MARKET REGULATION AND CONSUMER AFFAIRS (D) COMMITTEE

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Draft: 12/11/09

Market Regulation and Consumer Affairs (D) Committee
San Francisco, CA
December 8, 2009

The Market Regulation and Consumer Affairs (D) Committee met in San Francisco, CA, Dec. 8, 2009. The following Committee members participated: Kim Holland, Chair (OK); Ralph S. Tyler, III, Vice Chair (MD); Jay Bradford represented by Joe Musgrove (AR); Wayne Goodwin represented by Ernest Nickerson (NC); Adam Hamm (ND); Neil N. Jasey represented by Anne Marie Narcini (NJ); Scott J. Kipper (NV); Mary Jo Hudson (OH); Mike Kreidler (WA); Sean Dilweg represented by Sue Ezalarab (WI); and Ken Vines (WY). Also participating were: Peg Brown (CO); Ted Clark (KS); John M. Huff and Jim Mealer (MO); Bruce Ramge (NE); Lynette Baker (OH); Leslie Krier (WA); and Market Hooker (WV).

1. Adoption of the Nov. 3, 2009, Conference Call Minutes

Director Hudson made a motion to adopt the minutes of the Nov. 3 conference call. The motion was seconded by Commissioner Tyler and passed (Attachment One).

2. Current Activities Regarding the Market Conduct Annual Statement (MCAS)

Commissioner Holland said an industry survey had been conducted of the companies who had been required to file data with the Market Conduct Annual Statement (MCAS). She said the survey had been developed by Deidre Manna (Property Casualty Insurers Association of America—PCI) and Lee Wood (Prudential), as participants on the MCAS (D) Subgroup, in conjunction with several industry trade associations.

Ms. Manna stated that the survey included 11 questions for each of the data elements collected in MCAS. She said 96 property/casualty companies completed the survey, and she presented a PowerPoint presentation regarding the survey and its findings. She said the individuals at the companies who enter the MCAS data were asked to complete the survey. She said the survey was hundreds of pages long and took each company several hours to complete.

Catherine Paolino (American Insurance Association—AIA) said the overall conclusion of the property/casualty survey was that several of the data elements being collected caused confusion for the companies required to enter the data. She said it was often not clear to the companies what information was actually being requested. She said the definitions for the areas of lawsuits, claims and non-renewals/cancellations appeared to cause the most difficulty for participating companies. She suggested that a document be created that included frequently asked questions for the data elements. Ms. Manna suggested the Committee proceed cautiously with the development of additional data elements and suggested that, to ensure companies were providing the correct information, they needed to understand how regulators planned to use the data.

Ms. Wood said 70 life/annuity companies completed the survey, and she presented a PowerPoint presentation regarding the survey and its findings. She said the survey was lengthy, with hundreds of open-ended answers.

Kelly Ireland (American Council of Life Insurers—ACLI) said the overall conclusions of the life/annuity survey was that most of the data elements being requested could already be found in the annual financial statement and that it would be helpful to have a better understanding of how regulators wanted to use the data. She said it was often not clear to the companies what information was actually being requested. She said there needed to be more emphasis on uniformity, and noted that many companies received a follow-up call from regulators.

Ms. Baker asked if follow-up calls required of companies were about the data elements or procedures. Ms. Ireland said a good number were procedural in nature.

Commissioner Ario said it was important for the industry representatives to understand how MCAS fits into the overall goals of the states' market regulatory oversight.

Commissioner Kreidler asked what percentage of the companies asked to complete the survey actually completed the survey. Ms. Manna said she was not sure of the percentage because the distribution was to a large number of companies, including those that did not belong to a trade association. Commissioner Kreidler said the results of the survey might not accurately reflect the comments for all participating companies, because companies that were not confused by the process might not have an incentive to complain.

Ms. Baker asked if the survey participants were asked if they had read the information on the NAIC MCAS Web page. Ms. Ireland said that question was not asked.

Ms. Ezalarab asked if the survey included a question about the length of time the individual completing the survey had been working with MCAS data. Ms. Paolino said the survey participant's experience level was not included in the survey.

Ms. Narcini said she was not surprised by the responses of the survey because she often heard the same comments.

Ms. Baker said it appeared the data elements that caused the most confusion for companies were the data elements that included flexibility for the states in collecting the data. She said the confusion could be eliminated if the definitions were solidified and agreed upon by all regulators. Mr. Mealer said uniform definitions are often difficult for regulators because data is not uniform between companies. He said regulators should ask industry what additional data elements should be collected.

Ms. Baker asked where the life/annuity data elements were in the annual financial statement. Ms. Ireland said she would be able to provide where the specific information could be located. Ms. Baker said the survey indicates that there are numerous misunderstandings with how the data is collected. Ms. Baker said that the information is not broken down by product type or applicable state like it is in the MCAS so the information from the financials would not be useful.

Birny Birnbaum (Center for Economic Justice—CEJ) said the difficulties mentioned in the survey results indicate that the current MCAS infrastructure, in which the data being collected in highly summarized, is creating the problem. He said that if transaction-level data was collected, the regulators and industry would not have the difficulties of defining what was being collected. He said companies only need to know the data is being used by that states as part of their market analysis programs. He encouraged regulators to take a broad view of the MCAS project and not allow discussions about specific data elements to drag on for years. He said he was concerned about industry's suggestion to slow down the collection of new data elements.

Ms. Manna suggested that a possible next step for the Committee would be to conduct a forum so that regulators and company representatives could discuss what information should be included for each of the data elements. Ms. Narcini said she supports such a forum.

Commissioner Holland said she would like to have a forum at the 2010 Spring National Meeting for regulators and company representatives to be able to discuss what information should be included for each of the MCAS data elements. She said that, while it is important to take time to clarify what data is to being requested, she did not want to slow down the collection of the data by all states in 2011.

3. Future Activities of the Market Information Systems (D) Task Force

Commissioner Holland said she was appointing a Market Information Systems (D) Task Force to prioritize and provide oversight for all market systems modifications and enhancements. She said the Task Force would be responsible for the oversight of the automation of MCAS and evaluating the current market analysis tools for effectiveness. She said Director Huff had agreed to chair the Task Force. Ms. Baker asked why the Special Activities Database (SAD) was not mentioned in the charges for the Task Force. Tim Mullen (NAIC) said SAD was not included because it is overseen by the Antifraud (D) Task Force.

4. Complaint Reconciliation Process

Commissioner Holland said that, because consumers and regulators rely heavily on consumer complaint information, the reconciliation of consumer complaints was an important project. Ms. Narcini said the development of a uniform reconciliation process was important and needed to be overseen by its own group. Mr. Brown agreed and said it would be an ongoing effort to make sure changes were implemented. Mr. Hooker suggested that representatives from SBS be included in any working group discussions.

Marty Mitchell (America's Health Insurance Plans—AHIP) said that if a working group is formed, he hoped it would not cause a delay in the implementation of the complaint codes. He said it was important not to throw the "good" out in search of the "perfect." Commissioner Holland said it would be important to have industry participation with the reconciliation process.

Ms. Narcini made a motion to appoint a working group to oversee the development of a uniform reconciliation process. The motion was seconded by Ms. Krier and passed.

5. Adoption of Changes to the *Market Regulation Handbook*

Mr. Ramge stated that new standards had been developed for Chapter 25 of the *Market Regulation Handbook*, "Conducting the Advisory Organization Examination." He said four changes were proposed by the Advisory Organization Examination Oversight (C) Working Group and previously adopted by the Property and Casualty Insurance (C) Committee.

Mr. Ramge said the proposed changes include a new standard for rating rule manuals. He said the Working Group agreed to combine the proposed new standard into the current standard regarding loss costs, policies, forms, rating factors and classifications. He said the changes also included a new section and standard related to workers' compensation inspection services, a new section and standards for residual market functions and revisions to the Information System Questionnaire (ISQ).

Mr. Musgrove made a motion to adopt the recommended changes. The motion was seconded by Ms. Ezalarab and passed (Attachment Two).

6. Adoption of Working Group Reports

Commissioner Tyler stated that the Special Accreditation Standards (D) Working Group had made tremendous progress toward their charge over the past year. He acknowledged the hard work and input of Working Group members in the development of several market conduct accreditation proposals. He said that to ensure the market regulation accreditation program continued to be a priority for the organization, he had requested that an Executive (EX) Committee-level Working Group be created to oversee continued development of a market regulation accreditation program. Commissioner Holland said this was a good step to ensure that the states have the resources they need to ensure they have proper market regulation programs.

Ms. Krier stated that the Market Analysis Procedures (D) Working Group had met a couple of times since the Fall National Meeting. She said the Working Group had been unable to complete their task of identifying the lines of business, which should further be developed for review by the regulators. She also said the complaint coding discussion would continue in the future and suggested the task of overseeing the implementation of the revised codes be transferred to the newly formed working group. Ms. Manna said the Market Analysis Procedures (D) Working Group should focus their energies on personal coverages when identifying additional lines of business for review. Ms. Paolino said it is also important to consider the resources available at the state insurance departments when discussing additional lines of business to be reviewed by regulators (Attachment Three).

Mr. Nickerson said the Consumer Connections (D) Working Group had received a presentation on the difference between insurance contract readability and plain language in insurance contracts. He said discussion focused on the scope of the public hearing to be hosted by the Working Group during the 2010 Spring National Meeting. He said the hearing will include all lines of insurance and is open to anyone who signs up in advance to testify. He also said the Working Group discussed policy oversight by the Working Group as to the type of information that should be included for use by consumers on the NAIC Consumer Information Source (CIS) Web site. He said discussion focused on the trend report, the definition of "confirmed complaint" and the mapping of complaint codes. He said the Working Group voted to recommend that the trend report be removed from the CIS and that total complaints be added to the CIS. Commissioner Holland said the discussion of eliminating the trend report and posting the total number of complaints on CIS would occur in the newly formed working group and would not be considered an adopted policy statement with the adoption of the Working Group's report (Attachment Four).

Mr. Ramge said the Market Conduct Examination Standards (D) Working Group had adopted many new standards for inclusion in the *Market Regulation Handbook*. He said revisions had occurred to Chapter 16—General Examination Standards; Chapter 17—Conducting the Property and Casualty Examination; Chapter 18—Conducting the Title Insurance Company and Title Insurance Agent Examination; Marketing and Sales Standard 9 of Chapter 19—Conducting the Life and Annuity Examination; and Placement, Cancellation and Nonrenewal Standard 4 of Chapter 24—Conducting the Surplus Lines Broker Examination (Attachment Five).

Ms. Mead said the Market Actions (D) Working Group will soon finalize its plans for 2010. She said the Working Group had discussed the Executive (EX) Committee creation of a Multistate Settlement (EX) Working Group. She said the Working

Group was seeking new applicants for membership and encouraged market regulators who were interested in participating on the Working Group to apply. She said all nominations should be submitted by Dec. 24, 2009.

