operations and the management of those operations than does a conventional market conduct examination. This methodology utilizes a qualitative review as opposed to the quantitative review found in the conventional methodology. This methodology should not be limited to Company Operations/Management (Section A in most examination chapters), but also to each of the other areas of interest during an examination.

Briefly stated, this approach is the review of the directions provided by a regulated entity's management in the form of written procedures, directives, processes, strategies, etc., (collectively, processes). This review reveals how a regulated entity manages and controls the various processes it implements to operate its business and to comply with insurance statutes. This approach is an effective means to determine whether regulated entity management in an area or areas under review is proactive or reactive. A proactive process generally results in a

minimal level of error or violation. A reactive process has an increased propensity for error and violation. If the process is flawed, compliance is usually compromised.

The conventional method of examination as described in this *Handbook* typically reviews the results of a regulated entity operation for error or violation of statute and reacts to that result. It is generally quantitative and microscopic in nature. This approach is reasonably effective at identifying violations of state law that have already occurred. It uses sampling methodology to select files for review and then applies standards and tests to determine whether the files reviewed comply with the applied test. This results in considerable duplication when multiple states have similar concerns and conduct separate examinations. The conventional method of examination is usually cumbersome when applied on a multi-state basis unless the subject of the examination is sufficiently targeted and the state laws for the examining states are sufficiently similar. It is not particularly effective at determining causation of file failure. The principal regulatory interest in developing new tools for review is not the quantification of violation or error, but rather the qualification of the management structure and its ability to provide effective compliance. It is also particularly useful in structuring corrective action.

The conventional market conduct examination utilizes a review of events at the operational level of an insurer. These results have already occurred so the review is historical. A process review approach looks to all levels with emphasis on the management and control of those processes of interest to market regulation.

In an effort to avoid the criticism of duplication in regulation, states revisited the role of market analysis. Market analysis has existed in states actively engaging in market conduct examinations in some form or another for years. However, it did not possess the refinements that have been developed in recent years. In its current configuration, market analysis is being used to determine which of a variety of regulatory responses are appropriate to a particular set of circumstances. See chapters 1 through 5 of this *Handbook*. As this process becomes more refined, and as the states collaborate in their regulatory efforts, much of the duplication can be expected to dissipate. The challenge is to recognize more effectively and efficiently the indicators that should lead to some form of regulatory interaction.

When a state conducts a review, finds violations or errors and tells a regulated entity to fix it, a difficult condition may be established particularly in those instances where causation in not clear. The regulated entity may have no more of an idea of what has caused a violation or error than does the regulator. For that determination a qualitative review is needed, not a quantitative one. The only way to arrive at a qualitative utility is to adopt reviews that look more intensively at the process and controls affecting the process of interest. Like the reviews to which financial examiners have moved, the overall techniques are similar but rely on very different experience bases. The Financial Examiner reviews process from the viewpoint of the reviewer's background in accounting, investment and/or financial management experience. The market conduct examiner reviews process from the viewpoint of the reviewer's background in underwriting, claims, consumer services, complaint handling and/or contract review experience.

The methodology discussed in this chapter is a review of management structures and controls of areas impacting market related issues. This approach is very effective at identifying *causes* for

violations of statute. The process review market conduct examination utilizes a review of the processes and controls developed for the operations of an insurer.

The use of process review methodology has several advantages including the following:

- It can be used on a targeted or routine basis.
- It requires less time to conduct such a review.
- A considerable amount of the review work can be conducted off-site.
- The review conducted tends to be corporate-wide rather than state-specific, thus increasing the multi-state utility of the process.
- It is readily able to identify causation and potential areas of regulatory slippage.
- It tends to be less confrontational since development of violations is not the primary function.
- It is highly predictive of where violations have occurred or are likely to occur thus allowing for proactive correction activity.
- It provides an opportunity for objective regulator/regulated entity dialogue.
- It provides value for the examination costs to the regulated entity.
- It can be used as a stand-alone examination or as a supplement to a conventional examination.
- It is responsive to domestic deference concerns.
- It offers the regulated entity the opportunity to improve compliance.

In its' September 30, 2003 report, GAO-03-433 Insurance Regulation, the Government Accounting Office recognized the need to include corporate governance (process review) elements in the examination approach with the following statement in its' conclusions: "In addition, existing computerized audit tools could allow regulators to substantially change the way examinations are done by shifting the focus from file review to a review of controls, systems, and processes and possibly by shortening the time needed for the examination."

B. Enabling Statute

The statute enabling a process review review is already found in state examination statutes and to some extent, in the admissions statutes. The language in the examination statutes is generally similar from state to state and provides broad authority to examine matters of regulatory interest to the states.

The provision of interest in the admissions statutes is that related to competent management. An enabling statute reads something similar to the following:

> "The Commissioner shall not grant or continue authority to transact insurance in this State as to any insurer or proposed insurer the management of which is found by the Commissioner after investigation or upon reliable information to be incompetent or dishonest or untrustworthy or of unfavorable business repute or so lacking in insurance company managerial experience in operations of the kind proposed in this State as to make such operation, currently or prospectively, hazardous to or contrary to the best interests of, the insurance-buying or investing public of this State, or which the Commissioner has good reason to believe is affiliated directly or indirectly through ownership, control, reinsurance transactions or other business relations with any person or persons of unfavorable business repute or whose business operations are or have been marked, to the injury of insurers, stockholders, policyholders, creditors, or the public, by illegality, or by manipulation of assets or of accounts or of reinsurance or by bad faith."

In some cases the reference is somewhat less direct. For example:

> "It is the duty of the commissioner to examine all requests and applications for licenses to be issued under the authority of this title, and the commissioner is authorized to refuse to issue any such licenses until the commissioner is satisfied of the qualifications and general fitness of the applicant in accordance with the requirements of the insurance laws."

In fewer cases the reference appears only in the Commissioners authority to revoke or suspend the regulated entity's license. For example:

> "The certificate of authority of an insurance company to do business in this state may be revoked or suspended by the commissioner for any reason specified in this title. Specifically, the certificate may be suspended or revoked by the commissioner for reasons that include, but are not limited to use of methods that, although not otherwise specifically proscribed by law, nevertheless render its operation hazardous, or its condition unsound, to the public or to its policyholders."

C. Review Considerations

An examination that utilizes the process review approach should be based on an understanding of the considerations that contribute to the efficacy of its processes. If the considerations and the logic that support the approach are not thoroughly understood, it is not likely that the method can be used effectively. This usually means that the examiner will be focusing on the written processes in use by the regulated entity.

1. Management Cycle

The management of a well-run regulated entity adopts processes that are similar in structure to ensure compliance. An absence or ineffective application of such processes in a regulated entity often results in an inconsistent application of the intended process. Ineffective processes are typically revealed by adverse findings in samples tested during the course of a market conduct examination. The processes include the following components:

- A planning function where direction, policy, objectives, and goals are formulated
- An execution or implementation of the planning function elements
- A measurement and control function that considers the results of the planning and execution, such as an internal audit function that looks to test and refine the effectiveness of the control or process
- A reaction function that utilizes the results of measurement to take corrective action or to modify the process to develop more efficient and effective management of the regulated entity's operations.

(a). Planning

The planning function in the management cycle is where direction, policy, objectives, and goals are formulated. The function is often predicated on a risk assessment and mitigation review. This function is found most often in the written policies and procedures of the regulated entity. These may also be called processes, strategies, or directives, and are tested for clarity, currency, functionality, and conflict with existing statutes. A proactive process that results in reduced error or violation is one that is clearly stated, up-to-date, fits its intended purpose, and complies with state laws. A reactive process generally results in observable errors and violations that the regulated entity can not avoid, because it is not structured to do so. Absences of policies suggest areas that need to be tested. Findings from this review are predictive of areas where an examiner's review of a sample will yield criticisms and errors. They also provide the examiner with data that helps identify whether problems found are systemic, intended, unintended, or true error. Finally, review findings aid the planners of the examination in determining what business areas may need further examiner attention.

(b). Implementation

When management-directed policies and written processes are disseminated throughout the regulated entity to appropriate and affected persons, implementation of the planning function in the management cycle occurs. Review of the implementation process is useful in determining whether the regulated entity is effectively distributing its directives. Testing the implementation of the planning function involves answering many questions including:

- What are your processes to ensure compliance?
- Are the processes in writing?
- Are the written processes coherent, readable, and on point?
- Are the written processes functional; that is, do they fit their intended purposes?
- Do the written processes comport with statutes and contain state exceptions where applicable?
- Are the written processes up-to-date?
- Are the written processes readily available to affected persons?
- Are the written processes utilized?
- Are affected persons trained in the use of the written processes?
- If the written processes are computerized, is the documentation for the resultant process adequate and does the process accomplish management's intent?
- If the written processes are not computerized, is the documentation for the resultant process adequate and does the process accomplish management's intent?
- Is the process periodically tested and updated?

(c). Measurement

The measurement function in the management cycle evaluates the results of planning and implementation. Measurements can be found in internal audits, management reports, supervisory reports, Board meeting minutes, minutes of the Compliance Committee, minutes of the Quality Review Committee, Market Conduct Examination reports, etc. The measurement function is concerned with the quality of information developed to inform the management and the Board of the results and the effectiveness of its directives. This function must develop information that confirms or refutes that the intended process is utilized, functioning and working. Without measurement, management cannot know whether its directions are being implemented effectively. The measurement process must be written, formal, and documented, and must occur with sufficient frequency to function as a reasonable tool. Without the measurement function in

place, the process used is passive or reactive, and the regulated entity will not have an effective means for knowing that errors or violations are occurring and be in a position to prevent them. This is where the regulated entity exercises the control over the intended process and is critical to the effectiveness of that process.

(d). Reaction

The reaction function in the management cycle is where a regulated entity has the opportunity to insert into the process what it learned through the measurement of its written processes. The process requires a means of utilizing the information arising from internal audits, management reports, and complaint systems. This is reflected in the responses to internal audits, management reports, supervisory reports, Board of Directors and Committee minutes, Market Conduct Examinations, and errors detected through the regulated entity's complaint system analysis.

This information needs to flow back directly to management so that it can use these findings to modify policies and written processes. The regulated entity should also resolve, through documented remediation, any errors that resulted in harm to policyholders and/or the public.

This information represents data that a regulated entity should know about itself. In some cases federal law insists on it. The Sarbanes-Oxley Act (SOX) essentially requires documentation that certain levels of corporate governance are in place and operating.

2. The Cycle as a Whole

The cycle of preparing instructions (policies and written processes), disseminating them, testing their results, and making modifications should be a continuous and ongoing cycle. A continuous and ongoing cycle is indicative of proactive management. Of course, not every regulated entity is fully proactive or fully reactive. A regulated entity can be at both ends of the proactive/reactive spectrum depending on the business area being reviewed. For example, a regulated entity with a proactive claims environment may have a reactive underwriting environment. In some cases a specific process may have components of the proactive/reactive scale. Section I describes a method to evaluate where, on a comparative scale, a particular process is located. The levels resulting from such an evaluation are described with key characteristics in Section I. The levels are:

0 Lack of any recognizable processes / practices.
1 Processes are ad hoc and disorganized.
2 Processes follow a regular pattern.
3 Processes are documented and communicated.
4 Processes are monitored and measured.
5 Good practices are followed and automated.

3. Policies and Procedures

Policies and procedures are two terms heard with some frequency, but they do not tend to evoke an image of how they might be used in a regulatory application. These terms in fact denote two different things.

(a). Definitions

"Policies" are the high-level general principles by which an entity guides the management of its affairs. It is not critical for the regulator to be concerned with policy statements except to the extent that they represent management's direction to proceed in a particular manner. Policies may be the basis for procedures. Policies are generally too vague to require any regulatory interaction unless they are obviously in conflict with a statute.

"Procedures" are the specific methods or courses of action used to implement a policy or corporate directive. Many companies have processes in place that do not derive from policy and do not really constitute procedures. In this chapter, a written procedure is referred to as a written process. How a regulated entity structures and documents its written processes tells the regulator a considerable amount about the regulated entity. Written processes indicate whether a regulated entity is proactive or reactive in the management of its operations; whether the corporate compliance activities are a cause for concern; and whether particular areas of concern to the regulator are managed in a way to avoid the need for regulatory interaction.

(b). Procedure Review

Throughout the *Handbook*, there are suggestions in the review criteria for the various standards to review a particular procedure. For example, Standard 2 for Operations/Management in Chapter 16 states, "Review regulated entity records, central recovery and backup procedures." It then adds, "Review computer security procedures." Standard 3 of the same section adds, " Determine if the regulated entity has procedures in place to prevent persons convicted of a felony involving dishonesty or breach of trust from participating in the business of insurance." It also adds another, "Determine if the regulated entity has procedures in place to provide information regarding fraudulent insurance acts to the insurance commissioner and in a manner prescribed by the commissioner." There are many other examples of a procedural or process review indicated in the *Handbook*. Unfortunately, the *Handbook* is silent concerning what constitutes such a review. The review of a procedure should determine whether the management cycle relating to the process at interest adequately considers each of the elements noted in the discussion of the management cycle.

(c). Testing the Process

Management analysis of written processes is a top-down look at how a regulated entity operates. It can be thought of as a vertical view of a regulated entity's operation. It represents a somewhat different skill set than typically used in the conventional market conduct examination that is more focused on a "bottom of the ladder" view or horizontal view of a regulated entity operation. Both methods

are valid and may be used in conjunction with each other. To test the validity of the use of this approach, laboratory states have conducted examinations utilizing both methods, process review and conventional including sampling. The examiners have then compared the results of the samples impacted by particular written processes with the management analysis performed relating to that process and the findings have been striking.

Since most examinations conducted during the testing phase have been comprehensive examinations with reasonable levels of sampling, the samples support the notion that the proactive/reactive analysis is a valid tool. The samplings of business areas for companies with proactive tendencies generally yield fairly "clean" results. Where the analysis indicated that there was a passive or reactive process in place or no process in place, the samples revealed considerable human error, systemic error, and certainly more deliberate errors than are seen with proactive management.

(d). Processes to Review

The written processes to review vary depending on the lines of business written by a regulated entity, the reason for examination (target or "baseline"), and a variety of other considerations. Each of the standards appearing in chapters 16 through 24 of the *Handbook* is a potential review subject.

(e). Additional Considerations- The Case for Ethical Management

In addition to the considerations noted above, ethical management, management attitude, and confirmation of management processes are appropriate.

A critical element in any scheme to develop allocation of examiner resources is ethical management. Ethical management is not a direct standard currently in the *Handbook* nor is it a statutory requirement of the regulation of the business of insurance. However, the need for ethical management is strongly implied through the structure of those statutes. For example, a pattern of misrepresentations will raise strong doubts about an insurer's ethical base. The standards and tests found in the Handbook are generally objective indicators that can measure this behavior. Factors such as regulated entity attitude and negative, confrontational, or resistive reaction by regulated entity management may be more subjective, but no less apparent, to the regulator. Likewise, a regulated entity with a reputation for being a "good corporate citizen" typically demonstrates a willingness and structure that is responsive to its customers.

D. Application of the Process Review Methodology

The application of a process review methodology consists of several steps with variations depending upon the particular process under review. The steps are as follows:

- Determine which processes to review
- Provide an information request to the regulated entity.
- Consider the quality and completeness of responses
- Test the structure of the process
- Test the content of the particular process
- Confirm the process is as represented
- Document the review
- Determine the maturity level of the particular process reviewed
- Determine whether issues that arise merit reporting in a report or in a management letter

1. Determination of Processes to Review

The most likely use of this approach will be to apply a combination of the examination standards already outlined in the *Handbook* or state specific handbook and a process review review of selected processes. The approach will be generally driven by the reasons for conducting the examination. The examination supervisor will need to evaluate, given the information derived from market analysis, which standards in the *Handbook* require a conventional approach or quantification and which standards require a process review approach. In some cases, both methods will seem useful. In such cases, the decision to apply process review methodology should be deferred until sample results suggest a need.

2. The Information Request

Reasonable structure to the information request is critical to a timely and thorough understanding of a particular process. There are a series of requests that should be made for any process reviewed. Some of these are generic to all processes while others are specific to the particular process.

(a). Risk Assessment and Mitigation Document

The examiner will want to know what led the regulated entity down a particular path in its development of a process. For this reason, the first item requested should be a copy of the risk assessment and mitigation document that formed the starting point for the process. This document should identify and enumerate the operational and regulatory risks to which the regulated entity is exposed and what it needs to do to control or mitigate that risk. In many cases this document will not exist and that will make the examiners effort a bit more difficult. This situation may be partially overcome with interviews of mid and upper management.

(b). Written Process
The examiner should request a complete description of the process including applicable written procedure used to operate and control the process. The regulated entity should also describe how errors are detected and corrected in the process. The regulated entity should note if the process is contained within a computerized application. If the process is computerized, the documentation for the process and how it works should be described along with any exception reports .

