

**Michael Lovendusky**  
Vice President & Associate General Counsel  
Telephone 202.624.2390 [michaellovendusky@acli.com](mailto:michaellovendusky@acli.com)



3 February 2020

John Haworth, Chairman  
Market Regulation Certification (D) Working Group  
NAIC Central Office  
1100 Walnut Street, Suite 1500  
Kansas City MO 64106-2197  
Via [rhelder@naic.org](mailto:rhelder@naic.org)

RE: Pilot Recommendation to Market Regulation Certification Program

Dear Chairman Haworth,

This letter memorializes the observations I made during the Working Group teleconference on January 30, when I associated ACLI sensitivities with those of the American Property Casualty Insurance Association. The following comments pertain to the draft *Voluntary Market Regulation Certification Program Self-Assessment Guidelines, Checklist Tool and Implementation Plan* (10/14/19).

Regarding the discussion which arose pertaining to cybersecurity standards, the ACLI would recommend that Requirement 5, Confidentiality and Information Sharing, include the following:

The department shall have the authority and capability to: Comply with cybersecurity requirements equal or more rigorous than those required of regulated entities.

*Comment:* Just as regulators are appropriately concerned with regulated entities' protecting consumer information and having processes in place in circumstances breaches of cybersecurity, so, too, are life insurers concerned that government agencies have processes for and protections against cybersecurity breach. Industry concerns are heightened in this regard to the degree government agencies rely upon contract vendors to provide governmental services.

Regarding the discussion which arose pertaining to Requirement 3, Department Staffing, ACLI understands the current proposal is to delete the elements detailing use of contract examiners (appended). ACLI concerns pertaining to contract examiners are dynamic. ACLI concern is diminished if a state seldom or minimally utilizes contract examiners. However, ACLI concern grows commensurately with the degree of reliance by a state upon contract examiners. The more a state relies upon contract examiners, the more important it will be to obtain precisely the kind of information which would be obtained by the Requirement 3 elements proposed for deletion. Additionally, reliance upon contract examiners can often result in exorbitant costs which are passed along to the regulated entity. In ACLI members' experience, there seems to be less cost oversight by regulators when contract examiners are engaged. ACLI is concerned that engagement of contract examiners on a daily or hourly basis can incentivize them to be less efficient and cost conscious as a longer examination equals higher compensation – paid for by

the examined company. To help control these costs and to ensure contract examiners remain focused and efficient in their duties, the ACLI suggests that the companies be allowed to enter into tri-party agreements with contract examiners and that contract examination agreements have a dollar cap. ACLI also recommends that the deleted contract examiner elements be revived in the captioned certification program, perhaps moderated by some threshold of government reliance justifying heightened public information about the use of contract examiners.

Finally, regarding Requirement 6, Collaboration With Other Jurisdictions, the ACLI agrees with the APCIA: as industry has no access to the Market Action Working Group (MAWG) policies and procedures, it is impossible for ACLI to support this Requirement. ACLI concerns are heightened in consideration that a state participant in MAWG or MAWG itself relies upon contract examiners. ACLI is considering appealing to MAWG or NAIC leadership to revise MAWG policies and procedures to provide transparency in its operations.

Thank you for your consideration.

Sincerely,  
  
 MICHAEL LOVENDUSKY  
 Vice President & Associate General Counsel  
 The American Council of Life Insurers

Appendix – Requirement 3 Proposed Deletions

- 3a. Does the department have examiners on staff whose responsibility is to examine and/or conduct continuum actions of insurance companies as indicated by the department’s market analysis or as prescribed by state laws?
- 3b. Does the department utilize contract examiners in lieu of department staff examiners to examine and/or conduct continuum actions of insurance companies as indicated by the department’s market analysis or as prescribed by state laws?
- 3c. If the department utilizes contract examiners, please describe in a separate attachment the manner and extent of utilization in the department’s recent activities.
- 3d. Indicate below the number of full-time market examiners, including supervisory personnel on the department’s staff and/or the number of individual contract examiners used compared to the last three years. For contract examiners convert the number of contract hours to a full-time equivalent employee position. Also list your jurisdiction’s premium volume for any and all examinations or actions written in the most recently completed year.

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

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

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