Mr. Clark said the Antifraud (D) Task Force and its working groups had accomplished several tasks. He said they had received a presentation from Commissioner Kipper regarding the Nevada Insurance Division's "Insurance Alert" campaigns designed to educate consumers about unauthorized entities; received updates from the Coalition Against Insurance Fraud, National Insurance Crime Bureau, Financial Crimes Enforcement Network and Office of Foreign Asset Control on their antifraud-related activities during the past quarter; received comments from Task Force members, interested regulators and interested parties on proposed revisions to the Antifraud (D) Task Force *Guidelines to State Insurance Regulators to the Violent Crime Control and Law Enforcement Act of 1994: 18 USC 1033 and 1034 (1033 Guidelines);* received comments from Task Force members, interested regulators and interested parties on proposed *Antifraud Plan Guidelines for Regulators (Antifraud Plan Guidelines)*, and announced that the Task Force would host an Antifraud Seminar in June at the NAIC Central Office in Kansas City.

Commissioner Kreidler made a motion to receive the reports. The motion was seconded by Commissioner Tyler and passed.

Having no further business, the Market Regulation and Consumer Affairs (D) Committee adjourned.

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Draft: 11/12/09

Market Regulation and Consumer Affairs (D) Committee
Conference Call
November 3, 2009

The Market Regulation and Consumer Affairs (D) Committee met via conference call Nov. 3, 2009. The following Committee members participated: Kim Holland, Chair (OK); Ralph S. Tyler, III, Vice Chair (MD); Jay Bradford represented by Joe Musgrove (AR); Sharon Clark (KY); Scott J. Kipper (NV); Wayne Goodwin (NC); Adam Hamm (ND); Mary Jo Hudson represented by Lynette Baker (OH); Mike Kreidler (WA); Sean Dilweg represented by Sue Ezalarab (WI); and Ken Vines (WY). Also participating was: Kent Dover (NH).

1. Discuss and Consider Adoption of 2010 Proposed Charges – Ongoing Support

Commissioner Holland referenced the 2010 Proposed Charges and the submission of comments from Jack Chaskey (NY), Leslie Krier (WA), and Birny Birnbaum (Center for Economic Justice—CEJ). Commissioner Holland then reviewed each charge in detail.

Charge 1: This charge was modified to include the concept of national analysis and reporting.

Charge 2: Commissioner Holland commented that an NAIC Executive (EX) Committee working group may be formed to discuss the market regulation accreditation. Because the Executive (EX) Committee has not discussed this issue, the D Committee members agreed to maintain this charge.

Charge 3: No changes were made to this charge.

Charge 4: Commissioner Holland suggested the activities of the Market Analysis Priorities (D) Working Group be modified to focus on ensuring that market analysis is achieving its desired goals. She said the D Committee members need to determine if the current market analysis efforts are predictive, identify trends and reduce the need for market conduct examinations. Ms. Krier suggested that a better process for analysis needs to be developed. Commissioner Holland said market regulation needs to be elevated, which will require change. She said the Working Group should identify the skill set needed for market analysis and the training needed to achieve these skills. Mr. Musgrove suggested this charge include the need to define what a market analysis program entails, but also include guidance on how a state can achieve the goal of implementing a market analysis program. The D Committee members agreed that this charge should be broadened to address whether market analysis is predictive and effective in identifying marketplace issues.

Charge 5: No changes were made to this charge.

Charge 6: Commissioner Tyler said an important function of the Consumer Connections (D) Working Group is to identify current marketplace issues and to bring these issues to the attention of the D Committee and other appropriate committees. Commissioner Holland suggested this charge include a reference to the Working Group advancing recommendations to the D Committee for further interaction with appropriate technical working groups. Mr. Chaskey said the Working Group should also be given authority to take substantive action on appropriate issues. For example, Mr. Chaskey said the Working Group discussed the issue of readability at the Fall National Meeting and that this is an appropriate issue for the Working Group to address. The D Committee members agreed to add a reference to this charge that the Working Group should also receive tasks assigned by the D Committee.

Charge 7: Commissioner Holland suggested this charge be broadened beyond consumer disclosures and address readability and general consumer awareness about policy benefits and exclusions. Commissioner Holland said this would provide the D Committee the needed flexibility to address issues as they arise. Mr. Birnbaum said he thinks the charge of the Consumer Connections Working Group provides the broader focus and suggested this charge remain specific to disclosure practices. Mr. Birnbaum said the use, timing and effectiveness of disclosures are important consumer issues because the creation and issuance of a consumer disclosure is often the suggested solution to an identified market issue. Based upon these comments, the D Committee members agreed not to make any changes to this charge. The D Committee members also agreed this charge should be marked as essential.

Charge 8: No changes were made to this charge.

Charge 9: The D Committee members agreed this charge should not be limited to a hearing at the Fall National Meeting and suggested public hearings should be held as appropriate.

Charge 10: Commissioner Holland suggested this charge be broadened to special consumer issues and not be limited to credit-based insurance scores and coordination with the Property and Casualty Insurance (C) Committee. The D Committee members agreed.

2. Discuss and Consider Adoption of 2010 Proposed Charges – New Objectives and Goals

Charge 1: No changes were made to this charge.

Charge 2: Mr. Dover questioned the scope and purpose of this charge. Commissioner Holland said the focus will be on how states can emphasize the use of collaborative market analysis over collaborative examinations. She said this charge would also encompass the issue of domestic deference. Mr. Musgrove suggested there is a need for a better system for sharing market analysis from state to state. Ms. Krier suggested this charge be combined with the existing charge calling for the appointment of the Market Actions (D) Working Group.

Charge 3: No changes were made to this charge.

Mr. Musgrove made a motion to adopt all of the charges, as revised, with an understanding that Commissioner Holland would work with NAIC staff to formulate final language that reflects the discussion today. Mr. Tyler seconded the motion.

Ms. Baker questioned what, if any, charge will address the issue of developing national market analysis and reporting. The D Committee members recognized that this as an issue needing further clarification in the charges and suggested the first charge under "ongoing support" be modified to address this issue.

The motion passed unanimously (Attachment One-A).

Having no further business, the Market Regulation and Consumer Affairs (D) Committee adjourned.

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Market Regulation Handbook
Proposed Changes to Chapter 25
Conducting the Advisory Organization Examination

By the Advisory Organization Examination Oversight Working Group

The following is a summary of the November 23, 2009, drafted changes:

1. Pages 23 and 24: NCCI proposed a new standard to be added for rating rule manuals. During an August 4, 2009, Conference Call of the Working Group, the Working Group agreed to combine the proposed new standard into the current standard that begins on page 23 regarding loss costs, policies, forms, rating factors and classifications.

2. Pages 75 and 76 contain a new section and standard related to Workers' Compensation Inspection Services as proposed by NCCI. NAIC staff drafted the Purpose, Techniques and Tests & Standards that appear for this new standard and Bruce Ramge, Nebraska reviewed.

3. Pages 77 through 82 contain new section and standards for Residual Market Functions as proposed by NCCI. NAIC staff drafted the Purpose, Techniques and Tests & Standards that appear for these new standards and Bruce Ramge, Nebraska reviewed.

4. Pages 93 – 94 and 97 – 98 contain revisions to the Information System Questionnaire (ISQ) as proposed by Sarah McNair-Grove, Alaska.

Draft: ~~11/20/08~~11/23/09

STANDARDS
ADVISORY ORGANIZATIONS OPERATIONS/MANAGEMENT/GOVERNANCE

Standard 3.
The advisory organization prepares, submits filings as necessary, adheres to applicable state filing and/or approval requirements and written procedures prior to distribution of prospective loss costs, policy forms, endorsements, factors, classifications or rating rule manuals.

Apply to: Advisory Organizations that develop and file prospective loss costs, policy forms, endorsements, factors, classifications or rating rule manuals.

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Procedural information from the advisory organization

_____ Filings made to applicable states

_____ Communications and manuals provided by the advisory organization to its members and subscribers

_____ Distributed prospective loss costs, policy forms, endorsements, factors, classifications or manuals.

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Review Procedures and Criteria

Review a sample of actual filings and materials distributed to member or subscribing companies.

- The advisory organization makes filings on SERFF or other state approved filing systems;
- The advisory organization follows mandated time requirements (if applicable) following filing or approval before permitting use of materials;
- The advisory organization is responsive to state filing analyst questions regarding filings;
- Distributed materials are the same as those filed with applicable state insurance departments;
- Prospective loss costs, policy forms, endorsements, factors, classifications or rating rules are filed and approved (as applicable) in accordance with state filing laws;
- Instructions are included in the advisory organization's manuals for all prospective loss costs, policy forms, endorsements, factors, classifications or rating rules;

- The advisory organization provides accurate information to its members and subscribers relating to states approval status and approved usage date of prospective loss costs, policy forms, endorsements, factors, classifications or rating rules in a timely manner.

Draft: ~~11/20/08~~11/23/09

Section 15. Standards for Inspection Services

1. Purpose

The purpose of this portion of the exam is to review the advisory organization's processes for ensuring proper classification of risks that are subject to inspection and to report the results of this review to carriers and insureds.

2. Techniques

The examiner should review the procedural information from the advisory organization, as well as completed reports. Communications and manuals provided by the advisory organization to its members and subscribers, as well as applicable statutes and rules and regulations should be reviewed to determine that the communications to insurers and insureds are consistent with existing classifications of risk.

3. Tests and Standards

The insurance program development and maintenance standards include, but are not limited to, the following standards. The sequence of the standards listed here does not indicate priority of the standard.

Draft: ~~11/20/08~~11/23/09

STANDARDS
INSPECTION SERVICES

Standard 1.
The advisory organization conducts inspection services in accordance with applicable statutes, rules and regulations, and written procedures.

Apply to: All advisory organizations maintaining a workers' compensation classification system

Priority:

Documents to be Reviewed

_____ Procedural information from the advisory organization

_____ Reports to individual state insurance departments providing inspection services information

_____ Communications and manuals provided by the advisory organization to its subscribers

_____ Applicable Statutes, Rules and Regulations

Others Reviewed

_____

_____

NAIC Model References

Review Procedures and Criteria

The advisory organization has an inspection program in place to ensure proper classifications of risks.

The advisory organization communicates inspection results to carriers and insureds.

Draft: ~~11/20/08~~11/23/09

Section 16A. Standards for Residual Market Functions – Plan Administration

1. Purpose

The purpose of this portion of the exam is to review all advisory organizations acting as a residual plan administrator in regard to the implementation of rules, procedures, manuals, policy forms, endorsements, pricing programs, application processing procedures, carrier selection, compensation and oversight. The examiner should note that this section will not be applicable to all advisory organizations.