(c). Process Communication and Training
The examiner should request a description to indicate how the process is conveyed to persons affected by it and how those persons are trained in its use. The response should include how the process is accessed; describe training related to the process and how management confirms that the process is being utilized.

(d). Monitoring the Process
The examiner should request a description of the methods used to monitor compliance with the process to ensure it is performing as intended. The response should include a description of the frequency of measurement. Also request copies of any management reports or forms used for this purpose.

(e). History of the Process
The examiner should request a five-year history and description of changes to the process.

(f). Person Responsible for the Process
The examiner should request the name, position and title of the person in the regulated entity responsible for the effective operation of the process under review.

Additional requests should be designed for the specific process under review. For some processes the added questions will be extensive while in others none will be necessary. A good source for additional information request related to a specific process is the testing criteria for a related standard in the *Handbook.*

3. Quality of Information Request Responses
The examiner, where possible, should receive a number of process responses prior to arriving on-site. This provides an opportunity to determine if the regulated entity has provided complete responses of sufficient quality to be useful. The examiner should assume a lack of understanding initially as to process review generally by the Insurer. The Examiner-in-Charge might want to arrange a test of a process selected jointly with the regulated entity to assure that the level of understanding of expectations is reasonable. Since the information contained in the responses is generally sensitive, additional caution to maintain confidentiality is necessary.

4. Testing the Structure of the Process Generally

The first level of testing a process is focused on the quality of the process as a process. These are tests that apply to all processes reviewed using process review methodology. They are generic tests. The items that follow are expressed as questions that should be posed to gain an understanding of review of the process. The examiner should provide responses to these questions in the documentation of his or her review.

(a). Policy Statement

This is a broad statement intended for adoption by management of a regulated entity. It is the basis on which procedures, standards and processes are developed for the operation of the various parts of the regulated entity.

Is there a policy statement that generally provides the overall direction is expected to take on compliance matters?

(b). Risk Assessment and Identification

A Risk Identification is a statement describing an element of risk that is inherent in the performance of some operation of the regulated entity. Risks may be operational, environmental, reputational or the effect of a contract provision, applicable statute, rule, regulation or court precedent. In each case failure to manage the risk identified can result in a violation of a contract provision, applicable statute, rule, regulation or a court precedent. The Review Criteria associated with a Standard are the principle source for Risk Identifications.

Has a risk assessment been conducted? Are all the risks associated with a particular function adequately identified? Does the risk assessment address compliance issues?

(c). Mitigation Potential

For each risk identified, there are potential mitigations available that provide the means for a regulated entity to, mitigate, reduce or avoid the risk outlined. The categories of mitigation can be used singly or more effectively in combination. Management of a regulated entity must determine which combination best achieves the result desired within the framework of their particular operations and circumstances. While a particular mitigation potential category may not be necessary for every Risk Description, it should be evaluated for applicability and potential impact. Listed below are the mitigation categories with descriptions:

- *Process* – Process is the written instruction provided to guide the affected party or parties in applying the mitigation.
- *Intent* – Intent is usually in a written form and is the basis for establishing a consistent measurement or baseline for periodic oversight and review. It can be viewed as a policy statement specific to the risk identified.
- *Structure* – Structure refers to the standards or guides that are established, monitored, tracked and enforced as they relate to mitigation of the Risk Identification.

- *Research-Internal* – Research-Internal refers to research or compilations related to the risk arising from noncompliance with the Company's contract provisions or Company policies.
- *Research-External* – Research-External refers to research or compilations related to the risk arising from noncompliance with applicable statutes, rules, regulations or court precedent.
- *Reference* – Reference refers to the tools created for affected persons in the Company resulting from Research-Internal and Research-External.
- *Timeframe* – Timeframe refers to a mitigation that has an associated amount of time in which an activity must occur. These are frequently stated in contract provisions, and applicable statutes, rules or regulations.
- *Access* – A mitigation process cannot be effective if it is not circulated or accessible to persons expected to effect change on the process.
- *Feedback* – The effectiveness of a mitigation process is enhanced if there is a well-structured feedback mechanism at the operational level to ensure that flaws inherent in the process are identified and corrected. The same is true for errors arising from operation of the process. Flaws and errors must be corrected or remedied in order to improve the process.
- *Review* – Periodic review of the process should occur at the departmental level to assure that the mitigations designed for a particular Risk Identification are effective and working as intended.
- *Modification* – Mitigations must remain dynamic and reflect continuous improvement in order to remain effective and valid. Improvements learned from the operation, feedback and review of a mitigation process must be utilized to revise the process.
- *Training* – Personnel must be trained in the use, expectations and operation of the process if it is to be applied appropriately, consistently and effectively.

Do the mitigations provided adequately address the risk noted? Are any obvious mitigation elements missing?

(d). Process in Writing

A written structured process is important to consistently meet regulatory requirements; avoid violation of statute; as well as improve service quality to policyholders. These statements describe a component of a process or procedure used to address a risk identified and its accompanying mitigation. Notice that the mitigation potential described above is frequently a procedure or process component.

Is a written procedure or process in place? The absence of a written policy or procedure potentially allows for inconsistent application of the process. If not in writing, how does the regulated entity assure consistent application of the process? Exceptions should be minimal for the process to be effective.

(e). Clarity of Description
Is the procedure or process unambiguous, clear and readable? Does the examiner understand the process or procedure described? Would employees understand the process or procedure? Examiner should explain analysis.

(f). Accessibility
Is the procedure or process accessible and provided to persons subject to its provisions? How the procedure or process is made accessible to those persons? How are they made aware of the existence of the procedure?

(g). Training
Does the Regulated entity provide adequate training to persons affected by the procedure or process? What training is provided? How does the Regulated entity ensure those affected by the process receive training? How are employees re-trained if a problem is found? Are steps to avoid bias adequate?

(h). Measurement and Control
Measurement is the effort applied by the regulated entity to determine that a process is conducted in the manner expected and is working. Control is the management feature in place to guide the process in the direction intended. Most controls make deviation from the intended path difficult if not impossible. Some provide for correction of performance in order to make sure that enterprise objectives and the plans devised to attain them are accomplished. This is the method by which management assures that a process or procedure it has adopted as their mitigation to an identified risk is working as intended. The control provides the opportunity to address defects or flaws in a process and achieve continuous improvement. There are three categories of controls that a Company should utilize: feedback controls, concurrent controls and pre-controls. The difference among the categories of controls is when they occur: feedback controls focus on past performance and concurrent controls occur while work is being performed. A pre-control is a control effort made to prevent an undesirable outcome and may include setting policies, rules and procedures. Relying solely on feedback controls is a reactionary stance that may not uncover defects or flaws in a process until after they have occurred. Delayed feedback increases an organization's operational, regulatory and reputation risk. In order to obtain assurance that a process or procedure is working as intended, a Company should incorporate all three categories of controls. Some of the types of measurement and control that an examiner should expect to see include:

- Internal or external Audit;
- Checklists;
- Computer Anomaly or Error Reports (including Expert Systems Use);
- Intervention by Supervisor or Manager;
- Regular Management Reports;
- Periodic Sampling;
- Employee evaluations; and/or,
- Training or retraining.

Are appropriate measurements or controls in place to test the functioning and efficacy of the procedure or process? How often is the procedure or process reviewed, tested or audited? How does management exercise oversight and control of the process? How is the procedure or process reviewed, tested or audited?

(i). Use of Measurement
How does management utilize the results of its measurement structures? Explain and provide examples, how the results of measurement structures are utilized.

(j). Performing as Intended
Is the procedure or process performing as intended? How does the regulated entity know the procedure or process is performing as intended? If it is not, where is it deficient? Is it possible to know if the procedure or process is performing as intended?

(k). Currency of Process
Is the procedure or process current? When was process last modified? Have events suggested a need for update such as legislation or product line change? Revisions and their reasoning if provided should be explained. Were revisions proactive? Reactive? Are any changes the result of an examination?

5. Testing the Content of the Specific Process
The second level of testing a process is focused on the content of the specific process. These are tests that apply only to the specific process reviewed using process review methodology. A good source for tests applicable to a specific process is the testing criteria for a related standard in the *Handbook*. The examiner should provide responses to these questions in the documentation of his or her review.

6. Process Confirmation
The third level of testing a process is focused on the confirmation that the process is in operation. Often a regulated entity claims to maintain a process or procedure, but in fact it does not. In using this methodology it is important that the examiner confirm the existence **and use of** the processes a regulated entity purports to utilize. This can be accomplished in several different ways:

(a). Walk Through
The first exercise is conducting a "walk-through". It provides the examiner with the opportunity to question how the process actually functions. The examiner should have questions prepared so he or she can achieve a thorough understanding of what the regulated entity does.

(b). Interview
The next method is the use of interviews of upper and mid-level managers and persons using the purported written process. Some companies may use an informal or undocumented process. The efficacy of such processes should also be

considered. The challenge with an undocumented process is that it is frequently without measurement, meaning that the regulated entity really does not know how that process is working. It also means that there is an increased likelihood of inconsistent application, posing potential unfair discrimination issues.

(c). Sampling
The final method is to actually test a sample of files to determine that the process has been applied as described.

7. Documenting the Review
The process review methodology can be more subjective than application of a standard that has only a pass or fail option. It is therefore especially important that examiner work be carefully documented. Worksheets are recommended to assure that consistency of application is maintained.

8. Determine Maturity Level of the Process
The review of procedures and processes is intended to aid in the understanding of the regulated entity efforts to comply with regulatory requirements and to manage its regulatory risks. This is done through a review of the procedures, processes and controls utilized by a Company to manage its exposure to regulatory risk and to mitigate the effects of that exposure. To be useful, a means to place processes on a comparative scale is needed. This is described in Section I.

9. Report or Management Letter
The discovery of flawed process may not result in a violation of statute or regulation. It may not be an actual violation but may represent a potential for violation. The risk for such an event may be low and not warrant inclusion in an examination report. Some states utilize a management letter for low risk situations when it is desirable to provide the regulated entity with an opportunity to correct or repair a system flaw. A management letter is less threatening to the regulated entity and provides an opportunity for more cordial communication and resolution.

E. Uses of the Process review Methodology
The use of process review methodology has a wide range of utility for insurance organizations. It can be used as a stand-alone form of examination or it can help to a narrow a focused review of an area of the regulated entity's operations. It can be useful to augment a conventional examination.

1. Domestic Baseline
The phrase "baseline examination", as used here, contemplates an initial examination of a regulated entity conducted by a state. It is expected to provide a "baseline" of information on which to base future regulatory oversight or absence thereof.

The advantage in this instance is that the state of domicile possesses the authority to look at business areas that other states cannot. This is true whether the domestic regulated entity is a large writer in the domestic state or writes no business at all in the state. The

written processes a regulated entity utilizes are generally corporate-wide. The domicile state has the opportunity to look at how the regulated entity treats compliance on a scale that is broader than its own immediate interests and to provide other states with information of strong interest to them. This is a meaningful way to address a state's interest in achieving domestic deference. It also happens to enhance efficiency.

Typical baseline examinations are conducted on a state's domestic insurers. The examinations look at a regulated entity's total complaint population to determine if there are any detectable patterns that may suggest a need for regulatory interaction. The reviews should not be limited to a single line of business or to a single jurisdiction, but they can easily consider all jurisdictions in which the regulated entity operates. Examiners conducting the baseline examination consider complaints directed at the regulated entity, its producers, its vendors, etc. The object is to look for developing patterns anywhere and to determine if the regulated entity maintains processes to correct or repair the issues driving the patterns.

In a full scope base line, examiners will review 40 or more written processes for each regulated entity examined, unless the examination is for a group of companies using the same written processes and controls. The process should take approximately three to five days for each process in the examination scope assuming all requested materials are available and examiners are appropriately trained in the review process. Generally, half of the work can be conducted off-site, resulting in travel-related expense savings. This review also replaces the market conduct work performed as part of a financial examination. The expectation is that this will provide considerable information about each of the state's domestic companies, thereby allowing better future allocation of a state's regulatory resources. For example, this type of examination can identify companies with reactive or passive management styles and, consequently, allow a state to focus greater attention upon those companies. Data developed in this process should be incorporated into a state's market analysis efforts, thus providing a true baseline for future efforts.

It is not unusual to find a regulated entity with few, or no, written processes. Even more commonplace is finding a regulated entity that has no way to tell whether its written processes are working since measurements are non-existent. If the regulated entity writes a line of business that does not generate consumer complaints, there may be few other valid indicators of regulatory concern. Maintenance of the data in the baseline, once acquired, is easy to accomplish with minimal effort.

The baseline examination departs substantially from the definition of a conventional market conduct examination. However, in view of recent NAIC discussions, experience in proactive/reactive analysis, and the need for states to accomplish their examinations with minimal resources, states might well consider a baseline examination. Examinations that focus on the regulated entity operations and management, proactive vs. reactive analysis of each business area, and a detailed review of patterns that arise from complaint systems provide an insurance commissioner with the necessary data to determine when

and where a more limited-scope, targeted examination is appropriate in addition to enhancing data derived from market analysis.

2. Target Examination
The analysis completed in the process review examination is exceptionally predictive; it lends itself to a more precise application of Department resources. Other indicators used in market analysis may suggest that a specific review of a particular process is warranted. This next level of review may be accomplished using the process review methodology as a stand-alone process or combined with a conventional market conduct examination.

3. Identification of Causation
When a trade practice or repeat violation of statute is found through market analysis, a conventional examination or complaint review, using a focused application of process review methodology is useful in identifying causation. Once the cause of the violation is determined, the regulator is able to develop recommendations to repair the issue or structure remediation with precision.

4. Market Analysis Supplement
Users of market analysis are seeking ways to gather and review data that are valid indicators that can be used to demonstrate the need for regulatory interaction. Process review methodology is a valuable tool that provides a means of achieving this goal. However, because the process is relatively new, it will be some time before there is an adequate database of findings from the application of process review methodology upon which states can rely.

F. Requests for Information

This section addresses the Requests for Information made by the examiner(s). Please note that the listed requests for a procedure are not fixed or absolute. These requests do not limit the examiner from posing additional questions, when warranted, in efforts to enhance the understanding of the Regulated Entity's response(s). If no response is provided, the fact should be part of the examiners documentation.

1.	Does the regulated entity have a (name of process) in place?
2.	Please provide a copy of the most recent risk assessment and mitigation document for the regulated entity's (name of process) process.
3.	Please provide a copy of the written (name of process) process or procedure. If a written procedure does not exist, so state, and describe the process the company uses in the absence of a written procedure.
4.	Please provide a complete description of the controls utilized to ensure proper operation of the regulated entity's (name of process) process. Please provide documentation.
5.	Please provide a copy of policy statement or statement of intent related to the process.
6.	Please describe how errors are detected and corrected in the process. If the process is contained within a computerized application, please describe the process and how it works. Please provide documentation.
7.	Please describe in detail how (a). the process is conveyed to persons affected by it. (b). persons utilizing the process are trained in its use and the content of the training. (c). the process is accessed. (d). the Company confirms that the process is being utilized.
8.	Please (a). describe the methods used to monitor compliance with the process to ensure it is performing as intended. (b). describe the frequency of measurement and exercise of control. (c). provide copies of any forms used for this process. (d). provide copies of any management reports arising from this process. (e). describe what management does with measurements and reports arising from this process. (f). describe how bias within the process is detected and avoided.
9.	Please provide a five-year history and description of changes to the process.
10.	Please identify the person and position in the Company responsible for the effective operation of this process. Include Name, title, phone contact and email address.

In addition to the first ten requests common to all processes, there are requests to be considered that are specific to a particular process. These are listed by process. An additional column is provided to indicate the affected standard.