2. Techniques

The examiner should review contracts, designations or agreements with applicable states for which the assigned risk mechanisms are administered as available and/or required. The examiner should also check to be sure that applicable statutes, rules and regulations are addressed in national and/or state rules and/or procedures where appropriate. A sample of actual filings and materials should be submitted for review.

3. Tests and Standards

The insurance program development and maintenance standards include, but are not limited to, the following standards. The sequence of the standards listed here does not indicate priority of the standard.

Draft: ~~11/20/08~~11/23/09

STANDARDS

Standard 1.
The advisory organization uses objective and established procedures when administering assigned risk plans.

Apply to: All advisory organizations, acting as a residual market plan administrator, that develop file and implement prospective rules, procedures, manuals, policy forms, endorsements, pricing programs, application processing procedures, carrier selection, compensation and oversight.

Priority: Essential – Market of Last Resort

Documents to be Reviewed

_____ Administration of the rules and procedures

_____ Standards of performance for assigned carriers

_____ Servicing carrier selection, compensation and oversight

_____ Application processing procedures

_____ Dispute resolution process

_____ Contractual agreements with state if applicable

Others Reviewed

_____

_____

NAIC Model References

Review Procedures and Criteria

Contracts, designations or agreements with applicable states for which the assigned risk mechanisms are administered as available and/or required.

Applicable statutes, rules and regulations are addressed in national and/or state approved filing systems and responds to inquiries.

Review a sample of actual filings and materials submitted for approvals.

Draft: ~~11/20/08~~11/23/09

The Plan Administrator makes filings on SERFF or other state approved filing systems and responds to inquiries.

The Plan Administrator is responsive to inquiries relating to individual assigned risk policy issues.

The Plan Administrator develops standards of performance for assigned carriers.

The Plan Administrator adheres to an established selection process for choosing and compensating service carriers.

The Plan Administrator handles applications for assigned risk coverage in a timely manner.

The Plan Administrator adheres to an established process for making assignments to assigned carriers.

The Plan Administrator adheres to established audit practices and procedures for auditing an assigned carrier.

The Plan Administrator develops and/or implements a dispute resolution process for resolution of assigned risk policyholder disputes.

Draft: ~~11/20/08~~11/23/09

Section 16B. Standards for Residual Market Functions – Reinsurance Administration

1. Purpose

The purpose of this portion of the exam is to review the advisory organization's processes for preparing and publishing manuals, procedures and/or information for such reinsurance administration. The examiner should note that this section will not be applicable to all advisory organizations.

2. Techniques

The examiner should review communications with insurers and states relating to contracts, designations or agreements with applicable states for which the assigned risk reinsurance pooling mechanisms are administered as available and/or required. Actuarial practices and procedures for developing reserves should also be reviewed, as well as accurate information being reported to member participants relating to the state's assigned risk deficit or surplus on a timely basis.

3. Tests and Standards

The insurance program development and maintenance standards include, but are not limited to, the following standards. The sequence of the standards listed here does not indicate priority of the standard.

Draft: ~~11/20/08~~11/23/09

STANDARDS

Standard 1.
The advisory organization uses established procedures when administering residual market pool assessments or reinsurance pooling mechanisms

Apply to: All advisory organizations, acting as a residual market reinsurance administrator, that manage a reinsurance pooling mechanism required by statute on behalf of member participants

Priority: Essential – Market of Last Resort

Documents and Procedures to be Reviewed

Manuals, procedures and information prepared or published by the advisory organization that relate to residual market pool assessments or reinsurance:

_____ Reporting of financial information

_____ Financial and accounting responsibilities

_____ Reserving practices

_____ Deficit/surplus administration

Others Reviewed

_____

_____

NAIC Model References

Review Procedures and Criteria

Contracts, designations or agreements with applicable states for which the assigned risk reinsurance pooling mechanisms are administered as available and/or required.

The Reinsurance Administrator adheres to established actuarial practices and procedures for developing reserves.

Draft: ~~11/20/08~~11/23/09

The Reinsurance Administrator provides accurate information to its member participants relating to the state's assigned risk deficit or surplus on a timely basis.

The Reinsurance Administrator provides accurate and timely information to applicable state insurance departments relating to state deficit or surplus results on a timely basis.

a copy of the agreement and the name and phone number of the person who can validate the existence of the equipment at the alternate site.

E. Operations and Processing Controls

The name, title and phone number of the statistical/advisory organization's contact person responsible for providing the answers to this set of questions must be included on the response summary.

E1. Is there an IS steering committee or other evidence that top management is involved in the IS function and, if so, who are the members? Please provide copies of the steering committee meeting minutes or other evidence (e.g., memos or agendas) of steering committee meetings held during the period under review.

E2. Does management monitor the level of open requests for changes to applications and the satisfaction of users with changes made? Please provide a copy of reports on application performance, which have been reviewed and approved by management and include information regarding the volume of changes made to applications, application problems, emergency fixes, application related help desk calls, backlog of requests from users for application changes and users' views on the functional and operational quality of applications.

E3. Is the process used in changing the system architecture documented? Please provide a copy of the documented process and the name and phone number of the person who can demonstrate or validate the process.

E4. Are there control procedures in place to ensure electronic data transmissions are transmitted and received completely and accurately? Please provide a copy of the control procedures and the name and phone number of the person who can demonstrate or validate the procedures.

E5. Are there control procedures in place to detect data that is input inaccurately or incompletely? Please provide a description of the control and the name and phone number of the people who can demonstrate or validate the control for each application as directed by the examiner.

E6. Is there a control that ensures the effective administration of databases including integrity checks (e.g., is it the responsibility of a database administrator)? Please provide a job description for the database administrator and the name and phone number of the administrator.

E7. Is there a control that ensures that the underlying causes of operational failures are identified and addressed (as opposed to applying short-term fixes)?

E8. Is there a control that ensures that all changes to preapproved job schedules are appropriate and authorized? Please provide a description of the control and evidence of management's approval of the last job schedule change made during the period under review.

E9. a) Are there appropriate escalation procedures in place to report and resolve operational failures in a timely manner?

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b) Are appropriate IS staff and, where appropriate, users involved in the resolution of operational failures?

Please provide a copy of the escalation procedures and evidence of compliance with the escalation procedures during the last operational failure.

E10. a) Is there a procedure for independent testing and validation of system changes or corrections?

E10. b) Is there a procedure for independent testing and validation of the accuracy and completeness of data used in ratemaking or in statistical reports?

Please provide a copy of the procedures and evidence of compliance with the procedures for the last change, correction, ratemaking or statistical report cycle.

E11. a) Are there appropriate escalation procedures in place to report operational failures, including failures related to system upgrades, transmissions and receipt of data, migration of data to new tables, completeness and accuracy of data used in ratemaking or statistical reports, to management in a timely manner?

E11. b) Are there appropriate escalation procedures in place for management to report operational failures to regulators in a timely manner?

Please provide a copy of the escalation procedures and evidence of compliance with the escalation procedures during the last operational failure.

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Market Regulation Handbook
Chapter 25 –Current Title Name is CONDUCTING THE STATISTICAL AGENT EXAMINATION

1

Section	Question	Response Yes	Response No	Attachments	Comments
C. Application Management					
Contact Name/Phone:					
	1				
	2				
	3				
	4.a				
	4.b				
	5				
	6				
	7				
D. Disaster Recovery / Contingency Planning					
Contact Name/Phone:					
	1				
	2				
	3				
	4.a				
	4.b				
	4.c				
	5.a				
	5.b				
	6				
	7				
	8				
	9.a				
	9.b				
E. Operations and Processing Controls					
Contact Name/Phone:					
	1				
	2				
	3				
	4				
	5				
	6				
	7				
	8				
	9.a				
	9.b				
	10.a				
	10.b				

	11.a				
	11.b				

Draft: 11/20/09

Market Analysis Procedures (D) Working Group
Conference Call
November 12, 2009

The Market Analysis Procedures (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met via conference call Nov. 12, 2009. The following Working Group members participated: Leslie Krier, Chair (WA); Maria Chavira, Vice Chair (AZ); Kathy Talley (AL); Peg Brown and Carol O'Bryan (CO); Kurt Swan (CT); Luther Ellis (DC); Pamela Lovell (FL); Robert Rapp (IL); Stacy Rinehart (KS); Laura Moore (KY); Larry Hawkins (LA); Matt Regan (MA); Tom Marshall (MD); Kendra Godbout (ME); Regan Johnson (MI); Pamela Gergen (MN); Jim Mealer (MO); Carol Roy (MT); Tracy Biehn (NC); Bruce Ramge (NE); Deb Stone (NH); Anne Marie Narcini (NJ); Sylvia Lawson (NY); Lynette Baker (OH); Mike Lydon (OR); Michael Bailes (SC); Robert Herrera (UT); Karen Gerber (VA); Sue Ezalarab (WI); and Mark Hooker (WV).

1. Approval of Oct. 15 Minutes

Ms. O'Bryan said the Oct. 15 minutes should be amended by replacing the third sentence, in the second paragraph, with "Ms. O'Bryan said there is an increasing number of claims against producer E&O policies." Ms. Narcini moved to adopt the minutes as amended. Mr. Hooker seconded the motion, and the minutes were adopted unanimously (Attachment Three-A).

2. Complaint Database System

Ms. Brown said the proposal that circulated to the Working Group recommends a process developed for managing suggested changes to the Complaint Database System (CDS). The process follows the SERFF process already in place. Key dates are identified and an online form is being recommended. A workgroup would be set up to consider all the suggested changes and make recommendations for the Working Group to consider and prioritize.

Mr. Ellis said this was an excellent beginning and liked the online form for the suggested changes. He asked if a one-year timeline for making and implementing updates to CDS was too frequent and if it left enough time to put the changes in place. Ms. Brown said the process was put on an annual basis to be sure changes were implemented and not lost. Ms. Ezalarab said SERFF has a project steering committee that looks at changes that have implementation times of greater than one year and suggested the similar process for the Working Group.

Ms. Narcini said the proposal should consider the format of the process and the creation of a subgroup separately. She said that with the national meetings now to be held three times a year, states may not have enough time to implement recommended programming changes. Ms. Narcini said the recommendation's references to specific times should be deleted. She said the online form seems to only allow for one suggested change at a time, and that a new form needs to be completed for each suggested change.

Marian Drape (NAIC) said work on the adopted plan will begin the first quarter of 2010. She said the NAIC will migrate and present the data in the new format by the end of 2010. She said the adopted plan included the expectation that states convert to the new format within five years. In the meantime, NAIC will convert the data received from the states to the new format.

Ms. Narcini said a major part of the new conversion involves adding an indicator that identifies if a complaint is valid. She said she was uncertain how the data would be converted. Ms. Drape said that until a state sends the indicator, NAIC staff will continue to determine the validity of the complaint based on the approved codes. Ms. Narcini said she was not confident the current method for identifying the validity of a complaint worked.