Process 001 – Internal or External Audit

Source:	Ch16§A01
Note: The focus is on the internal or external audit process utilized to verify appropriate function and to perform analysis of market conduct issues including the various business areas considered in a market conduct examination. A regulated entity that has no internal or external audit function lacks the ready means to detect structural problems until after problems have occurred.	
11. Please provide a description of the frequency of application and triggering events for audit.	Ch16§A01
12. Please provide access to reports generated by the audit process during the Examination Period. This request encompasses audits conducted by or for the regulated entity's internal audit department as well as other operational audits conducted by affected departments. Indicate location for access.	Ch16§A01
Note: The State and the examiners are aware that these documents may be viewed as proprietary and sensitive. The reports will be viewed on the company premises after commencement of the on-site portion of the examination. The examiners, based on the results of audit findings for which the company has taken appropriate corrective action and remediation, will not recommend administrative action. The purpose for viewing these documents is to determine that management directives are in compliance with statute and that errors found through the audit process are corrected. It is not used as a device to discover and quantify violations, rather it is used for qualitative purposes. Any special needs or concerns should be discussed with the Examiner in Charge.	
13. Please describe how recommendations made in audits are tracked until implemented or resolved. Cross reference to appropriate location in the written procedure.	Ch16§A01
14. Does the audit function include edit and audit procedures to screen and to check data submitted by the regulated entity's statistical agent.	Ch16§A01
15. Does the regulated entity conduct periodic reviews of creditors with respect to its credit insurance business with such creditors?	Ch16§A01

Process 002 – Computer Security

Source:	Ch16§A02
Note: The focus is on the existence of sufficient protection to the regulated entity systems. Examiners should avoid requiring information that itself poses a threat to that protection.	
11. If changes to contracts can be made electronically or verbally, please describe process for the change and who has authority to make such changes.	Ch16§A02
12. How does the regulated entity detect and respond to attempts at unauthorized access to computer data? How does the regulated entity respond to successful unauthorized access? Has the regulated entity experienced inappropriate intrusions?	Ch16§A02
13. What steps are taken to ensure there is adequate security of applicant/insured data during electronic transfer of data? Please address the security of both data "at rest" and data "in motion". Are security audits conducted and if so with what frequency.	Ch16§A02

Process 003 – Anti fraud

Source:	Ch16§A03
Note: Examiners are interested in internal as well as external fraud response and detection mechanisms.	
11. Please provide a copy of the fraud warning notice provided with claims processing.	Ch16§A03
12. Please describe how the regulated entity determines that its anti-fraud efforts are adequate.	Ch16§A03
13. Please describe staffing for the program and number of suspected fraud cases referred to the Commissioner during the examination period.	Ch16§A03
14. Please describe procedures in place to prevent persons convicted of a felony involving dishonesty or breach of trust from participating in the business of insurance.	Ch16§A03
15. Does the regulated entity utilize a reporting mechanism to provide information regarding fraudulent insurance acts to the insurance	Ch16§A03

commissioner?	

Process 004 – Disaster recovery

Source:	Ch16§A04
11. Please describe any use of the regulated entity disaster recovery plan during the period of the examination.	Ch16§A04
12. Please describe how often elements of the disaster recovery plan are tested and the methods used to critique results.	Ch16§A04
13. Please describe the regulated entity's off-site backup for its data and the frequency of update. Is the backup site sufficiently distant geographically so as not to expose primary and backup sites to a common disaster?	Ch16§A04

Process 005 – Vendor oversight and control

Source:	Ch16§A05 Ch16§A06
Note: "Vendor" refers to a third party provider of services including but not limited to MGA's, GA's, and TPA's related to one or more of the following functions: • **Complaint handling** • **Marketing and Sales** • **Producer Licensing** • **Policyholder Service** • **Underwriting and Rating** • **Claims Handling** • **Grievance Handling** • **Network Adequacy** • **Provider Credentialing** • **Utilization Review** **It does not include supply vendors or vendors providing equipment such as computers, maintenance, landscaping, communications, etc.**	
11. Provide a list of any vendors including but not limited to MGA's, GA's and TPA's used by the regulated entity to perform functions in the complaint handling, sales and marketing, producer licensing, policyholder services, underwriting and rating, claims handling	Ch16§A05 Ch16§A06

grievance handling, network adequacy, provider credentialing and utilization review areas, and describe the scope of authority extended. If license for the vendor is required, indicate the type of license held.	
12. Provide a copy of the contract(s) used by the regulated entity for vendors.	Ch16§A05 Ch16§A06
13. Please describe oversight and control by regulated entity of a vendor.	Ch16§A05 Ch16§A06
14. Provide a copy of each vendor audit completed during the Examination Period.	Ch16§A05 Ch16§A06
15. Describe how performance standards for vendors are established, monitored and documented.	Ch16§A05 Ch16§A06

Process 006– Records, central recovery and backup (Includes maintenance, content and retention)

Source:	Ch16§A07
Note: The records of interest include records for complaint handling, sales and marketing, producer licensing, policyholder services, underwriting and claims handling. For Health records this also include grievance procedures, network adequacy, provider credentialing, quality assessment and utilization review functions.	
11. Please describe the various media used for records affected by market regulation concerns.	Ch16§A07
12. Please describe step taken to maintain orderly organization, legibility and structure of files.	Ch16§A07
13. Please provide a copy of the regulated entity record retention schedule.	Ch16§A07
14. Please describe any failed recoveries.	Ch16§A07
15. Please describe record backup process.	Ch16§A07

Process 007–License Authorization

Source:	Ch16§A08
11. Please describe how the regulated entity avoids writing business not authorized by its certificate of authority.	Ch16§A08

Process 008– License Authorization-Title

Source:	Ch18§A01 Ch18§A02 Ch18§A03 Ch18§A04
Title Insurance 11. Please describe how the regulated entity avoids writing business not authorized by its certificate of authority.	Ch18§A01
Title Insurance 12. Explain how the regulated entity assures that no member of its board of directors may be a title agent who wrote more than 1% of its direct writings for the previous year.	Ch18§A02
Title Insurance 13. Please describe the errors and omissions policy and fidelity coverage (or alternative financial arrangement, where permitted) requirements to which the regulated entity is subject.	Ch18§A03
Title Insurance 14. Please describe all business diversification requirements to which the regulated entity is subject.	Ch18§A04

Process 009 – Examination Facilitation

Source:	Ch16§A09
11. Please describe how the regulated entity monitors its interaction with examiners to assure timely delivery of requested data.	Ch16§A09

Process 010 – Assertions of Privilege

Source:	Ch16§A09
Note: "Assertions of Privilege" refers to the process whereby the company asserts some form of privilege to deny access to certain documents. The primary privilege of this type is the attorney-client privilege. The privilege is asserted to protect communications between an Attorney and a client. The party asserting the privilege bears the burden of demonstrating its existence and applicability of the privilege is determined on a case-by-case basis. The regulated entity should have a written policy regarding the use of attorney-client privilege, as state or federal law governs the protection afforded by the privilege. "Assertions of Privilege" may also be attempted for self-evaluative or self-critical analysis privilege and privilege may be claimed for proprietary documents, however, these forms of privilege may not be recognized by the examining state.	
11. If a document for which a privilege is claimed is critical to examiner review of an issue, to whom in the Company can an appeal be made and what is the process for appeal?	Ch16§A09
12. Please describe the various Assertion of Privilege types used by the regulated entity and the logic for each type.	Ch16§A09

Process 011 – Staff training

Source:	None
Note: The staff of a regulated entity includes a wide variety of job descriptions. The particular staff in whom we are interested include • **reception staff** • **complaint handling staff** • **sales and marketing staff** • **producer licensing staff** • **policyholder services staff** • **underwriting staff and** • **claims handling staff.** **In addition in the health insurance field the particular staff in whom we are interested include** • **grievance handling staff** • **network adequacy staff** • **provider credentialing staff and**	

• **utilization review staff.** **If the various areas noted are subject to separate procedures, so note and provide separate responses for each area.**	
11. Please describe the process for determining staffing needs. Please describe the training regimen for each area listed in the opening note.	

Process 012 –Privacy Protection

Source:	Ch16§A10 Ch16§A12 Ch16§A13 Ch16§A16 Ch16§A17
11. Please describe the regulated entity's standards and security to safeguard nonpublic customer information. Please describe the factors considered in developing these safeguards.	Ch16§A10 Ch16§A12 Ch16§A13 Ch16§A16 Ch16§A17
12. Please provide a copy of all notices and disclosures provided to customers, former customers and consumers who are not customers, for the protection of consumer information and privacy including but not limited to "Notice of Information Practices", disclosure of nonpublic personal financial information, and disclosure of nonpublic personal health information.	Ch16§A10 Ch16§A12 Ch16§A13 Ch16§A16 Ch16§A17
13. Please describe the process for correcting, amending, or deleting personal information held by the regulated entity.	Ch16§A10 Ch16§A12 Ch16§A13 Ch16§A16 Ch16§A17
14. Please describe the regulated entity feedback process that monitors for appropriate use of the "Notice of information Practices", timely provision of notices, ensures errors are appropriately remedied, and process changes are implemented to prevent future errors.	Ch16§A10 Ch16§A12 Ch16§A13 Ch16§A16 Ch16§A17
15. Please provide a copy of the opt-out form used by the regulated entity with any instructions for its use.	Ch16§A10 Ch16§A12 Ch16§A13 Ch16§A16 Ch16§A17
16. Please explain how persons responsible for collecting personal	Ch16§A10

information on behalf of the regulated entity in connection with insurance transactions are trained (including agents and TPA's) in the appropriate handling of such information.	Ch16§A12 Ch16§A13 Ch16§A16 Ch16§A17
17. Please describe internal limitations to access of personal information, adverse underwriting decisions and investigative consumer reports. Please describe limitations on subcontractors to access of personal information, adverse underwriting decisions and investigative consumer reports.	Ch16§A10 Ch16§A12 Ch16§A13 Ch16§A16 Ch16§A17
18. Please describe regulated entity's system for allowing production of all disclosures made, routine of otherwise.	Ch16§A10 Ch16§A12 Ch16§A13 Ch16§A16 Ch16§A17
19. Please provide specific and accurate reasons for adverse underwriting decisions.	Ch16§A10 Ch16§A12 Ch16§A13 Ch16§A16 Ch16§A17
20. Please provide a copy of the opt-out form used by the regulated entity with any instructions for its use.	Ch16§A10 Ch16§A12 Ch16§A13 Ch16§A16 Ch16§A17
21. Please provide the identity of any vendors holding and/or using personal information concerning insureds or prospective insureds of the regulated entity and their reasons for doing so. The list should also contain a contact name, phone number and email address.	Ch16§A10 Ch16§A12 Ch16§A13 Ch16§A16 Ch16§A17
22. Please describe efforts to prevent unfair discrimination against customers and consumers who are not customers who have opted out from the disclosure of nonpublic personal financial information to nonaffiliated third parties or who have not authorized disclosure of nonpublic personal health information.	Ch16§A10 Ch16§A12 Ch16§A13 Ch16§A16 Ch16§A17

Process 013 – Management of Insurance Information

Source:	Ch16§A11
Note: This process applicable for states that have adopted the NAIC Insurance Information and Privacy Protection Model Act referred to as the 1982 Model Act.	
11. Please provide training manuals and bulletins that address the	Ch16§A11

management of insurance information including handling, disclosing, storing or disposing of insurance information.	
12. Please describe the regulated entity's standards and security to safeguard insurance information. Please describe the factors considered in developing these safeguards.	Ch16§A11
13. Please provide a copy of the contract used by the regulated entity to share information shared with a contractor of the regulated entity.	Ch16§A11
14. Please describe the process used by the regulated entity before disclosure of information held.	Ch16§A11
15. Please provide the identity of any vendors holding and/or using personal information concerning insureds or prospective insureds of the regulated entity and their reasons for doing so. The list should also contain a contact name, phone number and email address.	Ch16§A11
16. Please provide a copy of the "Notice of Information Practices" provided to all applicants or policyholders for the protection of consumer information and privacy. If this responsibility has been delegated to the producer, please provide the contractual language that supports the delegation and a discussion of the controls utilized to assure that the delivery has occurred.	Ch16§A11
17. Please specify those questions posed by the regulated entity designed to obtain information solely for marketing or research purposes.	Ch16§A11
18. Please describe the regulated entity's use of investigative consumer reports and how reports are initiated.	Ch16§A11
19. Please describe the process for correcting, amending, or deleting personal information held by the regulated entity.	Ch16§A11
20. Please describe the controls used by the regulated entity for information or data held by vendors or producers.	Ch16§A11

Process 014 – Nondisclosure of nonpublic personal financial information

Source: **This Process Review Still Under Construction**	Ch16§A14 Ch16§A15
11. Identify vendors holding and/or using nonpublic personal financial information concerning insureds or prospective insureds of the	Ch16§A14 Ch16§A15

regulated entity and their reasons for doing so.	
12. Please provide a copy of all notices and disclosures provided to customers and consumers for the protection of nonpublic personal financial information.	Ch16§A14 Ch16§A15

Process 015 – Reports to Insurance Departments

Source: **This Process Review Still Under Construction**	Ch16§A18 Ch21§A01 Ch22§A01
Note: This process impacts loss statistical reports, medical professional liability loss reports, MCAS data, state specific data calls, etc.	
11. Please describe the process for resolving data errors.	Ch16§A18 Ch21§A01 Ch22§A01
12. Please explain the reconciliation process used before data is submitted.	Ch16§A18 Ch21§A01 Ch22§A01
Medicare Supplement 11. Provide copies of reports relating to each resident of the state for whom the entity has more than one Medicare supplement policy or certificate in force.	Ch21§A01
Long Term Care 11. Provide a copy of any reports by the regulated entity in compliance applicable statutes rules or regulations for Long Term Care.	Ch22§A01

Process 016 – Title Plant Maintenance

Source: **This Process Review Still Under Construction**	Ch18§A05
Title Insurance 11. Describe frequency of title plant update and testing for accuracy,	Ch18§A05

Process 017 – Certifications

Source: **This Process Review Still Under Construction**	Ch19§A01 Ch21§A03 Ch22§A01
Life and Annuity 11. Describe the specialized product training provided to producers and the frequency of the training.	Ch19§A01
Medicare Supplement 11. Provide a copy of the certification by the regulated entity is in compliance with standards for claims payments on the Medicare supplement insurance experience reporting form.	Ch21§A03
Long Term Care 11. Provide a copy of any certifications by the regulated entity in compliance applicable statutes rules or regulations for Long Term Care.	Ch22§A01

Process 018 – Medicare Select Plan of Operation

Source: **This Process Review Still Under Construction**	Ch21§A01
Medicare Supplement 11. Please provide a copy of the plan of operation.	Ch21§A01

Process 019 – Producer Compensation - Medicare

Source: **This Process Review Still Under Construction**	Ch21§A04
Medicare Supplement 11. Please explain how the determination is made that the regulated entity does not provide producer compensation that encourages replacement sales.	Ch21§A04

Process 020 – Surplus Lines Bonds

Source: **This Process Review Still Under Construction**	Ch24§A01
11. Please provide a listing of all statutorily required bonds.	Ch24§A01

Process 021 – Surplus Lines Reports

Source: **This Process Review Still Under Construction**	Ch24§A02
11. Please provide a copy of any reports filed in compliance with applicable statutes rules or regulations.	Ch24§A02

Process 022 – Surplus Lines Taxes

Source: **This Process Review Still Under Construction**	Ch24§A03
11. Please describe methods used to prpperly allocate premium and taxes to appropriate state on a multistate placement.	Ch24§A03

Process 023 – Surplus Lines Unearned Premium Calculations

Source: **This Process Review Still Under Construction**	Ch24§A04
Surplus Lines 11. Please explain how determinations are made for unearned premiums and how refunds are made and tracked.	Ch24§A04

Process 024 – Reserved for Future Use (TPA Financial Security)

Process 025 – Reserved for Future Use (Viatical Reporting)

Process 026 – Reserved for Future Use (Premium Finance Compensation)

Process 027 – Reserved for Future Use (Prevention of Anti-Competitive Practices-Advisory Organizations)

Process 028 – Reserved for Future Use (Development of Prospective Loss Costs – Advisory Organizations)

Process 029 – Reserved for Future Use (Filing of Prospective Loss Costs, Policy Forms, Endorsements, Factors, Classifications or Rating Rule Manuals - Advisory Organizations)

Process 030 – Reserved for Future Use (Development of Experience Rating Factors – Advisory Organizations)

Process 031 – Reserved for Future Use (Individual Inspection and Research - Advisory Organizations)

Process 032 – Reserved for Future Use (Development of Risk Classifications – Advisory Organizations)

Process 033 – Reserved for Future Use (Loss Control Services - Advisory Organizations)

Process 034 – Reserved for Future Use (Monitoring State Changes – Advisory Organizations)

Process 035 – Reserved for Future Use (Administration of Residual Market or Assigned Risk Assessments - Advisory Organizations)

Process 036 – Reserved for Future Use (Administration of Residual Market or Assigned Risk Pools - Advisory Organizations)

Process 037 – Reserved for Future Use (Legislative Analysis and Impact - Advisory Organizations)

Process 038 – Reserved for Future Use

Process 039 – Reserved for Future Use

Process 040 – Reserved for Future Use

Process 041– Complaint Register

Source:	Ch16§B01
11. Please provide a copy of the Consumer Complaint Register.	Ch16§B01
12. Please describe the media used for the complaint register and how it is accessed.	Ch16§B01
13. Describe limitations to access.	Ch16§B01

Process 042 – Complaint Handling

Source:	Ch16§B02 Ch16§B03 Ch16§B04
11. Please describe information provided to policyholders to communicate procedures for complaint handling.	Ch16§B02 Ch16§B03 Ch16§B04
12. Please describe steps taken by regulated entity to ensure that correspondence and email received expressing a complaint or grievance is handled as a complaint and is logged and processed accordingly.	Ch16§B02 Ch16§B03 Ch16§B04
13. Please describe the regulated entity's reporting mechanism and frequency for reporting the findings on its review of complaints to senior management..	Ch16§B02 Ch16§B03 Ch16§B04
14. Please describe how the regulated entity assures that all issues raised in a complaint or grievance are fully addressed by its responses.	Ch16§B02 Ch16§B03 Ch16§B04
15. Please describe the regulated entity's standards for timely and accurate response and disposition of a complaint. Please describe the controls in place to assure that the standards are met.	Ch16§B02 Ch16§B03 Ch16§B04
16. Please describe the regulated entity's standards for logging, dating and documentation of all complaint/grievance activities. Please describe the controls in place to assure that the standards are met.	Ch16§B02 Ch16§B03 Ch16§B04
17. Provide a listing of all complaints filed with the company during the examination period including grievances filed.	Ch16§B02 Ch16§B03 Ch16§B04