3. New Data Elements and Lines of Business

Ms. Krier said the Priority List of Lines of Business has been available for some time on the Working Group's Web page. A Priority List of Data Elements was posted to the Web page during the week of Nov. 2. On Nov. 10, a revised Priority List of Lines of Business that incorporated changes recommended on the Oct. 15 conference call was sent in an e-mail to the Working Group and interested parties. Ms. Krier said she has extended the comment deadline to Nov. 25 on all these documents.

Deidre Manna (Property and Casualty Insurers Association of America—PCI) said the Market Conduct Annual Statement (MCAS) survey results of the regulators and industry should be considered before adding the commercial lines of business. Ms. Manna said the Priority List of Lines of Business recommends adding the commercial lines of Workers' Compensation (WC), Fidelity and Surety, Errors and Omissions (E&O), and Directors and Officers (D&O) in the MCAS. She said adding those lines of business before the personal lines are implemented is a poor use of resources, as the purchasers of those commercial coverages generally have risk managers and brokers working for them. She said that in regard to WC, claims issues are addressed by WC industrial accident boards in all the states and not the departments of insurance, and that rates are heavily regulated with the exception of large deductible and retroactive rating plans, which are only purchased by larger, more sophisticated companies. She said protection of consumers in personal lines should be the No. 1 goal.

Mr. Hooker said industrial accident boards do not address claims issues in all states. However, even in the states where that is true, the departments of insurance can initiate Unfair Claims Practices actions if there is a pattern. Ms. O'Bryan said that having baseline WC claims information in MCAS is important for analyzing a company when complaints are received. Ms. Moore said Ms. Manna's comments had validity and that adding the Health line of business will be difficult and will take some time. She would like to see the addition of MCAS lines of business move more slowly to be sure it is done right.

Catherine Paolino (American Insurance Association—AIA) said she would like to see the priority list broken out by application and have MCAS listed separately, as there is so much activity going on with MCAS right now.

Birney Birnbaum (Center for Economic Justice—CEJ) recommended a two-way table organized by application in columns and lines of business in rows. He said another meeting should be held prior to the Winter National Meeting so the priority lists will not be delayed for another quarter. He said this group was moving very slowly. Mr. Birnbaum said Ms. Manna misrepresented the purpose of MCAS. He said the purpose of MCAS is to track the industry, and that needs to be done on all lines of business. He said more urgency is needed.

Marty Mitchell (America's Health Insurance Plans—AHIP) asked how quickly the NAIC is planning to move on adding the Health line of business and data elements into MCAS. He said there is currently a large amount of long-term care data being collected in Exhibit E that should be examined before adding an additional request for information that it is already being collected.

Mr. Hooker suggested that the Working Group conduct another call prior to the Winter National Meeting and focus on just one issue. Ms. Moore said it is important to get this right rather than rush to meet a self-imposed deadline.

Ms. Krier said the Priority List of Data Elements has been very difficult to put together because there are many changes and fixes currently needing to be addressed in the Market Information Systems (MIS) before additional data elements can be added. Randy Helder (NAIC) said the Priority List of Data Elements would need to be reviewed by NAIC staff to determine whether each could be added.

Ms. Manna said one of the suggested data elements to be added to all lines of business in MCAS is the Number of Suits Against the Company in the Calendar Year, yet the MCAS survey results received from regulators showed that Ratio 7 – Suits to Claims Closed Without Pay is the least-used of the ratios and caused the most concern on how it is calculated.

Mr. Birnbaum said that though the ratio was the least-used, the survey results showed that it was still used over 75% of the time. He said the data elements in MCAS are unchanged from when it was a pilot program.

Mr. Hooker said the Market Analysis Review System (MARS) recommendation that would allow for the input of analysis notes for the lines of business not automated in the application would allow for more lines of business to be analyzed.

Ms. Chavira said the recommendation to split the E&O line of business from the category of Other Liability in the Financial Annual Statement was needed so that complaint indices could be properly calculated.

Ms. Krier encouraged further written comments on all posted documents.

Having no further business, the Market Analysis Procedures (D) Working Group adjourned.

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Draft: 11/12/09

Market Analysis Procedures (D) Working Group
Conference Call
October 15, 2009

The Market Analysis Procedures (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met via conference call Oct. 15, 2009. The following Working Group members participated: Maria Chavira, Vice Chair (AZ); Kathy Talley (AL); Joe Musgrove (AR); Don McKinley (CA); Peg Brown and Carol O'Bryan (CO); Jennifer Miner (CT); Luther Ellis (DC); Barbara Szumowski (FL); Robert Rapp (IL); Jim Welch and Stacy Rinehart (KS); Jim Axman (KY); Ron Musser and Larry Hawkins (LA); Dorothy Raymond (MA); Dudley Ewen (MD); Kendra Godbout (ME); Jim Mealer (MO); Tracy Biehn (NC); Deb Stone (NH); Sylvia Lawson (NY); Lynette Baker (OH); Mike Lydon (OR); June DuBard (SC); Rusty Shropshire (VA); Doug Pennington (WA); Jo LeDuc (WI); and Mark Hooker (WV).

1. New Data Elements and Lines of Business

Ms. O'Bryan said the priority list of lines of business was sorted according to desirability and practicality. She said to add a line of business to the Market Analysis Review System (MARS), it is necessary to first develop a complaint index for the line of business. Therefore, those lines of business that already had a complaint index were given priority over those that still needed to have a complaint index established.

Ms. Narcini said the Long-Term Care (LTC) line of business should be moved higher on the list than Fidelity and Surety or the commercial auto line because it has greater consumer protection needs. Ms. Narcini questioned the need to split the Errors and Omissions (E&O) lines of business from the Other Liabilities line of business on the financial statement. Ms. O'Bryan said there is an increasing number of claims against producer E&O policies. Analysts would like to view producers' E&O information separately from all other professional liability coverages. Before this can be done, the various E&O lines of business need to be split on the financial statement so that the premium information is available to establish complaint indices.

Mr. Hooker said West Virginia conducts analysis on miscellaneous commercial lines. He said they would like to have the ability to do manual Level 1 analyses on MARS even if the data is not available to be pulled automatically into MARS. Mr. Hooker said the LTC line of business should be higher on the list. He said the lines of business without complaint indices should be moved higher on the list in order to get the complaint indices set up for them. Ms. O'Bryan said the group did not prioritize the complaint index needs higher because they questioned the credibility of some of the complaint information for the smaller lines of business, as there is not a large number of complaints received.

Ms. LeDuc said thought should be given to adding the ability to do MARS analyses on fraternals.

Birny Birnbaum (Center of Economic Justice—CEJ) said the Market Conduct Annual Statement should be expanded to include transaction-level detail on all applicants, claims and policies. He said the current limited number of questions and answers does not allow for predictive modeling or the possibility of comparing multiple data elements—for example, the effects of location, or cause of loss on lawsuits. He said the NAIC can be designated as the statistical agent to collect the data on behalf of the regulator and then review, compile and produce reports to the regulators. He said currently—as the NAIC is considering principle-based reserving (PBR) for life insurance, health insurance, annuities and long-term care insurance—one of the activities being considered is the development of PBR experience reporting: a transaction level statistical plan for reporting experience of life, health, long term care insurance and annuities. The current draft of the experience report covers life insurance and most of the data elements needed for market analysis. The addition of only a few data elements would make the PBR experience reporting completely functional for market analysis. Mr. Birnbaum said the market analyst skill sets would move from an audit function to an investigative function. He said the cost of the collection would be charged by the designated statistical agent to the insurers, just as it is currently done with the financial annual statement and by ISO for property and casualty experience information. He said that politically and resource-wise, it is important to make the commitment now.

Ms. Chavira said that comments on the priority list can be sent to the NAIC by Nov. 1.

2. *Market Regulation Handbook*

Ms. Baker said that based on questions that arose in the Market Conduct Examinations Standards (D) Working Group meeting, she is redrafting her recommended changes to the *Market Regulation Handbook.*

3. Complaint Database System

Ms. Brown said a recommendation for the collection of suggested changes to the Complaints Database System will be ready for the Working Group to consider at the next meeting.

4. Level 1 and Level 2 Analysis – "Referral to MAWG" Recommendations

Ms. Szumowski asked if the system-generated e-mail has been effective in promoting discussion about a reviewed company and ultimately bringing a referral to the Market Actions (D) Working Group (MAWG). Mr. Ewen said he did not see the effectiveness of the e-mail and did not feel the e-mail was a good idea. Ms. Szumowski said any such discussion with another Collaborative Action Designee (CAD) would be reviewed internally in Florida before this kind of recommendation is considered. She did not think an analyst should be generating this kind of e-mail. Mr. Musser said the reviewing CAD should make the determination whether to discuss a company with the domestic CAD. Mr. Pennington said Washington would want to know if another state had enough concerns to make this recommendation about one of their domestics. Ms. LeDuc said the automatic e-mail should be eliminated, and the reviewing state CAD should decide whether to contact the domestic state CAD. Mr. Pennington suggested that a Personalized Information Capture System (PICS) event could be generated and sent to any domestic CAD that wanted to view the information that such a recommendation was made on one of their domestics. Mr. Hawkins said a Market Analysis Chief (MAC) cannot make a referral to the Market Actions (D) Working Group and, therefore, should not be sending these types of notifications to a CAD in another state. He said it should not be on PICS because the reviewing CAD should be contacting the domestic CAD. The reviewing state CAD should first determine if there is anything of real concern. Mr. Pennington said that if the group decides to not send an e-mail notification, then the recommendation should be removed completely as an option.

Mr. Hooker moved that the automatic e-mail notification of the MARS Level 1 and Level 2 recommendation to contact the CAD in the domestic state be removed. Mr. Hooker said he was limiting the motion to just remove the electronic notification, and not the recommendation. Ms. Narcini seconded the motion. The motion passed unanimously.

Having no further business, the Market Analysis Procedures (D) Working Group adjourned.

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Draft: 12/11/09

Consumer Connections (D) Working Group
San Francisco, CA
December 6, 2009

The Consumer Connections (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met in San Francisco, CA, Dec. 6, 2009. The following Working Group members participated: Wayne Goodwin, Chair (NC); Joel Ario, Vice Chair, represented by Peter Camacci (PA); Jay Bradford represented by Joe Musgrove (AR); Steve Poinzer represented by Tony Cignarale (CA); Marcy Morrison represented by Peg Brown (CO); Thomas R. Sullivan represented by Gerard O'Sullivan (CT); Michael T. McRaith represented by Bill McAndrew (IL); James J. Donelon represented by Clarissa Preston (LA); Ralph S. Tyler, III (MD); Mila Kofman represented by Glenn Griswold (ME); John M. Huff represented by Jim Mealer (MO); Monica J. Lindeen represented by Christina Goe (MT); Ann Frohman represented by Bruce Ramge (NE); Neil N. Jasey represented by Anne Marie Narcini (NJ); Scott J. Kipper represented by Brett Barratt (NV); Bob Lisson (NC); Mary Jo Hudson represented by Lynette Baker (OH); Kim Holland represented by Marc Young (OK); Teresa Miller represented by Mike Lyndon (OR); Leslie A. Newman represented by LaCosta Wix (TN); Kent Michie represented by Tanji Northrup (UT); Paulette Thabault represented by Christine Oliver (VT); Mike Kreidler represented by Leslie Krier (WA); Sean Dilweg represented by Jim Guidry (WI); and Jane L. Cline represented by Mark Hooker (WV).