Process 043 – *Reserved for Future Use*

Process 044 – Advertising, Sales and Marketing

Source: **This Process Review Still Under Construction**	Ch16§C01
11. Provide a copy of the regulated entity's advertising objectives statement.	Ch16§C01
12. Provide a copy of the regulated entity's producer marketing materials or solicitation kits.	Ch16§C01
13. Provide a copy of the regulated entity's advertising materials and	Ch16§C01

associated policy forms used during the Examination Period.	
14. Describe the regulated entity's internet marketing efforts.	Ch16§C01
15. Provide a copy of the regulated entity's telemarketing scripts.	Ch16§C01
16. Describe methods of communication with producers. Is electronic media used to train, inform, communicate with producers?	Ch16§C01
17. Provide a copy of any buyer's guide in use by the regulated entity.	Ch16§C01

Process 045 – Producer Training

Source: **This Process Review Still Under Construction**	Ch16§C02
Note: For purposes of this process, this includes, agent, broker, solicitor, surplus lines broker, general agent, managing general agent, etc.	
11. Please describe the specialized product training provided to producers and the frequency of the training.	Ch16§C02
12. Please describe the regulated entity efforts to avoid producer misrepresentation.	Ch16§C02

Process 046 – Producer Communications

Source: **This Process Review Still Under Construction**	Ch16§C03
11. Please describe the media used for communications with producers.	Ch16§C03

Process 047 – Mass Marketing

Source: **This Process Review Still Under Construction**	Ch17§C01
11. Please describe how a legitimate basis for a group is determined.	Ch17§C01

Process 048 – Controlled Business - Title

Source: **This Process Review Still Under Construction**	Ch18§C01
11. Please describe all controlled business arrangements used by the regulated entity.	Ch18§C01

Process 049 – Inducements Related to Referrals - Title

Source: **This Process Review Still Under Construction**	Ch18§C02
11. Please describe process utilized to prevent inappropriate or illegal inducements related to referrals of business.	Ch18§C02

Process 050 – Affiliated Business Arrangements - Title

Source: **This Process Review Still Under Construction**	Ch18§C03
11. Please describe all affiliated business arrangements and their relationship to the regulated entity.	Ch18§C03

Process 051 – Producer Replacement Rules - Life

Source: **This Process Review Still Under Construction**	Ch19§C02
11. Please describe oversight of producers aimed at prevention of inappropriate producer replacements.	Ch19§C02

Process 052 – Life Replacements

Source: **This Process Review Still Under Construction**	Ch19§C03
11. Please describe steps aimed at prevention of inappropriate replacements.	Ch19§C03

Process 053 – Life Illustrations

Source: **This Process Review Still Under Construction**	Ch19§C04
11. Please describe quality control used to assure that life illustrations are accurate and complete. Describe process when they are not.	Ch19§C04

Process 054 – Product Suitability - Life

Source: **This Process Review Still Under Construction**	Ch19§C05
11. Please describe steps taken to assure product suitability.	Ch19§C05
12. Does the regulated entity allow multiple issue of policies to the same insured? If so, under what conditions or limitations.	Ch19§C05

Process 055 – Product Suitability - Annuity

Source: **This Process Review Still Under Construction**	Ch19§C05 Ch19§C09 Ch19§C10
11. Please describe steps taken to assure product suitability.	Ch19§C05 Ch19§C09 Ch19§C10
12. Please describe any remediation efforts during the examination period to correct any inappropriate annuity sales..	Ch19§C05 Ch19§C09 Ch19§C10
13. Please describe oversight of producers aimed at suitable of sale of annuity products.	Ch19§C10

Process 056 – Preneed Funeral Contracts, Disclosures and Advertisements

Source: **This Process Review Still Under Construction**	Ch19§C06
No additional questions.	Ch19§C06

Process 057 – Accelerated Benefits Disclosures in Forms and Advertisements

Source: **This Process Review Still Under Construction**	Ch19§C07 Ch19§E04
11. Please provide a copy of the disclosure made to an insured upon request for an accelerated benefit..	Ch19§C07 Ch19§E04

Process 058 – Disclosures on Depository Institutions Insurance Sales Applications

Source: **This Process Review Still Under Construction**	Ch19§C08
11. Please provide a copy of the notice provided and disclosures made to an insured that is related or unrelated to an extension of credit.	Ch19§C08

Process 059 – Education and Monitoring of Producers Selling Fixed Index Annuity

Source: **This Process Review Still Under Construction**	Ch19§C11
11. Please describe producers training regimen.	Ch19§C11

Process 060 – Education and Monitoring of Producers Selling Indexed Life Products

Source: **This Process Review Still Under Construction**	Ch19§C12
11. Please describe producers training regimen.	Ch19§C12

Process 061 – Health Replacements

Source: **This Process Review Still Under Construction**	Ch20§C01 Ch21§C01 Ch22§C06
11. Please provide a copy of your replacement register for the period covered by this Examination.	Ch20§C01 Ch21§C01 Ch22§C06
12. Please provide a copy of your application for individuals used during the period covered by this Examination.	Ch20§C01 Ch21§C01

	Ch22§C06

Process 062 – Outline of Coverage

Source: **This Process Review Still Under Construction**	Ch20§C02 Ch21§C01 Ch22§C06
11. Please describe the authorization process used by the regulated entity for Outlines of Coverage it issues. List persons with approval authority within the regulated entity over Outlines of Coverage.	Ch20§C02 Ch21§C01 Ch22§C06
12. Provide copies of the Outlines of Coverage in use by the regulated entity.	Ch20§C02 Ch21§C01 Ch22§C06
13. Does the regulated entity require a receipt to affirm that the Outline of Coverage reflects the application and that it has been received?	Ch20§C02 Ch21§C01 Ch22§C06

Process 063 – Product Suitability - Health

Source: **This Process Review Still Under Construction**	Ch20§C03
11. Does the regulated entity allow the issue of multiple policies to a single individual and if so, under what circumstances?	Ch20§C03

Process 064 – Medicare Guides

Source: **This Process Review Still Under Construction**	Ch21§C04
No additional questions.	Ch21§C04

Process 065 – Medicare Supplement Advertisements

Source: **This Process Review Still Under Construction**	Ch21§C05 Ch21§C06 Ch21§C08 Ch21§C10 Ch21§C11

	Ch21§C12 Ch21§C13 Ch21§C15 Ch21§C16
11. Are Medicare Supplement products advertised as insurance?	Ch21§C05 Ch21§C06 Ch21§C08 Ch21§C10 Ch21§C11 Ch21§C12 Ch21§C13 Ch21§C15 Ch21§C16
12. Are representations made accurate and truthful?	Ch21§C05 Ch21§C06 Ch21§C08 Ch21§C10 Ch21§C11 Ch21§C12 Ch21§C13 Ch21§C15 Ch21§C16
13. Are statistics used accurate and supported?	Ch21§C05 Ch21§C06 Ch21§C08 Ch21§C10 Ch21§C11 Ch21§C12 Ch21§C13 Ch21§C15 Ch21§C16
14. Do advertisements disparage competitors?	Ch21§C05 Ch21§C06 Ch21§C08 Ch21§C10 Ch21§C11 Ch21§C12 Ch21§C13 Ch21§C15 Ch21§C16
15. How are jurisdictions in which the regulated entity is licensed,	Ch21§C05

reflected in advertisements?	Ch21§C06 Ch21§C08 Ch21§C10 Ch21§C11 Ch21§C12 Ch21§C13 Ch21§C15 Ch21§C16
16. Do advertisements indicate name of regulated entity?	Ch21§C05 Ch21§C06 Ch21§C08 Ch21§C10 Ch21§C11 Ch21§C12 Ch21§C13 Ch21§C15 Ch21§C16
17. Please explain how misleading incentives are prevented?	Ch21§C05 Ch21§C06 Ch21§C08 Ch21§C10 Ch21§C11 Ch21§C12 Ch21§C13 Ch21§C15 Ch21§C16
18. Are statements about the regulated entity accurate and true?	Ch21§C05 Ch21§C06 Ch21§C08 Ch21§C10 Ch21§C11 Ch21§C12 Ch21§C13 Ch21§C15 Ch21§C16

Process 066 – Association, Trust or Discretionary Groups

Source: **This Process Review Still Under Construction**	Ch21§C07 Ch21§C14
11. Is a separate and distinct application for membership of the group and another for the insurance coverage required? Please explain.	Ch21§C07 Ch21§C14
12. Please describe steps taken to assure that Advertisements do not state or imply that prospective insureds become group or quasi-group members under a group policy and, as such, will enjoy special rates or underwriting privileges, unless it is a fact.	Ch21§C07 Ch21§C14

Process 067 – Product Suitability - LTC

Source: **This Process Review Still Under Construction**	Ch22§C01
11. Does the regulated entity allow the issue of multiple policies to a single individual and if so, under what circumstances?	Ch22§C01

Process 068 – LTC Benefit Triggers

Source: **This Process Review Still Under Construction**	Ch22§C02
11. Please describe how the regulated entity provides disclosures for the standards for benefit triggers to its insureds.	Ch22§C02

Process 069 – Marketing of LTC Products

Source: **This Process Review Still Under Construction**	Ch22§C03
No additional questions.	Ch22§C03

Process 070 – LTC Advertisements

Source: **This Process Review Still Under Construction**	Ch22§C04
No additional questions.	Ch22§C04

Process 071 – Producer Replacement Rules - LTC

Source: **This Process Review Still Under Construction**	Ch22§C05
11. Please describe oversight of producers aimed at prevention of inappropriate producer replacements.	Ch22§C05

Process 072 – LTC Replacements

Source: **This Process Review Still Under Construction**	Ch22§C06
11. Please describe steps aimed at prevention of inappropriate replacements.	Ch22§C06

Process 073 – Consumer Credit Disclosures and Advertisements

Source: **This Process Review Still Under Construction**	Ch23§C01
No additional questions.	Ch23§C01

Process 074 – Consumer Credit Limits

Source: **This Process Review Still Under Construction**	Ch23§C02
No additional questions.	Ch23§C02

Process 075 – *Reserved for Future Use*

Process 076 – *Reserved for Future Use*

Process 077 – *Reserved for Future Use*

Process 078 – *Reserved for Future Use*

Process 079 – *Reserved for Future Use*

Process 080 – License Records Agree with DOI Records

Source: **This Process Review Still Under Construction**	Ch16§D01
No additional questions.	Ch16§D01

Process 081 – Producer Selection and Appointment

Source: **This Process Review Still Under Construction**	Ch16§D02
11. Please describe steps aimed at assuring that producers is licensed before submission of business and appointed within 15 days of submission.	Ch16§D02
12. Please provide a sample producer contract and commission schedule.	

Process 082 – Producer Termination

Source: **This Process Review Still Under Construction**	Ch16§D03 Ch16§D04 Ch16§D05
11. Please provide a listing of acceptable reasons for termination of a producer contract.	Ch16§D03 Ch16§D04 Ch16§D05
12. Are terminations and reasons for the termination provided to the state?	Ch16§D03 Ch16§D04 Ch16§D05
13. Please describe the steps taken to prevent unfair discrimination when considering a termination.	Ch16§D03 Ch16§D04 Ch16§D05
14. Please describe the documentation required for a termination.	Ch16§D03

	Ch16§D04 Ch16§D05
15. Provide a listing of all producers that were terminated during the examination period. List reasons.	Ch16§D03 Ch16§D04 Ch16§D05

Process 083 – Producer Defalcation

Source: **This Process Review Still Under Construction**	Ch16§D06
11. Are criminal reports made when a defalcation occurs?	Ch16§D06
12. Does the producer contract used by the regulated entity require that premiums be held in a fiduciary capacity?	Ch16§D06
13. Provide a listing of producer accounts current where the remittance of premiums due has not been made according to contract.	Ch16§D06

Process 084 – *Reserved for Future Use*

Process 085 – *Reserved for Future Use*

Process 086 – Premium Billing

Source: **This Process Review Still Under Construction**	Ch16§E01
11. Please provide sample copy of billing notice.	Ch16§E01
12. Please provide a description of the timing of billings.	Ch16§E01

Process 087 – Policy Issuance and Insured Requested Cancellations

Source: **This Process Review Still Under Construction**	Ch16§E02 Ch16§F06
11. Please describe the regulated entity standards for timely policy issuance.	Ch16§E02 Ch16§F06
12. Please describe the regulated entity standards for timely insured requested cancellations.	Ch16§E02 Ch16§F06

Process 088 – Correspondence Routing

Source: **This Process Review Still Under Construction**	Ch16§E03
11. Please describe the regulated entity's standards for identifying and directing incoming correspondence.	Ch16§E03

Process 089 – Assumption Reinsurance

Source: **This Process Review Still Under Construction**	Ch16§E04
Note: According to the model act, "assumption reinsurance agreement"means any contract which both; • **transfers insurance obligations and/or risks of existing or enforce contracts of insurance from a transferring insurer to and assuming reinsurer; and** • **is intended to affect a novation of the transferred contract of insurance with the result that the assuming insurer becomes directly liable to the policyholders of the transferring insurer.**	
11. Does the regulated entity enter into assumption reinsurance agreements?	Ch16§E04
12. What notifications are provided to affected policyholders?	Ch16§E04

Process 090 – Policy Transactions

Source: **This Process Review Still Under Construction**	Ch16§E05
11. Please describe the regulated entity' standards for timeliness and accuracy of all transactions.	Ch16§E05
12. Please describe the regulated entity's standards for documentation of all transactions.	Ch16§E05
13. Please describe the regulated entity' standards for processing of mature endowments when due.	Ch16§E05

Life Products 14. Please describe the regulated entity' standards for processing premium refunds for modifying the guaranteed life products. Special requirements may exist, under policy provisions or state law, for calculation of refunds involving "10 day day right to return" periods for life products, which include a separate account.	Ch16§E05
Credit Insurance 14. Please describe the regulated entity' standards for handling of credit insurance where the debt is refinanced prior to the scheduled maturity date.	Ch16§E05

Process 091 – Locating Missing Policyholders or Beneficiaries

Source: **This Process Review Still Under Construction**	Ch16§E06
11. Please describe the steps taken to locate beneficiaries, policyholders and recipients of unclaimed properties.	Ch16§E06

Process 092 – Return Premium

Source: **This Process Review Still Under Construction**	Ch16§E07
11. Does the Company have a process to return unearned premium?	Ch16§E07
12. Please describe how the regulated entity verifies that refunds provided to a producer are properly distributed.	Ch16§E07

Process 093 – Provision of Claim History and Loss Information to Insured

Source: **This Process Review Still Under Construction**	Ch17§E01
11. Does the regulated entity have standards for providing claim history and loss information in a timely manner when requested?	Ch17§E01

Process 094 – Reinstatement – Life and Annuity

Source: **This Process Review Still Under Construction**	Ch19§E01
11. Please provide sample copy of reinstatement notice.	Ch19§E01
12. Please describe under what circumstances would reinstatement be denied.	Ch19§E01
13. Please describe the regulated entity standard for timely reinstatement notice.	Ch19§E01

Process 095 – Communication of Nonforfeiture Options – Life and Annuity

Source: **This Process Review Still Under Construction**	Ch19§E02
No additional questions.	Ch19§E02

Process 096 – Annual Report of Policy Values - Life and Annuity

Source: **This Process Review Still Under Construction**	Ch19§E03
No additional questions.	Ch19§E03

Process 097 – Reinstatement - Health

Source: **This Process Review Still Under Construction**	
11. Please provide sample copy of reinstatement notice.	Ch20§E01
12. Please describe under what circumstances would reinstatement be denied.	Ch20§E01
13. Please describe the regulated entity standard for timely reinstatement notice.	Ch20§E01