1. Adoption of Nov. 20, 2009, Conference Call Minutes

Mr. Musgrove made a motion to adopt the minutes of the Working Group's Nov. 20 conference call, as corrected. Ms. Narcini seconded the motion. The minutes were unanimously adopted (Attachment Four-A).

2. Insurance Contract Readability Public Hearing

Brenda Cude (University of Georgia) gave a presentation on insurance contract readability. She said identifying the goal and why this issue is important to consumers are steps that must be done prior to choosing plain language or readability as a solution. Dr. Cude said plain language is defined as "the simplest, most straightforward way, using only as many words as needed," while readability is defined as "an objective assessment of the literacy required to read and understand." She said the content, style, design, and structure should be considered regardless of whether readability or plain language is chosen. Dr. Cude said one Web site to reference regarding plain language is www.plainlanguage.com.

Ms. Cude said that according to the *National Adult Literacy Survey*, one in seven Americans cannot read and understand any written information in English. She said the reasons for such low literacy rates include undiagnosed learning disabilities, immigration and high school dropouts. Literacy rates by state and county are available at www.nces.ed.gov. Ms. Cude said that even Americans with good literacy skills—those who can read at a college level—prefer to read plain language (i.e., the 8th grade level). She added that this is because the reader can concentrate on the message at the 8th grade reading level rather than be distracted by complicated language at a reading level higher than 8th grade. Ms. Cude said if regulators were to require insurance products to be written at an 8th grade reading level, consumers would try to read them. She said this would be a way in which consumers could protect themselves. Ms. Cude said the *Jan. 2009 Siegel+Gale Simplicity Study* showed that consumers who understand their insurance products have more trust in their financial services providers. She said consumers who do not understand a particular insurance issue often will not admit it; however, they may avoid buying insurance, may be cheated, or may make mistakes in the market, such as buying the wrong coverage or underinsuring their risk.

Ms. Cude said there are many ways to measure readability. She said the most well-known are the Flesch Reading Ease Score and the Flesch-Kincaid Grade Level. The Flesch score is determined by counting words, syllables, and sentences; then applying a formula. The Flesch-Kincaid converts the Flesch score into a U.S. grade-school level. *The Harvard Law Review* has a Flesch score in the low 30s, which converts to a Flesch-Kincaid level of college graduates. *Reader's Digest* has a Flesch score of 65, which converts to a Flesch-Kincaid level of 8th grade. Most state standards for insurance products require a minimum Flesch score of 40, with a few states requiring 45 or 50, which converts to a Flesch-Kincaid level of high school graduates. Rhode Island requires insurance products to be written at an 8th grade level.

Ms. Cude said one of the risks of applying plain language is that insurance is a complicated product, so it may not be possible to effectively communicate about it in plain language. She said a question asked about this issue is if consumers will lose any legal rights if contracts are redrafted using plain language. Don Priestly (American Family Insurance Company) said

language currently being used in insurance contracts has been proven through the courts, so industry knows what their inherent risk is. Ms. Cude said the decision points for requiring more readable insurance contracts are based on the answers to the following questions: Should all lines of business be included? If so, should the same standard be required for all lines of business and all consumers? Should all consumer materials (disclosures, certificates of coverage, applications, marketing materials, benefits booklets, riders, etc.) or just the policies/contracts be included? Should the standard used be objective or subjective (like the Pennsylvania Plain Language Consumer Contract, which excludes insurance, and the Delaware Homeowners Insurance and Auto Insurance regulations)? Would the standards apply to contracts that are not written in English? Are standards for style, design and structure needed? What should not be counted when scoring a document (e.g., the policy title, medical terms, state-required language, words defined in the policy)? Should alternative measures of readability be permitted? Should enforcement require certification?

Commissioner Tyler asked which states have done the most with regard to readability. Mr. Musgrove asked if any states are looking into this issue currently or plan to in the future. Ms. Brown said Colorado plans to pursue this issue during its next legislative session. Mr. Guidry said Wisconsin's readability group is focusing on the Property and Casualty and Health lines of business. He said they are not focusing on Life insurance lines of business because those lines have already been addressed by the Interstate Compact National Standards (EX) Working Group. Mr. Guidry will send NAIC staff the Wisconsin readability group's Web site for distribution to the Working Group members. Commissioner Goodwin said the Working Group asked NAIC staff to conduct a survey of all the states to determine if other jurisdictions are undertaking the readability issue. The survey results will be distributed to the Working Group for discussion during the next scheduled call prior to the 2010 Spring National Meeting.

Commissioner Goodwin said the Working Group will host a public hearing at the 2010 Spring National Meeting. The hearing will focus on readability and the use of plain language in insurance contracts and other materials distributed to consumers by insurance companies. Commissioner Goodwin said the hearing will address all lines of business, and he invited anyone who is interested in testifying to contact Lois Alexander (NAIC). He said the Working Group will solicit testimony from regulators, industry, consumer groups and the chairs of the Life Insurance and Annuities (A) Committee, Health Insurance and Managed Care (B) Committee, Property and Casualty Insurance (C) Committee, and Market Regulation and Consumer Affairs (D) Committee. Commissioner Goodwin said written testimony will also be accepted.

3. Discuss Policy Oversight of Consumer Information Source (CIS)

Commissioner Goodwin said one of the 2009 Working Group charges is to provide policy oversight for the NAIC's Consumer Information Source (CIS), which means that the Working Group is to make recommendations regarding the type of information that consumers need to see on CIS. He said the goal is to make CIS more user-friendly by providing information that is valuable to consumers. The NAIC considers recommendations received from the Working Group when determining what is placed on the CIS Web site.

Commissioner Goodwin said regulators from Colorado, New York and North Carolina had worked with Ms. Cude on recommendations for simplifying the wording on the CIS Web page. Two documents from Mr. Lisson were attached to the Working Group agenda. One document had proposed revisions to the CIS text, and the other document had current CIS text. Mr. Lisson asked that members of the Working Group read both documents and submit their comments to NAIC staff. Ms. Brown said the Working Group should look at what is on the CIS currently and ask if it is helpful to consumers; if anything is missing that might be needed; and what can be done to make it clearer? The Working Group discussed the type of information that should be included for use by consumers on the CIS Web site, such as the trend report, the definition of "confirmed complaint" and the mapping of complaint codes.

Ms. Baker asked when the revised Complaint Database System (CDS) would become effective. Ms. Krier said implementation would start at the end of next year and be phased in over the next five years. Discussion focused on whether the existing definition of "confirmed complaint" or the newly revised version should be used on CIS. Marty Mitchell (America's Health Insurance Plans—AHIP) said the companies he represented were concerned about the timing and mapping of the CDS changes. Ms. Krier said this topic would be discussed at the Market Regulation and Consumer Affairs (D) Committee.

Mr. Hooker made a motion that the trend report be deleted from the CIS Web site. Ms. Baker seconded the motion, and it passed unanimously. Ms. Brown made a motion that total complaints be added to the CIS. Ms. Baker seconded the motion and it passed, with Mr. Young objecting.

The Working Group recommended that the trend report be removed from the CIS and that total complaints be added. Commissioner Goodwin said the next step regarding this issue is for the Working Group recommendations to be sent to the Market Regulation and Consumer Affairs (D) Committee for consideration.

Having no further business, the Consumer Connections (D) Working Group adjourned.

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Consumer Connections (D) Working Group
Conference Call
November 20, 2009

The Consumer Connections (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met via conference call Nov. 20, 2009. The following Working Group members participated: Wayne Goodwin, Chair (NC); Joel Ario, Vice Chair, represented by Beverly Sisko (PA); Jay Bradford represented by Joe Musgrove (AR); Marcy Morrison represented by Peg Brown (CO); Thomas R. Sullivan represented by Barbara Spear (CT); Kevin M. McCarty represented by Karen Isch (FL); Michael T. McRaith represented by Mary Petersen (IL); James J. Donelon represented by Clarissa Preston (LA); Mila Kofman represented by Bob Wake (ME); Ralph S. Tyler, III, represented by Sandy Castagna (MD); Glenn Wilson represented by John Gross and Sherri Mortensen Brown (MN); John M. Huff represented by Angela Nelson (MO); Monica J. Lindeen represented by Rosann Grandy and Carol Roy (MT); Ann Frohman represented by Jane Francis (NE); Neil N. Jasey represented by Anne Marie Narcini (NJ); Mary Jo Hudson represented by Lynette Baker and Anne Jewel (OH); Kim Holland represented by Russell Valleroy (OK); Teresa Miller represented by Ronald Frederickson (OR); Mike Geeslin represented by Jack Evins (TX); Kent Michie, represented by Suzette Green-Wright (UT); Paulette Thabault (VT); Alfred W. Gross represented by Jackie Myers (VA); Jane L. Cline represented by Kathy Beck, Dennis Garrison, Mark Hooker and Timothy Murphy (WV); and Sean Dilweg represented by Jo LeDuc and Jennifer Stegall (WI).

1. Adoption of Oct. 19, 2009, Conference Call Minutes

Ms. Brown made a motion to adopt the minutes of the Working Group's Oct. 19 conference call. Ms. Narcini seconded the motion. The minutes were unanimously adopted (Attachment Four-A1).

2. Insurance Contract Readability

Ms. Stegall gave an update on the Wisconsin group that is reviewing Wisconsin's readability standards, case law and statutes. She said Wisconsin's current health readability law mirrors the NAIC *Life and Health Insurance Policy Language Simplification Model Act* (#575). Ms. Stegall said the Wisconsin group will focus on health insurance readability, as well as property and casualty insurance readability. She said the Wisconsin group will recommend revisions to Flesch scores, plain language usage and exclusions by the end of April 2010, so that a Wisconsin legislative rule can be proposed. Ms. Stegall said the Wisconsin group plans to monitor a reference to plain language and readability in the national health insurance reform bill.

Commissioner Goodwin asked NAIC staff to conduct a survey of all the states to determine if jurisdictions other than Wisconsin are undertaking the readability issue. The survey will be distributed to the Working Group for discussion during the next scheduled call prior to the 2010 Spring National Meeting. Ms. Brown said that Colorado plans to pursue this issue during their state's next legislative session.