Process 098 – Credible Coverage

Source: **This Process Review Still Under Construction**	Ch20§E02
Note: Title I of HIPAA regulates the availability and breadth of group health plans and certain individual health insurance policies. It amended the Employee Retirement Income Security Act, the Public Health Service Act, and the Internal Revenue Code. **Title I also limits restrictions that a group health plan can place on benefits for preexisting conditions. Group health plans may refuse to provide benefits relating to preexisting conditions for a period of 12 months after enrollment in the plan or 18 months in the case of late enrollment. (29 U.S.C. § 1181(a)(2))** **However, individuals may reduce this exclusion period if they had group health plan coverage or health insurance prior to enrolling in the plan. Title I allows individuals to reduce the exclusion period by the amount of time that they had "creditable coverage" prior to enrolling in the plan and after any "significant breaks" in coverage. (29 U.S.C. § 1181(a)(3))** **"Creditable coverage" is defined quite broadly and includes nearly all group and individual health plans, Medicare, and Medicaid. (29 U.S.C. § 1181(c)(1))** **A "significant break" in coverage is defined as any 63 day period without any creditable coverage. (29 U.S.C. § 1181(c)(2)(A))** **Documents that may establish creditable coverage include a certificate of coverage or, in the absence of a certificate of coverage, any of the following:** • **Explanations of benefits or other correspondence from a plan or issuer indicating coverage** • **Pay stubs showing a payroll deduction for health coverage** • **Health insurance identification card** • **Certificate of coverage under a group health policy** • **Records from medical care providers indicating health coverage** • **Third-party statements verifying periods of coverage** • **Benefit termination notice from Medicare or Medicaid** • **Other relevant documents that evidence periods of health coverage**	
11. Please provide a sample Creditable Coverage certificate.	Ch20§E02

12. Does the regulated entity issue certificates upon request?.	Ch20§E02
13. Does the regulated entity adequately process certificated received?.	Ch20§E02

Process 099 – Policy Renewals - LTC

Source: **This Process Review Still Under Construction**	Ch22§E01
No additional questions.	Ch22§E01

Process 100 – Application of Nonforfeiture - LTC

Source: **This Process Review Still Under Construction**	Ch22§E02
No additional questions.	Ch22§E02

Process 101 – Communication of Nonforfeiture Options -LTC

Source: **This Process Review Still Under Construction**	Ch22§E03
No additional questions.	Ch22§E03

Process 102 – Policyholder Service - LTC

Source: **This Process Review Still Under Construction**	Ch22§E04
No additional questions.	Ch22§E04

Process 103 – *Reserved for Future Use*

Process 104 – *Reserved for Future Use*

Process 105 – *Reserved for Future Use*

Process 106 – Premium Determination and Quotation

Source: **This Process Review Still Under Construction**	Ch16§F01 Ch16§F03
11. Please provide a copy of all rating manuals in use during the Examination Period.	Ch16§F01 Ch16§F03
12. Please describe method of rating policies. Indicate if rating is done manually, electronically, or a combination of both. If different systems used for new business versus renewal business, describe differences.	Ch16§F01 Ch16§F03
13. Please describe steps taken by regulated entity to detect and prevent illegal rebating, commission-cutting or inducements.	Ch16§F01 Ch16§F03
14. Please describe steps taken by regulated entity to determine that the basis of premium is correct.	Ch16§F01 Ch16§F03

Process 107 – Policyholder Disclosures

Source: **This Process Review Still Under Construction**	Ch16§F02
11. Please provide a copy of all disclosures made to policyholders during the examination period. Describe how disclosures made are documented.	Ch16§F02
12. Is notice if the existence of pools provided where required?	Ch16§F02
13. Are help phone numbers provided to policyholders?	Ch16§F02

Process 108 – Underwriting and Selection

Source: **This Process Review Still Under Construction**	Ch16§F04 Ch17§F08 Ch17§F10
11. Please provide a copy of all underwriting manuals and guidelines in use during the Examination Period.	Ch16§F04 Ch17§F08 Ch17§F10
12. Do applications form a part of the contract of coverage in all cases? Specify.	Ch16§F04 Ch17§F08

	Ch17§F10
13. Provide a copy of each policy form and rider used by the regulated entity during the Examination Period.	Ch16§F04 Ch17§F08 Ch17§F10
14. Describe process for handling adverse underwriting decisions. Include copies of form letters used.	Ch16§F04 Ch17§F08 Ch17§F10
15. Provide a copy of all bulletins, notices, orders, and newsletters, etc. provided to or accessible by underwriters to guide them in their selection of business. If materials are voluminous, please provide an index.	Ch16§F04 Ch17§F08 Ch17§F10
16. Describe latitude given to underwriters to deviate from selection or rating criteria and circumstances under which it may be exercised.	Ch16§F04 Ch17§F08 Ch17§F10
17. Describe commission structure including any variances permitted on an individual agent basis. Does the regulated entity use multilevel commission schedule and if so describe conditions under which variances are used and how are they applied?	Ch16§F04 Ch17§F08 Ch17§F10
18. Describe verification process used by the regulated entity to determine accuracy of application information.	Ch16§F04 Ch17§F08 Ch17§F10
19. Describe process used by Company to assure that underwriting, rating and classification efforts on auditable policies is developed at or near inception of the coverage rather that near or after expiration or following a claim.	Ch16§F04 Ch17§F08 Ch17§F10
20. Please provide a copy of each application for coverage used by the Company.	Ch16§F04 Ch17§F08 Ch17§F10
21. Describe controls in place to monitor declination/rejection by underwriters.	Ch16§F04 Ch17§F08 Ch17§F10

Process 109 – Form Filing or Certification

Source: **This Process Review Still Under Construction**	Ch16§F05
11. Please provide a list of forms filed during the examination period. If any were disapproved, so indicate.	Ch16§F05
12. Please provide a copy of any form certifications made during the Examination Period.	Ch16§F05

Process 110 – Termination of Coverage

Source: **This Process Review Still Under Construction**	Ch16§F07 Ch16§F08 Ch16§F09
Note: Termination includes rejections, declinations, cancellations, nonrenewals and rescissions.	
11. Please provide a list of reasons used by the Company for termination.	Ch16§F07 Ch16§F08 Ch16§F09
12. Please provide an explanation of conditions that allow a producer to terminate coverage and the specific controls the company has in place to assure that such terminations are appropriate.	Ch16§F07 Ch16§F08 Ch16§F09
13. Please explain the Company standards for materiality utilized before exercising a decision to rescind coverage.	Ch16§F07 Ch16§F08 Ch16§F09

Process 111 – Deviations

Source: **This Process Review Still Under Construction**	Ch17§F01
11. Please explain how the regulated entity assures consistent application of its credits and deviations.	Ch17§F01

Process 112 – Schedule Rating or Individual Risk Modification Plans

Source: **This Process Review Still Under Construction**	Ch17§F01 Ch17§F02
11. Please explain how the regulated entity assures consistent application of its schedule rating plan.	Ch17§F01 Ch17§F02
12. Please explain how the regulated entity documents its use of the schedule rating plan and describe what constitutes adequate support for the various categories of credit and debit.	Ch17§F01 Ch17§F02

Process 113 – Use of Expense Multipliers

Source: **This Process Review Still Under Construction**	Ch17§F03
11. Please provide the regulated entity's filed (and approved if applicable) expense multipliers during the examination period.	Ch17§F03
12. Please explain how the expense multiplier is developed for each line of business affected.	Ch17§F03

Process 114 – Premium Audit Accuracy

Source: **This Process Review Still Under Construction**	Ch17§F04 Ch17§F09
11. Please describe the regulated entity's standard for timely premium audit.	Ch17§F04 Ch17§F09
12. Please explain under what circumstances and conditions are premium audits waived.	Ch17§F04 Ch17§F09
13. Please describe the process utilized when the auditor finds a significant difference in the classifications used or the estimated premium basis.	Ch17§F04 Ch17§F09
14. How does the Company assure that premium audit data is accurately reflected in the unit statistical report. (Workers Compensation)	Ch17§F04 Ch17§F09

Process 115 – Experience Modification – Workers Compensation

Source: **This Process Review Still Under Construction**	Ch17§F05
11. Does the regulated entity reconcile experience modification to the unit statistical reports made to NCCI?	Ch17§F05
12. Does the regulated entity insist on timely development of experience modifications and what is the process when modifications are not applied within the first thirty days of the policy period affected?	Ch17§F05
13. How does the Company assure that the correct experience modification is applied accurately and timely?	

Process 116 – Loss Reporting – Workers Compensation

Source: **This Process Review Still Under Construction**	Ch17§F06 Ch17§F07
11. How does the regulated entity assure timely and accurate reporting of the unit statistical reports made to NCCI?	Ch17§F06 Ch17§F07
12. How does the regulated entity assure timely and accurate reporting of data calls made by NCCI?	Ch17§F06 Ch17§F07

Process 117 – NCCI Call on Deductibles

Source: **This Process Review Still Under Construction**	Ch17§F07
11 Please describe verification process for data submitted on deductible calls.	Ch17§F07

Process 118 – Timing of Underwriting, Rating and Classification

Source: **This Process Review Still Under Construction**	Ch17§F08
Note: Decisions should be based on information that reasonably should have been developed at the inception of the policy or during initial underwriting and not, through audit or other means, after the policy has expired.	Ch17§F08

No additional questions.	Ch17§F08

Process 119 – Listing of Forms and Endorsements

Source: **This Process Review Still Under Construction**	Ch17§F11
Note: All forms and endorsements forming a part of a contract must be listed on the declaration page unless added after inception in which case the attaching clause must be completed.	Ch17§F11
11. Does the regulated entity conduct a control review before a policy is released to assure that all forms and endorsements forming part of the contract are itemized on the declaration page?	Ch17§F11

Process 120 – Verification of VIN Numbers

Source: **This Process Review Still Under Construction**	Ch17§F12
11. Does the regulated entity utilize a third party to test the VIN numbers of the vehicles it insures for validity?	Ch17§F12
12. Describe how the regulated entity verifies the physical damage symbols it uses.	Ch17§F12

Process 121 – Prohibited Anticompetitive Underwriting Practices

Source: **This Process Review Still Under Construction**	Ch17§F13
Note: Examiners are instructed to refer any practice suggesting anti-competitive behavior to the Insurance Department legal counsel. This includes engaging in collusive underwriting practices that may inhibit competition.	Ch17§F13
No additional questions.	Ch17§F13

Process 122 – Mass Market Underwriting

Source: **This Process Review Still Under Construction**	Ch17§F14
11. Please explain the differences between the underwriting guidelines for mass-marketed business and individually marketed business.	Ch17§F14
12. Please explain the regulated entity's treatment of nonpayment of premium for mass marketed business.	Ch17§F14
13. Please describe the method used to disclose the right to continue for members of the group who leave employment or the group.	Ch17§F14

Process 123 – Group Personal Lines

Source: **This Process Review Still Under Construction**	Ch17§F15
11. Please describe the conversion options when an individual terminates coverage.	Ch17§F15
12. What are the differences between the group coverage written and the coverage offered under a conversion option?	Ch17§F15
13. What are the conditions or rules for participation in a group program?	Ch17§F15
14. Is group coverage contingent on the purchase of any other insurance, product or service?	Ch17§F15
15. How are experience refunds or dividends distributed?	Ch17§F15

Process 124 – Cancellation/Nonrenewal Notices

Source: **This Process Review Still Under Construction**	Ch17§F16
11. Please provide a copy of the Notice of Cancellation and the Notice of Nonrenewal used by the regulated entity.	Ch17§F16
12. Are reasons for cancellation or nonrenewal given with the notice?	Ch17§F16

Process 125 – Policy Coding

Source: **This Process Review Still Under Construction**	Ch17§F17
11. How does the regulated entity assure that codes are current?	Ch17§F17
12. How does the regulated entity assure that codes provided by producers are correct and current?	Ch17§F17

Process 126 – Underwriting File Documentation

Source: **This Process Review Still Under Construction**	Ch17§F18
11. Are applications maintained in the underwriting file?	Ch17§F18
12. When and under what conditions does the regulated entity require a physical inspection, a motor vehicle report (MVR), an inspection report, a credit report or other underwriting information to confirm exposure or premium basis?	Ch17§F18
13. When a policy is issued on a basis other than applied for, does the regulated entity provide an adverse underwriting decision? If not, please explain.	Ch17§F18

Process 127 – Title - Reissue and Refinance Credits

Source: **This Process Review Still Under Construction**	Ch18§F01
Note:	
11. **Under Construction**	

Process 128 – Title - Collusive or Anti-competitive Underwriting Practices

Source: **This Process Review Still Under Construction**	Ch18§F02
Note:	

11.	

Process 129 – Title - Other Charges and Fees

Source: **This Process Review Still Under Construction**	Ch18§F03
Note:	
11.	

Process 130 – Title - E&O for Closing

Source: **This Process Review Still Under Construction**	Ch18§F04
Note:	
11.	

Process 131 – Title - Closing and Settlement

Source: **This Process Review Still Under Construction**	Ch18§F05
Note:	
11.	

Process 132 – Title - Reports and Disclosures

Source: **This Process Review Still Under Construction**	Ch18§F06
Note:	
11.	

Process 133 – Title - Recording, Reporting and Validation of Revenue, Loss and Expense Experience

Source: **This Process Review Still Under Construction**	Ch18§F07
Note:	
11.	

Process 134 – Title- Coding.

Source: **This Process Review Still Under Construction**	Ch18§F08
Note:	
11.	

Process 135 – L&A - Pertinent Information on Applications.

Source: **This Process Review Still Under Construction**	Ch19§F01
Note:	
11.	

Process 136 – L&A - AIDS-Related Concerns.

Source: **This Process Review Still Under Construction**	Ch19§F02
Note:	
11.	

Process 137 – Health - Cancellation Practices.

Source: **This Process Review Still Under Construction**	Ch20§F01

Note:	
11.	

Process 138 – Health - Information on Applications.

Source: **This Process Review Still Under Construction**	Ch20§F02
Note:	
11.	

Process 139 – Health - Continuation of Benefits.

Source: **This Process Review Still Under Construction**	Ch20§F03
Note:	
11.	

Process 140 – Health - Genetic Information Nondiscrimination Act.

Source: **This Process Review Still Under Construction**	Ch20§F04
Note:	
11.	

Process 141 – Health - Protection of Health Information.

Source: **This Process Review Still Under Construction**	Ch20§F05
Note:	
11.	

Process 142 – Health - Use of Preexisting Exclusions.

Source: **This Process Review Still Under Construction**	Ch20§F06
Note:	
11.	

Process 143 – Health - Improperly Deny Coverage.

Source: **This Process Review Still Under Construction**	Ch20§F07
Note:	
11.	

Process 144 – Health - Guaranteed-Issue Requirements.

Source: **This Process Review Still Under Construction**	Ch20§F08
Note:	
11.	

Process 145 – Health – Portability.

Source: **This Process Review Still Under Construction**	Ch20§F09
Note:	
11.	

Process 146 – Health - Self-funded Benefit Plans.

Source: **This Process Review Still Under Construction**	Ch20§F10
Note:	

11. **This Process Review Still Under Construction**	

Process 147 – LTC - Appeal of Adverse Benefit Trigger Determination.

Source: **This Process Review Still Under Construction**	Ch22§F01
Note:	
11. **This Process Review Still Under Construction**	

Process 148 – Consumer Credit - Effective and Termination Dates.

Source: **This Process Review Still Under Construction**	Ch23§F01
Note:	
11.	

Process 149 – Consumer Credit – Terminations.

Source: **This Process Review Still Under Construction**	Ch23§F02
Note:	
11.	

Process 150 – Consumer Credit - Creditor Submitted Premium.

Source: **This Process Review Still Under Construction**	Ch23§F03
Note:	
11.	

Process 151 – Consumer Credit - Payment of Compensation.

Source: **This Process Review Still Under Construction**	Ch23§F04
Note:	
11.	

Process 152 – Consumer Credit - Unfair Methods of Competition

Source: **This Process Review Still Under Construction**	Ch23§F05
Note:	
11.	

Process 153 – Reserved for Future Use

Process 154 – Reserved for Future Use

Process 155 – Reserved for Future Use

Process 156 – Reserved for Future Use

Process 157 – Claims Handling

Source: **This Process Review Still Under Construction**	Ch16§G01 Ch16§G02 Ch16§G03 Ch16§G06 Ch16§G10 Ch16§G11
11. What timeframes are utilized by the regulated entity for initial contact?	Ch16§G01
12. What timeframes are utilized by the regulated entity for timely investigation?	Ch16§G02 Ch16§G11
13. What timeframes are utilized by the regulated entity for resolution?	Ch16§G03
14. Describe regulated entity standards for use of claim releases, if any. Are releases used? If so provide a sample of each type of release	Ch16§G03

used.	
15. How does regulated entity assure that claim is settled in accord with policy provisions?	Ch16§G06
16. Does the regulated entity utilize fraud detection measures in its review of claims?	Ch16§G06
17. Indicate whether claims are paid by check or by draft. If by draft describe clearance process.	Ch16§G10

Process 158 – Response to Claim Correspondence

Source: **This Process Review Still Under Construction**	Ch16§G04
11. What timeframes are utilized by the regulated entity for response to claim correspondence?	Ch16§G04

Process 159 – Claim File Documentation.

Source: **This Process Review Still Under Construction**	Ch16§G05
11. Describe the claim file retention/destruction requirements.	Ch16§G05

Process 160 – Appropriate Claim Forms Use.

Source: **This Process Review Still Under Construction**	Ch16§G07
11. Please provide a copy of each claim form in use by the regulated entity.	Ch16§G07

Process 161 – Claims Reserving.