Commissioner Goodwin said he had talked with the chair of the Market Regulation and Consumer Affairs (D) Committee, Commissioner Holland, about this issue. He recommended that the Working Group host a public hearing at the 2010 Spring National Meeting. The hearing would focus on readability and plain language of insurance contracts and other consumer materials distributed by insurance companies. Commissioner Goodwin said the public hearing would address all lines of business. Testimony would be solicited from regulators, industry, consumer groups and the chairs of the Life Insurance and Annuities (A) Committee, Health Insurance and Managed Care (B) Committee, Property and Casualty Insurance (C) Committee, and Market Regulation and Consumer Affairs (D) Committee.

Mr. Wake said readability and plain language are connected, but they are not the same. He said readability is a statistical measure (e.g., how many consumers understand a policy) and readability is whether an average consumer can understand the policy. Mr. Wake said clarification of plain language vs. readability might be necessary. Ms. Brown suggested that Dr. Brenda Cude (University of Georgia) be invited to give a presentation on the definitions of readability and plain language to the Working Group. Commissioner Goodwin asked Ms. Alexander to contact Dr. Cude about addressing this issue at the Winter National Meeting.

Mr. Musgrove made a motion to proceed with planning a public hearing to occur at the 2010 Spring National Meeting for the purpose of examining readability and plain language issues. Ms. Brown seconded the motion. The plan to proceed with a public hearing was unanimously adopted.

3. Discuss Consumer Information Source (CIS) Suggested Wording

Commissioner Goodwin said regulators from Colorado, New York and North Carolina had been working with Dr. Cude on recommendations for simplification of the wording on the NAIC Consumer Information Source (CIS) Web page. At Mr. Lisson's request, two documents with his drafting notes were distributed to the Working Group. Proposed revisions to the CIS text were in one document and current CIS text was in the second document.

Ms. Cude said the group recommended changes to CIS, including deletion of the trend report, clarification and restructuring of the index report, changes to Complaint Data System (CDS) coding, the definition of unconfirmed complaint. They also recommended that new reports be based on the total number of complaints, in addition to those based on the total number of confirmed complaints. Bob Hunter (Consumer Federation of America) said the bases for various ratios in the CIS reports need to be reconfigured, so that CIS reports include information that is more relevant and useful to consumers.

When asked what the 2009 Working Group charge regarding CIS was, Ms. Alexander read it from the Working Group's Web site. She said one of the Working Group's 2009 charges is to provide policy oversight for CIS, which means that the Working Group is to make recommendations regarding the type of information that consumers in their respective jurisdictions need to see. The NAIC's goal is to make CIS more user-friendly by providing information that is valuable to consumers. The NAIC considers recommendations received from the Working Group when determining what is placed on the CIS Web site.

Commissioner Goodwin said the next step regarding this issue is for the recommendations of the Working Group to be sent to the Market Regulation and Consumer Affairs (D) Committee for review. Policy oversight of CIS will also be placed on the agenda for the Working Group meeting at the Winter National Meeting.

Having no further business, the Consumer Connections (D) Working Group adjourned.

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Draft: 11/20/09

Consumer Connections (D) Working Group
Conference Call
October 19, 2009

The Consumer Connections (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met via conference call Oct. 19, 2009. The following Working Group members participated: Wayne Goodwin, Chair, (NC); Joel Ario, Vice Chair, represented by Cindy Fillman (PA); Steve Poizner, represented by Leone Tiffany (CA); Marcy Morrison, represented by Dayle Axman (CO); Thomas R. Sullivan represented by Gerard O'Sullivan and Barbara Spear (CT); Angel Robinson (IA); Michael T. McRaith represented by Mary Petersen (IL); Susan E. Voss represented by Angel Robinson (IA); James J. Donelon represented by Clarissa Preston (LA); Ralph S. Tyler, III represented by Dudley Ewen and Joy Hatchette (MD); Glenn Wilson represented by Tina Armstrong and John Gross (MN);. John Huff represented by Mary Kempker (MO); Monica J. Lindeen represented by Barb Vandevere (MT); Ann Frohman represented by Bruce Ramge (NE); Neil N. Jasey represented by Anne Marie Narcini (NJ); James J. Wrynn represented by Sandra Anderson and Jack Chaskey (NY); Mary Jo Hudson represented by Suparna Bhaskaran, Anne Jewel and Craig Saurer (OH); Kim Holland represented by Susan Dobbins, Kathie Stepp and Russell Valleroy (OK); Teresa Miller represented by Ronald Frederickson (OR); Leslie A. Newman represented by Vickie Trice (TN); Mike Geeslin represented by Jack Evins (TX); Paulette Thabault (VT); Alfred W. Gross represented by Jackie Myers (VA); Jane L. Cline represented by Dennis Garrison, Mark Hooker, Timothy Murphy, Andrew Pauley and Dena Wildman (WV); and Sean Dilweg represented by Jo LeDuc (WI). Also participating were: Louis Belo and Bob Lisson (NC).

1. Insurance Contract Readability

Ms. LeDuc provided an update on Wisconsin's efforts to review its readability standards. She said the Wisconsin group had met for the first time in open forum via conference call in early October. Ms. LeDuc said the purpose of the initial call was to lay the groundwork for the goals the group hopes to accomplish regarding insurance contract readability. Ms. LeDuc said the Wisconsin readability group will have monthly calls. She said Commissioner Dilweg had an aggressive schedule for the state's readability group that required the group to complete their work by February 2010. Ms. LeDuc suggested that this issue may be included in the Working Group's 2010 Proposed Charges.

Lois Alexander (NAIC) said all 2010 working group charges, including those for the Market Regulation and Consumer Affairs (D) Committee, will be presented at the Winter National Meeting for approval. If any models need to be rewritten, model revision requests will need to be approved by the Joint Executive (EX) Committee/Plenary prior to the start of the model review process.

Mr. Belo said the Working Group should monitor the progress of Wisconsin's readability group to determine whether their readability group has a better idea of the direction the readability issue will take in the next few weeks. Mr. Belo said the Wisconsin readability group should report their findings to the Working Group. He said if the charge is approved by the D Committee, the Working Group will address it in 2010. Mr. Belo said perhaps the 2010 charge for the Working Group should be to monitor the Wisconsin readability group's work on this issue and address the issue after receiving that group's final report.

Mr. Belo said the Wisconsin readability group is not an NAIC working group, and according to the NAIC model review process, the readability group cannot make revisions to NAIC models.

Ms. Tiffany asked whether the Working Group would be reviewing readability of all lines of business, all insurance contracts and all disclosures. Mr. Ramge said there are two separate readability-related models, one for life and health and one for property and casualty personal lines. Mr. Ramge said a few states have implemented the property and casualty model, whereas the life and health model has had a much wider implementation.

Ms. LeDuc said the sound file of the October Wisconsin readability group call is on the Wisconsin Office of the Commissioner of Insurance Web site. Ms. LeDuc said she would provide a more complete report regarding any progress made and the goals that have been set to the Working Group after the next Wisconsin readability group conference call.

The Fall National Meeting minutes indicate that a motion was made by Commissioner Dilweg and adopted by the Working Group to create a subgroup of the Working Group to address the issue of readability. The minutes also indicate that Commissioner Dilweg volunteered Ms. LeDuc to lead the subgroup.

Mr. Belo said his understanding was that the Wisconsin readability group would continue their work on this issue; interested parties could work with Wisconsin's readability group; and the Working Group would monitor the progress of the Wisconsin readability group. Ms. LeDuc said that was her understanding as well.

Ms. Alexander said the Working Group is not required to wait for a report from the Wisconsin readability group. Ms. Alexander said an alternative to forming a subgroup as recommended by the Working Group at the Fall National Meeting would be for the Working Group to address this issue itself. Ms. Alexander said NAIC staff does not provide support for subgroups; however, the NAIC does provide support for Working Groups.

Mr. Belo said the Working Group would address this issue again after it received the information from the Wisconsin readability group. He said the next Working Group call would be scheduled after the next Wisconsin readability group call. He asked Dr. Brenda Cude (University of Georgia) to provide the Working Group with the PowerPoint presentation she made during the Wisconsin readability group call.

Ms. Cude offered to work with Wisconsin to produce a document other than her PowerPoint presentation that would provide better background on the readability issue for the next Working Group call. NAIC staff will distribute this document to the Working Group prior to the conference call.

2. Public Autism Survey

The Working Group made a motion at the Fall National Meeting to make the results of the autism survey public.

Every state that responded to the initial survey will review their survey information to confirm that it is ready to be released publicly.

Ms. Alexander said 15 states have already responded to this opportunity. Mr. Belo asked NAIC staff to send a reminder to those states that had not yet responded.

3. Complaint Reconciliation Process and ICAE Complaint Data Analysis Position Paper

Mr. Lisson said the Working Group recommended at the Fall National Meeting to refer both the complaint reconciliation process and the ICAE (Insurance Consumer Affairs Exchange) Complaint Data Analysis position paper to the D Committee and to the Special Accreditation Standards (D) Working Group for review. Commissioner Ario presented this issue to the D Committee at the Fall National Meeting. Ms. Fillman said Commissioner Holland is aware of the issue. Ms. Fillman said she would provide updates from Commissioner Holland and Commissioner Ario regarding this issue at the next scheduled Working Group call.

4. Consumer Information Source (CIS) Suggested Wording

Mr. Lisson said regulators from Colorado, New York and North Carolina and Dr. Cude have been working on recommendations for simplification of the wording on the NAIC Consumer Information Source (CIS) Web page. Mr. Lisson said he would provide a document showing the current wording of CIS and reflecting revised wording to NAIC staff for distribution to the Working Group for their review.

Having no further business, the Consumer Connections (D) Working Group adjourned.

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Draft: 11/18/09

Market Conduct Examination Standards (D) Working Group
Conference Call
November 12, 2009

The Market Conduct Examination Standards (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met via conference call Nov. 12, 2009. The following Working Group members participated: Bruce Ramge, Chair (NE); Carol O'Bryan (CO); Luther Ellis (DC); Barb Szumowski (FL); Deb Peirce (GA); Stacy Rinehart (KS); Laura Moore (KY); Ron Musser (LA); Dudley Ewen (MD); Theresa Koerkenmeier, Win Nickens and Jim Mealer (MO); Tracy Miller Biehn (NC); G. Kent Dover (NH); Anne Marie Narcini (NJ); Lynette Baker (OH); Peter Camacci (PA); Gregory Lee (VA); Leslie Krier (WA); Ashley Madison and Sue Ezalarab (WI); and Mark Hooker (WV).

1. Adopt Minutes of Oct. 8 Conference Call

Ms. Narcini made a motion to adopt the minutes of the Working Group's Oct. 8 conference call. Mr. Musser seconded the motion. The minutes were unanimously adopted (Attachment Five-A).

2. Revision of Section M. External Review of Chapter 20—Conducting the Health Examination

Mr. Ramge said revisions to incomplete text in Chapter 20—Conducting the Health Examination were recently received from Mr. Mealer. Mr. Ramge said the revised Section M. External Review of Chapter 20 was forwarded to the Working Group on Nov. 6 and posted on the Working Group Web page. Mr. Mealer said changes to Chapter 20 were regarding the two NAIC models regarding health carrier external review: the Health Carrier External Review Model Act (#75) and the Health Carrier Uniform External Review Model Act (#76). Mr. Mealer said the Health Carrier Uniform External Review Model Act was not referenced within Chapter 20, and he had revised the text to address both of the models. Mr. Ramge said this item would likely carry over to next year's Working Group.

3. Review and Discuss Ohio's Risk-Focused (Corporate Governance) Documents

Mr. Ramge said a letter dated Nov. 4 elaborating on the definition of "risk-focused" was recently received from Ohio, which was forwarded to the Working Group on Nov. 6 and posted to the Working Group Web page. Mr. Ramge said Ms. Baker had provided the Working Group in July with initial documents for consideration regarding the addition of corporate governance (risk-focused) methodology to the *Market Regulation Handbook.*

Ms. Baker said the Nov. 4 letter provided the Working Group with a clearer definition of the term "risk-focused" and gave a description of how the risk-focused approach is used in performing market analysis and continuum options. Ms. Baker said she had made no changes to any documents already submitted to the Working Group. Marty Mitchell (America's Health Insurance Plans—AHIP) asked whether the addition of risk-focused methodology would add on another layer of market regulation in a market regulation analysis program that is still relatively new.

Ms. Baker said the risk-focused approach does not replace any currently performed market regulation surveillance techniques, nor does it add on another layer of market regulation. She said the risk-focused approach may not fit every situation. She said the methodology is proactive in nature; it is a change in the focus of market analysis and continuum options.

Mr. Mitchell asked how an insurance company can be both proactive and reactive and said a balance should exist between the two. Mr. Mitchell said the risk-focused approach does not bring predictability and regularity to the state surveillance of market regulation. Ms. Baker said the methodology of the risk-focused approach is based on how a company is following an established procedure of controls for compliance. If an examiner finds an issue in these procedures, the examiner's methodology would then move to the risk-focused approach.

Mr. Ramge said this issue will likely carry over to 2010. Ms. Wallace said that comments are still being accepted on the risk-focused documents at this time. Ms. Baker said that next year she will review all comments received in 2009 on this issue and incorporate any changes to her drafts at that time.

4. Any other matters before the Working Group

Mr. Ramge requested that Working Group members, regulators and interested parties provide recommendations for Working Group tasks in 2010. Mr. Ramge recommended that the risk-focused documents and the revised Section M. External Review of Chapter 20 be carried over to 2010. Mr. Ramge also recommended that the Working Group review new and revised NAIC models adopted in 2009 for inclusion in the 2010 *Market Regulation Handbook.* Mr. Hooker recommended the development of a new workers' compensation chapter and a new surety chapter inclusion in the *Market Regulation Handbook.* Ms. O'Bryan proposed that the Working Group review the issue of examiner compensation. Ms. Ezalarab proposed that the Working Group review how the IIPRC affects the examination standards in the *Market Regulation Handbook*. Mr. Ramge added that the Working Group should review the examination standards relating to health insurance, depending upon what action is taken at the federal level on national health insurance reform.

Mr. Ramge reminded the Working Group that the Working Group's ultimate tasks and charges, as well as the scope of the Working Group's charges in 2010, are up to the discretion of next year's Market Regulation and Consumer Affairs (D) Committee chair.

Mr. Ramge said this would be the last scheduled Working Group call in 2009.

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

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Draft: 10/9/09

Market Conduct Examination Standards (D) Working Group
Conference Call
October 8, 2009

The Market Conduct Examination Standards (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met via conference call Oct. 8, 2009. The following Working Group members participated: Bruce Ramge, Chair (NE); Carol O'Bryan (CO); Charles Kelley (FL); Mark Ossi and Deb Peirce (GA); Bob Rutledge (KY); Larry Hawkins (LA); Jim Mealer (MO); Tracy Miller Biehn (NC); Anne Marie Narcini (NJ); Lynette Baker (OH); Peter Camacci (PA); Carly Daniel and Julie Fairbanks (VA); Sue Ezalarab and Jo LeDuc (WI); and Mark Hooker (WV).

1. Review and discuss Colorado's June 24 e-mail and Sept. 1 Draft of Revised Chapter 18—Conducting the Title Insurance Company and Title Insurance Agent Examination

Ms. Narcini made a motion to adopt the revised Chapter 18. Mr. Hooker seconded the motion. The revised Chapter 18 was unanimously adopted (Attachment Five-A1). Mr. Ramge said the chapter will need to be continually reviewed and revised as new HUD (U.S. Department of Housing and Urban Development) and RESPA (Real Estate Settlement Procedures Act) rules go into effect.

2. Review and Discuss New Jersey's June 23 e-mail and June 23 Draft of Chapter 17—Conducting the Property and Casualty Examination

Mr. Hooker said he reviewed New Jersey's draft Chapter 17 and incorporated the Guidelines for Regulations and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950) into numerous standards. Mr. Hooker said he also inserted a paragraph into the Review Criteria and Procedures section of various standards, which provided guidance to examiners to use separate samples when conducting a workers' compensation examination. Mr. Hooker added that he had also made similar revisions to Chapter 16—General Examination Standards. He suggested that a separate workers' compensation chapter be drafted for the *Market Regulation Handbook* next year.

Ms. Narcini made a motion to adopt the revisions to Chapter 16 and Chapter 17. Ms. LeDuc said that in some states, such as Wisconsin, the issue of large deductible does not apply. Ms. LeDuc recommended that the words "if applicable" be inserted after each occurrence of the words "large deductible" in Chapters 16 and 17. Mr. Hooker seconded the motion. The changes to Chapters 16 and 17, as revised by Ms. LeDuc, were unanimously adopted (Attachment Five-A2, Five-A3).

3. Review and Discuss Ohio's Risk-Focused (Corporate Governance) Documents

Mr. Ramge said Ms. Baker had provided the Working Group with documents for consideration regarding the addition of corporate governance (risk-focused) methodology to the *Market Regulation Handbook.* Mr. Ramge indicated that comments had been received regarding the documents from Barb Szumowski (FL) and Greg Lee (VA). Mr. Ramge said two of the documents had been forwarded to the Market Analysis Procedures (D) Working Group for consideration, as they related to market analysis. Mr. Ramge said this issue will likely carry over to 2010.

Ms. Baker said the description of "risk-focused" in the documents needs to be better explained, and that she would provide revised language for Working Group review and comment.

Birny Birnbaum (Center for Economic Justice) said the term "risk-focused" exam indicates that this is a different type of examination, whereas it is actually more of an examiner's review of a regulated entity's corporate procedures. Mr. Birnbaum suggested that the term "risk-focused" be more clearly defined and recommended that it be considered as a new continuum option, not as a new regulatory framework for market analysis.

Marty Mitchell (America's Health Insurance Plans) asked when clarifying language regarding this issue will be placed on the Working Group's agenda. Ms. Baker said she would provide revised language before the next Working Group call.

4. Review and discuss areas of missing text in the *Market Regulation Handbook*

Mr. Ramge said there are a few areas within the *Market Regulation Handbook* where areas of missing text have been identified—areas where text had been missing (incomplete sentences and whole sections missing) going back several years.

Mr. Mealer provided a revision to Marketing and Sales Standard 9 in Chapter 19—Conducting the Life and Annuity Examination. Ms. Narcini provided text for insertion in the Review Procedures and Criteria section of the Placement, Cancellation & Nonrenewal Standard 4 of Chapter 24—Conducting the Surplus Lines Broker Examination. Mr. Mealer made a motion to adopt the revisions to Chapter 19 and 24. Mr. Hooker seconded the motion. The revisions were unanimously adopted (Attachment Five-A4, Five-A5).

Mr. Mealer said he had already started on revisions to incomplete text in Chapter 20—Conducting the Health Examination and would be providing them to the Working Group for review within the next week.

5. Any other matters before the Working Group

In preparation for the next scheduled Working Group call, Mr. Ramge requested that regulators and interested parties provide recommendations for Working Group tasks in 2010. Mr. Ramge reminded the Working Group that the Working Group's ultimate tasks and charges, as well as the scope of the Working Group's charges in 2010, are up to the discretion of next year's D Committee chair.

Mr. Ramge said the Working Group's next call would be Nov. 12.

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

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Chapter 18—Conducting the Title Insurance Company and Title Insurance Agent Examination

IMPORTANT NOTE:
The standards set forth in this chapter are based on established procedures and/or NAIC models, not on the laws and regulations of any specific jurisdiction. This handbook is a guide to assist examiners in the examination process. Since it is based on NAIC models, use of the handbook should be adapted to reflect each state's own laws and regulations with appropriate consideration for any bulletins, audit procedures, examination scope and the priorities of examination. Further important information on this and how to use this handbook is included in Chapter 1—Introduction.

This chapter provides a suggested format for conducting title insurance company and title insurance agent examinations. Procedures for conducting life and health insurance company examinations, property/casualty company examinations and other types of specialized examinations—such as managed care organizations, third-party administrators and surplus lines brokers—may be found in separate chapters.

For the purpose of licensing standards, the term "producer" is used, instead of "title agent." It will be necessary to refer to Chapter 16—General Examination Standards relating to producer licensing.

The examination of title insurance operations may involve any review of one or a combination of the following business areas:

A. Operations/Management
B. Complaint Handling
C. Marketing and Sales
D. Producer Licensing
E. Policyholder Service
F. Underwriting and Rating
G. Claims
H. Escrow, Settlement, Closing or Security Deposit Funds
I. Title Insurance Producer (Agent) Licensing and Relations
J. Special Considerations for Title Insurance Companies and Title Insurance Agents
K. Example Title Letter
L. Example Title Interrogatory
M. Sample Checklist

When conducting an exam that reviews these areas, there are essential tests that should be completed. The tests are applied to determine if the title insurance company is meeting standards. Some standards may not be applicable to all jurisdictions. The standards may suggest other areas of review that may be appropriate on an individual state basis.

When an examination involves a depository institution or their affiliates, the bank may also be regulated by federal agencies such as the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board, the Office of Thrift Supervision (OTS) or the Federal Deposit Insurance Corporation (FDIC). In addition, banks may also be regulated at the state level. Many states have executed an agreement to share complaint information with one or more of these federal or state agencies. If the examination

results find adverse trends or a pattern of activities that may be of concern to a federal or state agency and there is an agreement to share information, it may be appropriate to notify the agency of the examination findings.

A. Operations/Management

Use the standards for this business area that are listed in Chapter 16—General Examination Standards and the standards set forth below.