Source: **This Process Review Still Under Construction**	Ch16§G08
11. Please provide a copy of the claims guidelines used by the adjuster or claim processor to establish reserves.	Ch16§G08

12. Please provide a copy of all bulletins, notices, orders, and newsletters, etc. provided to or accessible by adjusters to guide them in their adjustment of claims.	Ch16§G08
13. Please describe controls in place to detect reserve inadequacies or redundancies and to make adjustments.	Ch16§G08

Process 162 – Denied and Closed Without Payment Claims.

Source: **This Process Review Still Under Construction**	Ch16§G09
11. Does the regulated entity provide claimants with instructions for having rebuttals to denials reviewed by the Insurance Department or the regulated entity?	Ch16§G09

Process 163 – Catastrophe Claim Handling.

Source: **This Process Review Still Under Construction**	Ch16§G01 Ch16§G02 Ch16§G03 Ch16§G06
Note: This procedure is concerned with catastrophe incidents where there is catastrophic loss to property such as may occur in a hurricane or multiple hurricanes, a major earthquake in a heavily populated area or a series of tornados or a tsunami. Also major loss of life from such an event or terrorist attack. From a health point of view, a pandemic. Each of these cause additional burdens on an insurer's systems that may not be contemplated in the normal claim handling process	Ch16§G01 Ch16§G02 Ch16§G03 Ch16§G06
11. Please describe differences in the claim handling process necessitated by a catastrophic event.	Ch16§G01 Ch16§G02 Ch16§G03 Ch16§G06
12. Describe source of adequate claim adjustment or claim adjudication resources needed to address loss arising from a catastrophic event.	Ch16§G01 Ch16§G02 Ch16§G03 Ch16§G06

Process 164 – Reservation of Rights and Excess of Loss letter.

Source: **This Process Review Still Under Construction**	Ch17§G01
11. Who makes the determination to send a reservation of rights letter or an excess of loss letter?	Ch17§G01

Process 165 – Deductible Reimbursement.

Source: **This Process Review Still Under Construction**	Ch17§G02
11. What methods are used to refund recovered deductible amounts to insureds?	Ch17§G02
12. For long term subrogation cases, describe refund methodology.	Ch17§G02

Process 166 – Loss Statistical Coding.

Source: **This Process Review Still Under Construction**	Ch17§G03
11. How does the regulated entity assure that codes are current?	Ch17§G03
12. Does the regulated entity assure that loss amounts are separated from expense amounts?	Ch17§G03

Process 167 – Title - Indemnification for Loss of Settlement.

Source: **This Process Review Still Under Construction**	
Note:	
11.	

Process 168 – L&A - Accelerated Benefit Payment disclosures.

Source: **This Process Review Still Under Construction**	

Note:	
11.	

Process 169 – L&A - Discrimination - Qualifying Events.

Source: **This Process Review Still Under Construction**	
Note:	
11.	

Process 170 – Health - Newborns' and Mothers' Health Protection Act.

Source: **This Process Review Still Under Construction**	
11.	

Process 171 – Health - Mental Health Parity and Addiction Equity Act.

Source: **This Process Review Still Under Construction**	
Note:	
11.	

Process 172 – Health - Women's Health and Career Rights Act.

Source: **This Process Review Still Under Construction**	
Note:	
11.	

Process 173 – Health - Group Coverage Replacements.

Source: **This Process Review Still Under Construction**	
Note:	
11.	

Process 174 – Consumer Credit - Proof of payments reflect appropriate claim-handling.

Source: **This Process Review Still Under Construction**	
Note:	
11.	

Process 175 – Consumer Credit - Claim files establish events and dates.

Source: **This Process Review Still Under Construction**	
Note:	
11.	

Process 176 –

Source: **This Process Review Still Under Construction**	
Note:	
11.	

Process 177 –

Source: **This Process Review Still Under Construction**	
Note:	

11.	

G. Tests Common to the Structure of All Processes.

This section addresses the testing of the process to determine that features common to all processes exist. The tests are phrased in question form. These tests are applicable to each process identified in Section F and I. Please note that the listed tests for a process are not fixed and absolute. They do not limit the examiner from posing additional questions, when warranted, in efforts to enhance the understanding of the Regulated Entity's response(s). If no response is provided, the fact should be part of the examiners documentation.

1. Is a written procedure or process in place? Refer to response for Section F.1
Note: The absence of a written policy or procedure potentially allows an inconsistent application of the process. If not in writing, how does the Company assure consistent application of the process? The complete lack of any recognizable process indicates Level 0.
2. Has a risk assessment been conducted? If so, does it address compliance issues? Refer to response for Section F.2
Note: The absence of a risk assessment and mitigation document for the process may indicate that the regulated entity has not recognized that the issues exist or need to be addresses. This is a level 0 characteristic. If there is a document, the Level is likely to be Level 1 or higher.
3. Do the mitigations noted adequately address the risk noted? Are any obvious mitigation elements missing? Refer to response for Section F.2.
Note: The absence of a risk assessment and mitigation document for the process may indicate that the regulated entity has not recognized that the issues exist or need to be addresses. This is a level 0 characteristic. If there is a document, the Level is likely to be Level 1 or higher. If appropriate mitigations are not reflected the maturity level should not exceed Level 1.
4. Is the procedure or process unambiguous, clear and readable? Refer to response for Section F.3.
Note: If there are no standardized processes, and ad hoc approaches that tend to be applied on an individual or cases by case basis, the maturity level can be no higher than Level 1. When the procedures themselves are not sophisticated but are the formalization of existing practices, the maturity level can be no higher than Level 3.
5. Are appropriate measurements or controls in place to test the functioning and efficacy of the procedure or process? How often is the procedure or process reviewed, tested or audited? How does management exercise oversight and control of the process? Refer to response for Section F.4 & F.8.
Note: If the overall approach to management is disorganized, the maturity level

can be no higher than Level 1. Processes that have developed to the stage where similar procedures are followed by adherent people undertaking the same task indicate a Level 2 maturity. If there is a high degree of reliance on the knowledge of individuals then errors are likely and the maturity level is Level 2 or lower. It is a maturity Level 3 characteristic when it is mandated that these processes should be followed; however, it is unlikely that deviations will be detected.
6. How are errors in the process detected and corrected? Is the detection method timely? Refer to response for Section F.7.
Note: When management monitors and measures compliance with procedures and takes action where processes appear not to be working effectively, this is a Level 4 characteristic. When processes are under constant improvement and provide good practice, this is a Level 4 characteristic. When Automation and tools are used in a limited or fragmented way, the maturity level should not exceed Level 4.
7. How are persons subject to its provisions of the process or procedure made aware of its existence? How is the procedure or process made accessible to those persons subject to its provisions? Refer to response for Section F.7.
Note: The absence of communication of the process is a characteristic of maturity Level 2 or lower. If learning of the process is left to individual responsibility, the maturity level is Level 2 or lower. When procedures have been standardized and documented, and communicated through training, the maturity level characteristic is Level 3.
8. Does the Company provide adequate training to persons affected by the procedure or process? How? Refer to response for Section F.7.
Note: The absence of formal training in the process is a characteristic of maturity Level 2 or lower. When procedures have been standardized and documented, and communicated through training, the maturity level characteristic is Level 3.
9. Is the procedure or process performing as intended? How do you know? Are any deficiencies noted? Refer to response for Section F.8(a).
Note: When processes have been refined to a level of good practice, based on the results of continuous improvement and maturity modeling with other enterprises, this is a maturity Level 5 characteristic.
10. How does management utilize the results of its measurement structures? Refer to response for Section F.8(e).
Note: The When processes have been refined to a level of good practice, based on the results of continuous improvement and maturity modeling with other enterprises, this is a maturity Level 5 characteristic. When IT tools are used in an integrated way to automate the workflow, providing tools to improve quality and effectiveness, making the enterprise quick to adapt, this is a

maturity Level 5 characteristic.
11. Is the procedure or process current? Refer to response for Section F.9.

This Section Still Under Construction

H. Tests Specific to a Particular Process Content

This section addresses the testing of the process to determine that those features specific to a particular process do exist and are adequately addressed. The tests are phrased in question form. These tests are applicable to the particular process identified. Please note that the listed tests for a process are not fixed and absolute. They do not limit the examiner from posing additional questions, when warranted, in efforts to enhance the understanding of the Regulated Entity's response(s).Pertinent responses for the examined process should be reviewed and carefully considered before responding to th following questions. If no response is provided, the fact should be part of the examiners documentation.

Process 001 – Internal or External Audit –
All chapters referencing General (Ch16) and Advisory Organizations (Ch25).

Note: The focus is on the internal or external audit process utilized to verify appropriate function and to perform analysis of market conduct issues including the various business areas considered in a market conduct examination. A regulated entity that has no internal or external audit function lacks the ready means to detect structural problems until after problems have occurred.
12. Does the Regulated Entity have an Audit function? Do Audits address market regulation reputational and compliance issues?
13. How often are audits performed? Does the Regulated Entity have a standard for frequency of audit? What audits are on a routine of regular basis?
Note: The State and the examiners are aware that these documents may be viewed as proprietary and sensitive. The reports will be viewed on the company premises after commencement of the on-site portion of the examination. The examiners, based on the results of audit findings for which the company has taken appropriate corrective action and remediation, will not recommend administrative action. The purpose for viewing these documents is to determine that management directives are in compliance with statute and that errors found through the audit process are corrected. It is not used as a device to discover and quantify violations, rather it is used for qualitative purposes. Any special needs or concerns should be discussed with the Examiner in Charge.
14. Do audit reports provide meaningful information to management? Describe.
15. How is management using the audit reports?
16. How is the audit process activated?
17. Is the audit process compliant with applicable statutes or regulations?
18. Are audit recommendations resolved? How?

Process 002 – Computer Security

Note: The focus is on the existence of sufficient protection to the regulated entity systems. Examiners should avoid requiring information that itself poses a threat to that protection.
12. Does the Regulated Entity have a Computer Security function? Is it sufficiently robust to protect personal information?
13. How is access to data controlled and limited?
14. How are changes to data in the system authorized and supervised? Describe.
15. How are unauthorized attempts detected and deflected? Have there been any successful unauthorized access to Regulated Entity data? What was done? Was it reported?
16. How is the system protected during data transfers?
17. Are security audits conducted and if so with what frequency?

Process 003 – Anti Fraud

Note: Examiners are interested in internal as well as external fraud response and detection mechanisms.
12. Does the Regulated Entity use a fraud warning notice? Is a fraud warning notice used with the filing of a claim? Does the notice comply with governing statute and regulation.
13. Does the Regulated Entity have a designated unit to deal with its antifraud initiatives? How is it staffed?
14. Are Anti Fraud activities adequate?
15. Does the Regulated Entity process require the reporting of fraudulent activities to the insurance commissioner and was such an action taken during the Examination period?
16. Does the regulated entity have a process in place to prevent persons convicted of a felony involving dishonesty or breach of trust from participating in the business of insurance?

Process 004 – Disaster recovery

12 Was the regulated entity disaster recovery plan used or tested during the period of the examination?
13. How frequently are the elements of the disaster recovery plan tested? How are the results critiqued.
14. What is the regulated entity's off-site data backup process? What is the frequency of update? Is the backup site sufficiently distant geographically so as not to expose primary and backup sites to a common disaster?

Process 005 – Vendor Oversight and Control

12 Has the regulated entity adequately described the scope of authority extended to its vendors and memorialized that extension in a contract? How does the regulated entity assure that a vendor is not exceeding the authority extended? Does the vendor maintain a license appropriate to its extension of authority and convey that information to the regulated entity?
13. Do vendor contracts adequately describe the extension of authority and its limitations? Are recordkeeping requirements of the vendor adequately stated?
14. Does the regulated entity exercise reasonable oversight and control of the vendor?
15. Does the regulated entity perform regular audits of the activities by the vendor on behalf of the regulated entity?
16. Are vendor performance standards established in the contract. Do the standards comply with performance requirements in state law or regulation? Is vendor performance monitored by the regulated entity? Is documentation adequate? Is vendor failure to meet performance standards grounds for contract termination.

Process 006 – Records, Central Recovery and Backup

12 Are records maintained in an appropriate file structure with orderly organization and legibility? Refer to response for Section 1.3, 1.11 and 1.12.
13. Does the regulated entity record retention schedule comport with state record retention requirements? Refer to response for Section 1.3 and 1.13.
14. Has the regulated entity experienced any failure to recover records that are within the record retention schedule? Refer to response for Section 1.3 and 1.14.
15. Is regulated entity record backup process adequate? Refer to response for Section 1.3 and 1.15.

Process 007 – License Authorization

12 Does the business written by the regulated entity exceed the authority granted by its state of domicile and that which it is licensed to write in accordance with applicable statutes, rules and regulations?
13. Does the regulated entity monitor its financial statements to determine that its' writing in all states reported are authorized?

Process 008 – License Authorization-Title

Title Insurance 12. Does the business written by the regulated entity exceed the authority granted by its state of domicile and that which it is licensed to write in accordance with applicable statutes, rules and regulations?
Title Insurance 13. Does the regulated entity monitor its financial statements to determine that its' writing in all states reported are authorized?
Title Insurance 14. Does the regulated entity have a member of its board of directors who is a title agent that wrote more than 1% of its direct writings for the previous year? Are the measures of the regulated entity adequate to prevent such occurrences?
Title Insurance 15. Does the regulated entity meet all of the errors and omissions policy and fidelity coverage (or alternative financial arrangement, where permitted) requirements made by the state?
Title Insurance 16. Does the regulated entity meet all diversification requirements made by the state?

Process 009 – Examination Facilitation

12 Does the regulated entity have an Examination Facilitation function? Does the regulated entity adequately cooperate with the examiners? Does the regulated entity respond to data requests in a timely fashion? Are responses to examiner requests on point, correct, accurate and truthful?

Process 010 – Assertions of Privilege

12. Does the regulated entity have an appeal process available when access to a document for which a privilege is claimed and is critical to examiner review of an issue is denied?
13. Does the regulated entity assert privilege for self-evaluative or self-critical analysis? Does the regulated entity assert privilege for proprietary documents?

Process 011 – Staff Training

12 Is the regulated entity process for determining staffing needs adequate? Is the training regimen adequate?

Process 012 –Privacy Protection

12. Does the regulated entity adequately safeguard consumer information?
Note: In making this assessment, was the size and complexity of regulated entity considered and was the nature and scope of the regulated entity's activities considered. **In making this assessment, consider factors such as:** • **the products and services offered by the regulated entity;** • **the methods of distribution for the products and services;** • **the types of information maintained by the regulated entity;** • **the size of the regulated entity (which may include the number of employees and the volume of business, etc.);** • **the marketing arrangements; and** • **the extent to which, or methods by which, the regulated entity communicates electronically with customers, producers and other third parties.**
13. Does the regulated entity provide a "Notice of Information Practices" on a timely basis that contains the required information? Is the content compliant with statute and regulations?

Note: The 2000 NAIC Model Privacy Regulation provides that notices should include:

- **Identification of the regulated entity, if applicable;**
- **The categories of nonpublic personal financial information that the regulated entity collects;**
- **The categories of nonpublic personal financial information that the regulated entity discloses, if applicable;**
- **The categories of affiliates and nonaffiliated third parties to whom the regulated entity discloses nonpublic personal financial information, other than disclosures permitted under sections 15 and 16 of the NAIC model regulation, if applicable;**
- **The categories of nonpublic personal financial information about the regulated entity's former customers that the regulated entity discloses and the categories of affiliates and nonaffiliated third parties to whom the regulated entity discloses nonpublic personal financial information about the regulated entity's former customers, other than disclosures permitted under sections 15 and 16 of the NAIC model regulation, if applicable;**
- **If a regulated entity discloses nonpublic personal financial information to a nonaffiliated third party under Section 14 of the NAIC model regulation, a separate description of the categories of information the regulated entity discloses and the categories of third parties with whom the regulated entity has contracted;**
- **An explanation of the consumer's right to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right, if applicable;**
- **Any disclosures that the regulated entity may make under Section 603(d)(2)(A)(iii) of the federal Fair Credit Reporting Act (15 U.S.C. Section 1681a(d)(2)(A)(iii) (i.e., notices regarding the ability to opt out of disclosures of information among affiliates, other than transaction and experience information);**
- **The regulated entity's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and**
- **If a regulated entity only discloses nonpublic personal financial information as authorized under Sections 15 and 16 of the NAIC model regulation, a statement that indicates the regulated entity makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.**

14. Does the regulated entity provide a copy of its privacy notice to its producers?

15. Are privacy disclosures made in a "clear and conspicuous" format?

16. Is the regulated entity compliant with the frequency of notice required in statutes or regulations?

17. Is the process for correcting, amending, or deleting personal information held by the regulated entity clear and unambiguous?
18. Does the regulated entity feedback process that monitors for appropriate use of the "Notice of information Practices", provide timely notices, ensure errors are appropriately remedied, and implement process changes to prevent future errors?
19 Is the regulated entity's use of investigative consumer reports appropriate?
20. Are persons responsible for collecting personal information on behalf of the regulated entity in connection with insurance transactions properly trained (including agents and TPA's) in the appropriate handling of such information?
21. Are internal (employees or staff) limitations to access of personal information, adverse underwriting decisions and investigative consumer reports adequate? Are external (subcontractors and others) limitations to access of personal information, adverse underwriting decisions and investigative consumer reports adequate?
22. Has the regulated entity established specific and accurate reasons for adverse underwriting decisions? Are the reasons compliant with statutes and regulations? Is the recipient of an adverse underwriting decision notified of the reasons for the decision?
23. Does the regulated entity provide and allow for consumer opt-out for sharing of the information it gathers or acquires?
24. Does the regulated entity take adequate steps to prevent unfair discrimination against customers and consumers who are not customers who have opted out from the disclosure of nonpublic personal financial information to nonaffiliated third parties or who have not authorized disclosure of nonpublic personal health information?

Process 013 – Management of Insurance Information

12. Does the regulated entity adequately train and inform its staff and vendors how to address the management of insurance information including handling, disclosing, storing or disposing of insurance information?
13. Does the regulated entity adequately safeguard consumer information?
Note: In making this assessment, was the size and complexity of regulated entity considered and was the nature and scope of the regulated entity's activities considered.

In making this assessment, consider factors such as: • **the products and services offered by the regulated entity;** • **the methods of distribution for the products and services;** • **the types of information maintained by the regulated entity;** • **the size of the regulated entity (which may include the number of employees and the volume of business, etc.);** • **the marketing arrangements; and** • **the extent to which, or methods by which, the regulated entity communicates electronically with customers, producers and other third parties.**
14. Does the contract used by the regulated entity to share information shared with a contractor of the regulated entity provide for adequate protection of information shared by the regulated entity?
15. Are the standards used by the regulated entity adequate to protect the information from non-compliant disclosure?
16. Does the regulated entity provide a "Notice of Information Practices" on a timely basis that contains the required information? Is the content compliant with statute and regulations? Has this responsibility been delegated to the producer? Are controls to assure provision of notice adequate?
17. Does the regulated entity feedback process that monitors for appropriate use of the "Notice of information Practices", provide timely notices, ensure errors are appropriately remedied, and implement process changes to prevent future errors?
18. Does the regulated entity provide a copy of its "Notice of information Practices" to its producers?
19. Are the questions posed by the regulated entity that are designed solely for marketing or research purposes reasonable and non-invasive and is the customer given the opportunity to opt out of response to those questions?
20. Is the regulated entity's use of investigative consumer reports appropriate?
21. Is the process for accessing, correcting, amending, or deleting personal information held by the regulated entity clear and unambiguous?
22. Are persons responsible for collecting information on behalf of the regulated entity in connection with insurance transactions properly trained (including agents and vendors) in the appropriate handling of such information?
23. Are the controls for the management of insurance information adequate and working?

Process 014 –
This Process Review Still Under Construction

12
13.
14.
15.
16.

Process 041– Complaint Register

12. Does the regulated entity maintain a Consumer Complaint Register?
13. Does the register include direct consumer complaints and insurance department complaints?
14. Are there appropriate limitations relating to access of the complaint register?

Process 042 – Complaint Handling

12 Does the regulated entity have a formal Complaint Handling process function?
13. Is the information provided to policyholders to communicate procedures for complaint handling adequate?
14. Are the steps taken by the regulated entity to ensure that correspondence and email received expressing a complaint or grievance is handled as a complaint and is logged and processed correctly?
15. How is management using the complaint handling reports?
16. How does the regulated entity assure that all issues raised in a complaint or grievance are fully addressed by responses?

17. (a) Does the regulated entity have its own standards for timely and accurate response (b) How does it assure that it meets them? (c) Does it comply with state statutes and regulations?Refer to response for Section 1.3 and 1.15.
18. Are all complaint/grievance activities logged, dated and documented?

Process –
This Process Review Still Under Construction

12
13.
14.
15.
16.

Process –
This Process Review Still Under Construction

12
13.
14.
15.
16.

I. Evaluation of Process.

This section considers how to evaluate the results of the testing done in sections G and H. Based on the results of the testing done in those sections, the examiner should arrive at a determination concerning where on the matrix noted below, the process is generally described. This determination should be supported with the examiners evaluation of the process describing the reasons for the selection.

This review utilizes a maturity model to evaluate the efficacy of a procedure or process reviewed. Levels of maturity are generally not mandated by statute or regulation, but the evaluation does assist in identification of those areas where a procedure or process is non-existent, weak or insufficient. The maturity levels used in this report are identified numerically on a scale of 0 to 5, with 0 being the weakest and 5 the strongest. The definitions of these levels are:

Level	Description	Characteristics
0	Lack of any recognizable processes / practices.	- Complete lack of any recognizable processes. - The enterprise has not even recognized that there is an issue to be addressed.
1	Processes are ad hoc and disorganized.	- There is evidence that the enterprise has recognized that the issues exist and need to be addressed. - There are however, no standardized processes; instead, there are ad hoc approaches that tend to be applied on an individual or case by case basis. - The overall approach to management is disorganized.
2	Processes follow a regular pattern.	- Processes have developed to the stage where similar procedures are followed by adherent people undertaking the same task. - There is no formal training or communication of standard procedures, and responsibility is left to the individual. - There is a high degree of reliance on the knowledge of individuals and, therefore errors are likely.
3	Processes are documented and communicated.	- Procedures have been standardized and documented, and communicated through training. - It is mandated that these processes should be followed; however, it is unlikely that deviations will be detected. - The procedures themselves are not sophisticated but are the formalization of existing practices
4	Processes are monitored and measured.	- Management monitors and measures compliance with procedures and takes action where processes appear not to be working effectively. - Processes are under constant improvement and provide good practice. - Automation and tools are used in a limited or fragmented way.

5	Good practices are followed and automated.	- Processes have been refined to a level of good practice, based on the results of continuous improvement and maturity modeling with other enterprises. - IT tools are used in an integrated way to automate the workflow, providing tools to improve quality and effectiveness, making the enterprise quick to adapt.

When applying this evaluation to examination results, the examiner should recognize that some processes and procedures will contain characteristics of a more advanced level of maturity but the characteristics as a whole do not necessarily rise to that level of maturity. For example, some ad hoc processes may contain more advanced IT functions than might otherwise be expected given the state of process development.

Also note that expectation for some areas of risk may not be as high as others.

This Section Still Under Construction

J. List of Processes.

This section lists the various processes that can be tested using a process review methodology. The third column is a cross reference to an applicable standard in the Handbook. The fourth column lists the number of interrogatories listed in this chapter.

P#	Process Description	Related Standard(s)	Section F
001	Internal or External Audit	CH16§A01	1-15
002	Computer Security	CH16§A02	1-13
003	Anti fraud	CH16§A03	1-15
004	Disaster recovery	CH16§A04	1-13
005	Vendor oversight and control	CH16§A05, §A06, K07, L11; Ch23§A01	1-15
006	Records, central recovery and backup. Includes maintenance, content and retention.	CH16§A07	1-15
007	Regulated entity licensure	CH16§A08; Ch18§A01 & A02	1-11
008	Insurance for Agents and Employees	Ch18§A03	1-14
009	Examination cooperation	CH16§A09	1-11
010	Assertions of privilege	CH16§A09	1-12
011	Staff training	None	1-11
012	Customer and consumer privacy protection	CH16§A10, §A12, §A13, §A16, §A17	1-22
013	Management of insurance information	CH16§A11	1-20
014	Nondisclosure of nonpublic personal financial information	CH16§A14, §A15	1-12
015	Reports to insurance departments	CH16§A18; Ch21§A02; Ch22§A01	1-12

016	Title Plant Maintenance	Ch18§A03	1-11
017	Certifications	Ch19§A01; Ch21§A03; Ch22§A01	1-11
018	Medicare Select Plan of Operation	Ch21§A01	1-11
019	Producer Compensation - Medicare	Ch21§A04	1-11
020	Surplus Lines Bonds	Ch24§A01	1-11
021	Surplus Lines Reports	Ch24§A02	1-11
022	Surplus Lines Taxes	Ch24§A03	1-11
023	Surplus Lines Unearned Premium Calculation	Ch24§A04	1-11
024	*Reserved for future use.*		
025	*Reserved for future use.*		
026	*Reserved for future use.*		
027	*Reserved for future use.*		
028	*Reserved for future use.*		
029	*Reserved for future use.*		
030	*Reserved for future use.*		
031	*Reserved for future use.*		
032	*Reserved for future use.*		
033	*Reserved for future use.*		
034	*Reserved for future use.*		
035	*Reserved for future use.*		
036	*Reserved for future use.*		
037	*Reserved for future use.*		
038	*Reserved for future use.*		
039	*Reserved for future use.*		
040	*Reserved for future use.*		
041	Complaint register	Ch16§B01	1-13
042	Complaint handling	Ch16§B02, §B03, §B04, §B05	1-17
043	*Reserved for future use.*		
044	Advertising, sales and marketing including agent produced advertising.	Ch16§C01; Ch19§C01	1-17
045	Producer training	Ch16§C02	1-12
046	Producer communications	Ch16§C03	1-11
047	Mass Marketing	Ch17§C01	1-11
048	Controlled Business - Title	Ch18§C01	1-11
049	Inducements Related to Referrals – Title	Ch18§C02	1-11
050	Affiliated Business Arrangements – Title	Ch18§C03	1-11
051	Producer Replacement Rules - Life	Ch19§C02	1-11
052	Life Replacements	Ch19§C03	1-11
053	Life Illustrations	Ch19§C04	1-11
054	Product Suitability - Life	Ch19§C05	1-12
055	Product Suitability - Annuity	Ch19§C05, §C09 & §C10	1-13
056	Preneed Funeral Contracts, Disclosures and Advertisements	Ch19§C06	1-10

057	Accelerated Benefits Disclosures in Forms and Advertisements	Ch19§C07	1-10
058	Disclosures on Depository Institutions Insurance Sales Applications	Ch19§C08	1-11
059	Education and Monitoring of Producers Selling Fixed Index Annuity	Ch19§C11	1-11
060	Education and Monitoring of Producers Selling Indexed Life Products	Ch19§C11	1-11
061	Health Replacements	Ch20§C01; Ch21§C01	1-12
062	Outline of Coverage - Health	Ch20§C02; Ch21§C02, §C03	1-13
063	Product Suitability - Health	Ch20§C03	1-11
064	Medicare Guides	Ch21§C04	1-10
065	Medicare Supplement Advertisements	Ch21§C05, §C06, §C08, §C10, §C11, §C12, §C13, §C15, §C16	1-18
066	Association, Trust or Discretionary Groups	Ch21§C07, §C14	1-12
067	Product Suitability - LTC	Ch22§C01	1-11
068	LTC Benefit Triggers	Ch22§C02	1-11
069	Marketing of LTC Products	Ch22§C03	1-10
070	LTC Advertisements	Ch22§C04	1-10
071	Producer Replacement Rules - LTC	Ch22§C05	1-11
072	LTC Replacements	Ch22§C06	1-11
073	Consumer Credit Disclosures and Advertisements	Ch23§C01	1-10
074	Consumer Credit Limits	Ch23§C02	1-10
075	Reserved for future use.		
076	Reserved for future use.		
077	Reserved for future use.		
078	Reserved for future use.		
079	Reserved for future use.		
080	License Records Agree with DOI Records	Ch16§D01	1-10
081	Producer Selection and Appointment	Ch16§D02	1-12
082	Producer Termination	Ch16§D03, §D04, §D05	1-15
083	Producer Defalcation	Ch16§D06	1-13
084	Reserved for future use.		
085	Reserved for future use.		
086	Premium Billing	Ch16§E01	1-12
087	Policy Issuance and Insured Requested Cancellations	Ch16§E02	1-12
088	Correspondence Routing	Ch16§E03	1-11
089	Assumption Reinsurance	Ch16§E04	1-12
090	Policy Transactions	Ch16§E05	1-14
091	Locating Missing Policyholders or Beneficiaries	Ch16§E06	1-11
092	Return Premium	Ch16§E07	1-12

093	Claim History	Ch17§E01	1-11
094	Reinstatement - Life and Annuity	Ch19§E01	1-13
095	Communication of Nonforfeiture Options - Life and Annuity	Ch19§E02	1-12
096	Annual Report of Policy Values - Life and Annuity	Ch19§E03	1-10
097	Reinstatement - Health	Ch20§E01	1-13
098	Credible Coverage	Ch20§E02	1-13
099	Policy Renewals - LTC	Ch22§E01	1-10
100	Application of Nonforfeiture - LTC	Ch22§E02	1-10
101	Communication of Nonforfeiture Options – LTC	Ch22§E03	1-10
102	Policyholder Service - LTC	Ch22§E04	1-10
103	Reserved for future use.		
104	Reserved for future use.		
105	Reserved for future use.		
106	Premium Determination and Quotation	Ch16§F01, §F03	1-14
107	Policyholder Disclosures	Ch16§F02	1-13
108	Underwriting and Selection	Ch16§F04	1-21
109	Form Filing or Certification	Ch16§F05	1-12
110	Terminations	Ch16§F07, §F08, §F09	1-13
111	Deviations	Ch17§F01	1-11
112	Schedule Rating or Individual Risk Modification Plans	Ch17§F01, §F02	1-12
113	Use of Expense Multipliers	Ch17§F03	1-12
114	Premium Audit Accuracy	Ch17§F04	1-13
115	Experience Modification - Workers Compensation	Ch17§F05	1-12
116	Loss Reporting - Workers Compensation	Ch17§F06	1-12
117	NCCI Call on Deductibles	Ch17§F07	1-11
118	Timing of Underwriting, Rating and Classification	Ch17§F08	1-10
119	Listing of Forms and Endorsements	Ch17§F11	1-11
120	Verification of VIN Numbers	Ch17§F12	1-12
121	Prohibited Anticompetitive Underwriting Practices	Ch17§F13	1-10
122	Mass Market Underwriting	Ch17§F14	1-13
123	Group Personal Lines	Ch17§F15	1-15
124	Cancellation/Nonrenewal Notices	Ch17§F16	1-12
125	Policy Coding	Ch17§F17	1-12
126	Underwriting File Documentation	Ch17§F18	1-13
127	Title - Reissue and Refinance Credits	Ch18§F01	**UC**
128	Title - Collusive or Anti-competitive Underwriting Practices	Ch18§F02	**UC**
129	Title - Other Charges and Fees	Ch18§F03	**UC**
130	Title - E&O for Closing	Ch18§F04	**UC**
131	Title - Closing and Settlement	Ch18§F05	**UC**
132	Title - Reports and Disclosures	Ch18§F06	**UC**
133	Title - Recording, Reporting and Validation of Revenue, Loss and Expense Experience	Ch18§F07	**UC**

134	Title- Coding	Ch18§F08	**UC**
135	L&A - Pertinent Information on Applications	Ch19§F01	**UC**
136	L&A - AIDS-Related Concerns	Ch19§F02	**UC**
137	Health - Cancellation Practices	Ch20§F01	**UC**
138	Health - Information on Applications	Ch20§F02	**UC**
139	Health - Continuation of Benefits.	Ch20§F03	**UC**
140	Health - Genetic Information Nondiscrimination Act	Ch20§F04	**UC**
141	Health - Protection of Health Information	Ch20§F05	**UC**
142	Health - Use of Preexisting Exclusions	Ch20§F06	**UC**
143	Health - Improperly Deny Coverage	Ch20§F07	**UC**
144	Health - Guaranteed-Issue Requirements	Ch20§F08	**UC**
145	Health – Portability	Ch20§F09	**UC**
146	Health - Self-funded Benefit Plans	Ch20§F10	**UC**
147	LTC - Appeal of Adverse Benefit Trigger Determination	Ch22§F01	**UC**
148	Consumer Credit - Effective and Termination Dates	Ch23§F01	**UC**
149	Consumer Credit – Terminations	Ch23§F02	**UC**
150	Consumer Credit - Creditor Submitted Premium	Ch23§F03	**UC**
151	Consumer Credit - Payment of Compensation	Ch23§F04	**UC**
152	Consumer Credit - Unfair Methods of Competition	Ch23§F05	**UC**
153	Reserved for Future Use		
154	Reserved for Future Use		
155	Reserved for Future Use		
156	Reserved for Future Use		
157	Claims Handling	Ch16§G01; Ch16§G02; Ch16§G03; Ch16§G06; Ch16§G10; Ch16§G11	1-17
158	Response to Claim Correspondence	Ch16§G04	1-11
159	Claim File Documentation	Ch16§G05	1-11
160	Appropriate Claim Forms Use	Ch16§G07	1-11
161	Claims Reserving	Ch16§G08	1-13
162	Denied and Closed Without Payment Claims	Ch16§G09	1-11
163	Catastrophe Claim Handling	Ch16§G01; Ch16§G02; Ch16§G03; Ch16§G06	1-12
164	Reservation of Rights and Excess of Loss letter	Ch17§G01	1-11
165	Deductible Reimbursement	Ch17§G02	1-12
166	Loss Statistical Coding	Ch17§G03	1-12
167	Title - Indemnification for Loss of Settlement		**UC**
168	L&A - Accelerated Benefit Payment disclosures		**UC**
169	L&A - Discrimination - Qualifying Events		**UC**
170	Health - Newborns' and Mothers' Health Protection Act		**UC**
171	Health - Mental Health Parity and Addiction Equity Act		**UC**
172	Health - Women's Health and Career Rights		**UC**

	Act		
173	Health - Group Coverage Replacements		**UC**
174	Consumer Credit - Proof of payments reflect appropriate claim-handling		**UC**
175	Consumer Credit - Claim files establish events and dates		**UC**

G:\MKTREG\DATA\D Working Groups\D WG 2016 MCES (PCW)\Docs_WG Calls 2016\Process Review Methodology\Process Review Methodology Proposal 10-12-16.docx

Chapter X—Closing Continuum Actions

The process for continuum actions from inception to closing may be divided into four phases: (1) a "Fact Finding Phase" in which insurance department personnel are gathering facts[1] from the regulated entity and other sources[2]; (2) a "Violation Analysis Phase" in which the insurance department is applying the law to the facts in an effort to determine if any violations of the law have occurred; (3) a "Remedial Phase" in which the insurance department seeks appropriate remedies for any violations of the law; and (4) a "Reporting Phase" in which the insurance department reports the resolution of the continuum action to interested parties.

A. The Fact Finding Phase

Continuum actions involving the gathering of information from regulated entities regarding their activities can be divided into continuum actions that are undertaken pursuant to the insurance department's investigation authority and those that are undertaken pursuant to the insurance department's examination authority.

1. Continuum Actions under Investigation Authority

Chapter 2—Continuum of Regulatory Responses of this handbook lists a number of actions in the section titled "Contact with the Regulated Entity" that may be undertaken by an insurance department under its investigation authority[3]. Continuum actions under the investigation authority may be initiated on an informal basis (e.g., writing a letter to a company requesting information about an activity) or they may be part of a formal market regulation investigation as described in Chapter 7—Market Regulation Investigation Guidelines of this handbook. Regardless of whether the investigation is informal or formal, the end product of the Fact Finding Phase is generally a summary of findings from which a determination may be made in the next phase of the continuum action process. Depending upon the type of continuum action, the summary of findings may be as informal as a verbal discussion with a supervisor or may involve a more formal written memorandum or investigation report.

2. Continuum Actions under Examination Authority

Market conduct examinations are the continuum actions undertaken pursuant to an insurance department's examination authority. The types of market conduct examinations and the procedures used are discussed in great detail in other chapters of this handbook, so they will not be described in detail here. While variations in the market conduct examination process may occur due to variations in state law, the Fact Finding Phase generally concludes with a draft examination report being filed with the insurance department by the exam team conducting the examination along with a response to the draft examination report being filed by the entity examined.

[1] Facts may be gathered through the entire continuum process beginning with market analysis and extending to examinations.
[2] Some states may also utilize market regulation continuum actions to investigate entities operating illegally in a state. In such cases, fact finding may also extend to such illegally operating entities.
[3] Some states may take the position that all continuum activities from market analysis through examinations are conducted under their examination authority. For such states, the discussion of "Continuum Actions under Investigation Authority" in this chapter is intended to describe any continuum actions that these states may initiate under their examination authority other than actual market conduct examinations.

B. The Violation Analysis Phase

Once the Fact Finding Phase is completed, the results are referred to insurance department personnel with the requisite authority to determine whether violations have occurred[4], which may vary depending upon the department's organizational structure. These insurance department personnel review the facts and apply the relevant laws to those facts in an effort to analyze whether or not the facts demonstrate a violation of the insurance laws. In performing this analysis, the insurance department personnel must apply the standards imposed by the language of the state's laws.

1. Laws Requiring Intent vs. Laws without Intent Language

In a legal context, "intent" is "[a] state of mind in which a person seeks to accomplish a given result through a course of action." *Black's Law Dictionary, Sixth Edition*, p. 810 (1990). Some laws have as a component of the violation that the prohibited action must be done with some level of intent. Laws that describe the prohibited action as being done "knowingly," "willfully" or "in conscious disregard" are laws that require the facts to demonstrate some intent on the part of the regulated entity in order for the entity's action to be considered a violation. Intent "can seldom be proved by direct evidence, but must ordinarily be proved by circumstances from which it may be inferred." Id. For example, evidence that behavior contrary to the law had previously been brought to the regulated entity's attention but it had done nothing to change its behavior would be circumstantial evidence that it acted with intent. Where intent is a necessary element of the prohibited conduct in the law, there is no violation if no evidence is found indicating intent on the part of the regulated entity.

By contrast, some laws contain no language indicating a requirement for intent on the part of the violator. In applying such laws to the facts, all that need be shown in order to show a violation of the law is that the regulated entity engaged in the prohibited conduct.

2. Frequency Based Violations vs. Non-Frequency Based Violations

For some insurance laws, the question of whether a violation has occurred is dependent upon whether the regulated entity committed the prohibited conduct with sufficient frequency. Two examples of this type of law are the *Unfair Trade Practices Act* (#880) and the *Unfair Claims Settlement Practices Act* (#900). Both of these model laws indicate that a violation may be found if the regulated entity commits any of the actions defined in the laws "with such frequency to indicate a general business practice to engage in that type of conduct." When conducting compliance testing for activities regulated by these two model laws, states frequently utilize benchmark error rates. The presumption of a business practice violation is created when the ratio of errors to the total number of files tested exceeds these benchmark error rates. States vary in the benchmark error rates they use.

When analyzing the facts for the existence of a business practice, however, the reviewer should be careful not to slavishly rely upon the benchmark error rates. A business practice may be shown by other evidence. For example, a test for claims practices may uncover only one error out of a field of 100. The resulting error rate of 1% may be less than the state's benchmark error rate for claims practices, but a review of the company's claims processing manual shows that all claims of the type that was noted as an error will be processed in this way. Therefore, the combination of the claims processing manual and the single found error demonstrate that it is the company's business practice to incorrectly process all claims of that type in violation of the law despite the test error rate of only 1%.

[4] Some states will initiate a continuum action where a substantive error occurs even though a statute or regulation does not actually address the conduct. In such cases, the analysis phase may only involve a consideration of what actions, if any, the insurance department may be able to take.

Many other insurance laws are not based upon the frequency of committing the prohibited conduct. For these laws, a single instance of the prohibited conduct would constitute a violation. Such laws are the type of laws with which the average person is most familiar. For example, the laws against exceeding the speed limit do not say that one must exceed the speed limit a certain number of times before the law is violated; you will receive a ticket for a violation each time a policeman catches you speeding.

Similarly, some states have not included the "business practice" language when enacting the *Unfair Trade Practices Act* (#880) and/or the *Unfair Claims Settlement Practices Act* (#900). In these states, a violation occurs each time the regulated entity commits any of the acts prohibited by the statute regardless of whether it occurred once or one hundred times.

3. Violations of Prior Orders or Agreements

Some state laws make it a separate violation to fail to comply with an order or agreement not to behave in a certain way. For example, an insurance company may have entered into a settlement agreement with an insurance department not to process claims in a way that violated insurance law due to a finding of such violations in a market conduct examination. In a subsequent market conduct examination, it was discovered that the insurance company had continued to process claims in this way despite its agreement not to do so. If the state has a law making the company's failure to comply with the settlement agreement a violation, the company in this instance would be guilty of violating both the claims practices law it had previously violated as well as the law against failing to comply with a settlement agreement.

C. The Remedial Phase

The actions taken in this phase of the process are a function of what was determined in the Violation Analysis Phase.

1. No Violations Found

Where no violations are found, there is nothing to remedy, and the continuum action is usually closed without further action. How this occurs is a function of the type of continuum action. Actions under the investigation authority may or may not have prescribed processes under the state's laws, so closing may or may not involve communication of the resolution to the regulated entity. The market conduct examination process is usually more formalized. While the exact process depends upon a state's law, it usually involves something similar to the *Model Law on Examinations* (#390): (1) finalizing the exam report; (2) adoption of the exam report; and (3) forwarding of the adoption order and finalized exam report to the regulated entity examined.

Alternatively, if the regulator conducting the Violation Analysis Phase determines there is insufficient evidence of a violation, but there is reason to believe that it would be appropriate to gather additional facts, he or she could reopen the Fact Finding Phase. The degree of formality with which the Fact Finding Phase is reopened is a function of the state's law and the insurance department's procedures. The *Model Law on Examinations* (#390)specifically provides two options for reopening the Fact Finding Phase for market conduct examinations by authorizing the insurance commissioner to (1) reject the examination report with instructions to the examiners to reopen the examination to gather additional information or (2) call for an investigatory hearing for the same purpose.

2. Violations Found

Actions taken when violations are found depend upon the nature of the violations and the circumstances of the continuum action.

a. Resolution with Instructions to Cure any Violations Found

If violations are found that do not rise to a level requiring disciplinary action, a continuum action may be closed with instructions to the regulated entity to take action to bring itself into compliance with the law. Depending upon a state's laws, this directive to comply for continuum actions under an insurance department's investigation authority could be as informal as a verbal instruction or letter or as formal as a department order. Market conduct examinations usually have more formal procedures that may vary by state. For example, the *Model Law on Examinations* (#390) provides that "the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation" in those states that have enacted it.

b. Voluntary Settlement

The majority of continuum actions where violations are found and disciplinary action is deemed appropriate are resolved through a voluntary settlement. Voluntary settlements allow the insurance department and the regulated entity to avoid the time, trouble and expense of litigation. While state laws may vary as to the process, voluntary settlements usually involve a negotiated settlement agreement and/or appropriate departmental orders, such as consent orders, encompassing one or more of the following remedial measures.

(1) Retrospective Remediation

To address past violations, a voluntary settlement may require the regulated entity to take steps to remedy its past practices, including the payment of restitution where appropriate. For example, a company that had been improperly denying claims may be required to reprocess and pay previously denied claims, including applicable interest, in order to make affected consumers whole.

(2) Prospective Remediation

To ensure that violations do not continue to occur, a voluntary settlement may require the regulated entity to cease and desist from engaging in the prohibited conduct and to develop a plan to ensure future compliance. The voluntary settlement may also require the regulated entity to perform self-audits of its compliance measures.

(3) Monetary Fines

A voluntary settlement may include a requirement for the regulated entity to pay a fine for the violations of law. The calculation of a fine should be based upon the provisions of state law, which may allow for the consideration of various aggravating and mitigating circumstances.

(a) Intent as an aggravating or mitigating factor: While intent may be an element of determining whether or not a violation has occurred for some laws, other laws may utilize intent as a mechanism to enhance or reduce the fine. In such instances, evidence showing that the regulated entity acted with intent (e.g. "knowingly," "willfully" or "in conscious disregard") would involve the imposition of a higher fine and lack of a showing of intent would lead to a lesser fine.

(b) Business practice violations: For laws that are not frequency based, the fining provision of state laws usually regard each instance of conduct contrary to the law as being subject to a separate fine. Frequency based business practice laws, however, may vary in how a fine is calculated. Some state laws may regard the business practice as a single violation subject to a single fine. Other state laws may regard the business practice standard as merely a threshold. Once a

business practice is established under this threshold view, each act making up the business practice is considered a separate violation subject to a separate fine.

(c) Violation of prior agreements or orders as an aggravating factor: As noted above, a regulated entity's failure to comply with a prior agreement or order may be regarded as a separate violation subject to a separate fine under some state's laws. Additionally, this failure to comply may also be regarded as evidence of intent and an aggravating factor leading to increased fines for the underlying conduct that is contrary to the prior agreement or order.

(d) Behavior of the regulated entity as a mitigating or aggravating factor: Where the insurance department has some discretion to calculate fines within a range, the behavior of the regulated entity both before and during the continuum action may act as either a mitigating or aggravating factor. Cooperation with the continuum action, efforts to identify and correct problems prior to the continuum action being initiated or self-reporting of a violation are examples of behavior that may justify a lower fine within the range. Lack of cooperation, obstruction or evasion by the regulated entity are types of behavior that may justify increases of the fine within the range.

(e) Level of harm as an aggravating factor: The severity of financial or other harm to affected persons caused by the violations may act as an aggravating factor in calculating a fine, as opposed to technical violations that cause no apparent harm. Some state laws specifically recognize the amount or type of harm as an aggravating factor allowing an enhancement to the amount of fine imposed.

(4) Suspension or Revocation of License

Where violations are particularly egregious, a voluntary settlement may include the suspension or revocation of the regulated entity's license. Some state laws may allow a voluntary settlement to include a period of probation in lieu of a suspension or revocation of the license.

(5) Monitoring and Reporting

A voluntary settlement will likely include a requirement that the regulated entity provide the insurance department with reports on its retrospective and prospective remedial activities. Such reports may be at the completion of the remediation or may be required periodically if the voluntary settlement includes a monitoring period. After remedial measures are completed and any monitoring period has ended, the insurance department may determine that a follow-up investigation or examination is appropriate to audit compliance with the terms of the voluntary settlement.

c. Initiate an Administrative or Court Proceeding

Where the insurance department and the regulated entity cannot resolve a continuum action through a voluntary settlement, the insurance department may decide to initiate a formal proceeding. This may be either an administrative proceeding or a court proceeding depending upon the state's laws. In either case, it is important to realize the Fact Finding Phase starts anew given that either side may seek to do discovery (e.g., depositions, interrogatories or requests for production of documents) and the administrative hearing officer or judge will make his or her own findings of fact based upon the evidence presented at a hearing. After the hearing, the administrative hearing officer or judge will enter an order setting forth findings of fact and conclusions of law as to whether violations exist. This order may also impose some of the same kinds of disciplinary actions discussed above for voluntary settlements if the administrative hearing officer or judge agrees that violations exist, but if the administrative hearing officer or judge does not agree that violations exist, no discipline will be imposed. Either party may appeal the order through the court system if they are not happy with the result. This may lead to a protracted period before the continuum action is resolved unless the parties decide to negotiate a voluntary settlement at some point during the process.

d. Referral to the Market Actions (D) Working Group
If the findings of the continuum action indicate issues affecting multiple states, the insurance department may wish to refer the matter to the Market Actions (D) Working Group for collaborative action. A detailed discussion of this process may be found in Chapter 6—Collaborative Actions.

D. The Reporting Phase

Where appropriate, the results of a continuum action should be reported in accordance with the state's law and in the applicable NAIC database.

1. Publication of the Resolution as Authorized by State Law
The extent to which the resolution of a continuum action becomes a public record under a state's law may be dependent upon the type of continuum action.

a. Continuum Actions under Investigation Authority
Continuum actions under the investigation authority may not be considered public records under many state's laws unless some form of disciplinary action is imposed. Where disciplinary action is imposed, the settlement agreement and/or order for a voluntary settlement or the order entered pursuant to an administrative or court proceeding are frequently considered public documents[5]. Many insurance departments may wish to increase the dissemination of this information by posting the information on its website and issuing press releases.

b. Continuum Actions under Examination Authority
Finalized market conduct examination reports are generally considered public documents under state examination laws regardless of whether any violations were found or any disciplinary action was imposed. The "Continuum Core Competencies" for market conduct examinations in Appendix D of this handbook indicate that the publication of the final examination report should include the regulated entity's response to the examination report where allowed by state law. If disciplinary action is imposed, this will also likely include the settlement agreement and/or order for a voluntary settlement or the order entered pursuant to an administrative or court proceeding. As discussed above, dissemination of the final examination report and related documents to the public may occur through posting the information on the insurance department's website and the issuance of press releases.

2. Report the Resolution in the Market Actions Tracking System
The Market Actions Tracking System (MATS) was developed by the NAIC for tracking and reporting information regarding continuum actions to the other states. The resolution of any continuum action recorded in MATS should be entered into the system to share with other states.

3. Report any Disciplinary Action in the Regulatory Information Retrieval System
The Regulatory Information Retrieval System (RIRS) was developed by the NAIC to document and share information regarding disciplinary actions taken against regulated entities. If a continuum action results in disciplinary action, this information should be recorded in RIRS to share with the other states.

[5] While settlement agreements and orders may be considered public documents, any other information in the continuum action file (e.g., work papers, information received, communications, etc.) may still be accorded confidential status under the laws of many states. In particular, this is likely to be the case where a state conducts all of its continuum activities under its examination authority.

4. Other Reporting Activities

The section titled "Closure" of Chapter 2—Continuum of Regulatory Responses of this handbook mentions other means of reporting on issues uncovered in a continuum action to interested parties, such as insurance department bulletins, consumer outreach and referrals to other law enforcement agencies. Where appropriate, these may be considered and implemented.

G:\MKTREG\DATA\D Working Groups\D WG 2016 MCES (PCW)\Docs_WG Calls 2016\Closing Continuum Actions\Current Draft\Closing Continuum Actions 11-28-16.docx