STANDARDS
OPERATIONS/MANAGEMENT

Standard 1
The title insurance company acts within the scope of its license.

Apply to: All title companies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Certificate of authority

_____ Title insurance company system

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

No title insurance company may transact any class, type or kind of business other than title insurance.

Title insurance may not be transacted, underwritten or issued by any title insurance company transacting or licensed to transact any other class, type or kind of business.

The title insurance company shall do only title insurance business, reinsure title insurance policies and perform ancillary activities, including examining titles to real property and any interest in real property and procuring and furnishing related information and information about relevant personal property when not in contemplation of, or in conjunction with, the issuance of a title insurance policy.

A title insurance company shall not engage in the business of guaranteeing payment of the principal or the interest of bonds or mortgages.

The title insurance company is expressly authorized to issue closing or settlement protection to a proposed insured upon request, if the title insurance company issues a preliminary report, binder/commitment or title insurance policy.

STANDARDS
OPERATIONS/MANAGEMENT

Standard 2
No member of the board of directors of the title insurance company may be a title insurance agent who wrote 1 percent or more of the direct premiums for the previous calendar year.

Apply to: All title insurance companies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

This requirement does not apply if the relationship is covered by the state's insurance holding company act.

STANDARDS
OPERATIONS/MANAGEMENT

Standard 3
The agency and all applicable employees have in place an errors and omissions policy, fidelity coverage, and/or a surety bond (or alternative financial arrangement, where permitted), if required by statutes, rules and regulations.

Apply to: All title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations, especially insurance examination law

_____ Records of errors and omissions policy, fidelity coverage, surety or financial arrangement

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurance Agent Model Act (#230)

Review Procedures and Criteria

Some jurisdictions require fidelity coverage to cover all individuals who handle escrow, security deposits and/or closing funds.

STANDARDS
OPERATIONS/MANAGEMENT

Standard 4
Business is diversified as required by statutes, rules and regulations.

Apply to: All title insurance companies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Annual statement

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

Business is diversified as required by statutes, rules and regulations. Prior written approval from the insurance department may override the following restrictions.

An independent title insurance agent's aggregate premiums may not exceed a percentage of the title insurance company's gross premiums written during the prior calendar year (as required by applicable statutes, rules and regulations).

Direct operations business may not be accepted from a single source in excess of the allowed percentage of the title insurance company's gross premiums written during the prior calendar year.

A single source means a person that refers business to the title insurance company and any other person that controls, is controlled by or is under common control with that person.

STANDARDS
OPERATIONS/MANAGEMENT

Standard 5
There is a periodic review and testing of the title plant built, owned, controlled or maintained by a title agent.

Apply to: All title plants where a title insurance agent builds, owns, controls or maintains the title plant

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations, especially insurance examination law

_____ Title insurance company or title insurance agent standards for title plant construction, use and maintenance

_____ Title plant

_____ Agency contract, if applicable

_____ Claim files

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurance Agent Model Act (#230)

Review Procedures and Criteria

Determine if there are established title plant standards and periodic tests to see that standards are met.

Review claim files to determine if losses paid arise from faulty search of title.

Determine if adequate provisions concerning the title plant are in the agency contract, if applicable.

Note: In some instances, the title insurance company is responsible for overseeing the activities of its agents with respect to maintenance of the title plant. The examiner should be aware that in other instances, the title insurance company and the title insurance agent may be in direct competition with each other. In those situations, the title insurance agent is accountable for ensuring standards for appropriate maintenance of the title plant.

B. Complaint Handling

Use the standards for this business area that are listed in Chapter 16—General Examination Standards.

C. Marketing and Sales

Use the standards for this business area that are listed in Chapter 16—General Examination Standards and the standards set forth below.

STANDARDS
MARKETING AND SALES

Standard 1
Controlled business is handled in accordance with statutes, rules and regulations.

Apply to: All title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurance Agent Model Act (#230)

Review Procedures and Criteria

The title insurance agent must advise customers prior to commencing a transaction of the controlled business arrangement, if required by statutes, rules and regulations.

If a referral is received from an individual who constitutes a controlled business arrangement, the person being referred must be notified that he or she is not required to use a specified title insurance agent or title insurance company, if required by statutes, rules and regulations.

Referrals must be in compliance with the provisions of applicable statutes, rules and regulations as it relates to controlled business.

STANDARDS
MARKETING AND SALES

Standard 2
Inducements are not provided, directly or indirectly, in consideration of referral of title insurance business, escrow or other services provided by a title insurance agent.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Title insurance company's correspondence files

_____ Policy files

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)

Review Procedures and Criteria

All transactions must be in compliance with the provisions of applicable statutes, rules and regulations as it relates to referrals.

Referrals may not be originated from a producer or other person that requires, directly or indirectly, placement of the title insurance through a particular agency or title insurance company as a condition precedent to providing a loan, credit, sale, property, contract, lease or service, if prohibited by statutes, rules and regulations.

STANDARDS
MARKETING & SALES

Standard 3
Affiliated business arrangements are organized and operated in compliance with statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Policy files

_____ Response(s) to pre-examination AfBA interrogatories

_____ Accounting records, including but not limited to, copies of cancelled checks, front and back, and disbursements to owners from operating accounts

_____ Ownership documents

_____ Applications, reports and disclosures to the regulatory authority, if required

_____ Documentation of disclosures to consumers, if required

_____ Contracts and service agreements between affiliates

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)

Review Procedures and Criteria

All arrangements must be organized and operated in compliance with the provisions of applicable statutes, rules and regulations as they relate to referrals, illegal kickbacks, and providing things of value to agency/company owners, referrers of business and potential referrers of business.

Core services are performed by in-house agency/company staff, including title examinations, determination of insurability, clearance of exceptions or objections, the issuance of preliminary

commitment, issuance of title policies, and if normally performed by title agents in the state, conducting the title search and handling of the closing.

All contracted services provided by a party related to the affiliated business entity are obtained at fair market prices, including, for example, accounting, information technology, human resources, payroll, title search, title examination, providing preliminary commitment or issuing title policy. Review contracts, services agreements and disbursements to analyze such affiliate transactions.

Analyze performance of core services, including a review of employee activities and disbursements for contracted services.

Analyze the original source of business. Make note of common settlement producers and the amount of business being referred by each. If the majority of referrals are being submitted by a few persons or entities, examine the ownership/relationship of the referring settlement producer and the entity under examination. Review disbursements for marketing, sales and core service activities to analyze potential referral fees.

The agency/company must be capitalized in compliance with applicable statutes, rules and regulations.

If a referral is received from a person or entity who is part of the affiliated business arrangement, the agency/company and/or referrer must provide its customers in a timely manner with all disclosures required by statutes, rules and regulations, including, for example, disclosure of the affiliated business arrangement and notification that the person being referred is not required to use a specific agency/company. If documentation of disclosure is required, review such documentation. Consider contacting a sample of customers to verify that they received required disclosures.

Determine if reports, applications or disclosures of the affiliated business arrangement to the regulatory authority are required under state statutes, rules and regulations. If so, determine if such documents have been properly filed.

D. Producer Licensing

Not applicable

E. Policyholder Service

Use the standards for this business area that are listed in Chapter 16—General Examination Standards.

F. Underwriting and Rating

1. Purpose

The underwriting portion of the examination is designed to provide a view of how the title insurance company treats the public and whether that treatment is in compliance with applicable statutes, rules and regulations. It is typically determined by testing a random sampling of files and applying various tests to the sampled files. It is concerned with compliance issues. The areas to be considered in this kind of review include:

a. Rating practices;
b. Underwriting practices;
c. Use of correct and properly filed and approved forms and endorsements;
d. Unfair discrimination;
e. Use of proper disclosures, buyers' guides and delivery receipts; and
f. Statistical coding.

2. Techniques

During an examination, it is necessary for examiners to review a number of information sources, including:

- Rating manuals and rate cards;
- Rate classifications;
- Rating systems filed with regulators;
- Policy fees;
- Discounts;
- Title insurance company automated rating systems;
- Rating materials provided to title insurance agents;
- Underwriting guidelines;
- Applicable policy forms and endorsements;
- Title insurance agent compensation agreements, where applicable;
- Statistical reporting requirements; and
- Underwriting files content and structure.

For purposes of this chapter, "underwriting file" means the file or files containing rate calculation sheets, billings, and audits—including binders/commitments, all underwriting information obtained or developed, policy schedules A and B, endorsements, HUD-1 forms, correspondence and any other documentation.

In selecting samples for testing, residential coverages should generally not be combined with commercial coverages. These two areas are not always homogeneous and conclusions or inferences

to be made from the results of sampling may not be valid if combined. The examiner should be familiar with any statutory or regulatory distinctions made between residential coverages and commercial coverages with respect to the various tests to be developed. The examiner also should be familiar with the process for gathering and processing underwriting information and the quality controls for the issuance of policies and endorsements. The list of files from which a sample is to be drawn may be generated through a computer run or, in some cases, through a policy register covering the period of time selected in the notice or call of examination.

Determine the title insurance company's policy population (policy count). Review a random selection of business for application of a particular test or apply specific tests to a census population using automated tools. (In the event specific files are chosen for a target review, the examiner must be certain the examination results are clearly identified as representative of the target selection.) The examiner should maintain a list of the various tests to be applied to each file in the sample. This will aid in consistency by ensuring that each test is considered for each file in the sample.

If exceptions are noted, the examiner must determine if the exception is caused by such practices as the use of faulty automated rating systems or the development of improperly or vaguely worded manuals or guidelines. When exceptions are noted, it is advisable to determine the scope and extent of the problem. The examiner's responses should maximize objectivity; the examiner should avoid replacing examiner judgment for title insurance company judgment.

a. Rating Practices

   It is necessary to determine if the title insurance company is in compliance with rating systems which have been filed with and, in some cases, approved by, the various state insurance departments. Where rates are not required to be filed with an applicable regulatory agency, it is prudent to determine if rates are being applied consistently and in accordance with the title insurance company's own rating methods. In general, rates should not be unfairly discriminatory. Wide-scale application of incorrect rates by a title insurance company may raise financial solvency questions or be indicative of inadequate management oversight. Deviation from established rating plans may also indicate that a title insurance company is engaged in unfair competitive practices. Inconsistent application of rates, individual risk premium modifications, modification factors and deviations can result in unfair discrimination.

   The procedure for determining adherence to rates filed or used by a title insurance company may vary between residential coverages and commercial coverages. The examiner should become familiar with the title insurance company's policy form numbers or other identification procedures, inasmuch as references may be made to such numbers or procedures in lieu of having the particular form attached.

   When possible, the examination team should make use of audit software to verify correct application of specific rating components. This allows for a more thorough review and can save time during the examination process.

Rating practices of policies and endorsements should be reviewed. The examiner should ensure that the underwriting files contain sufficient information to support the rates that have been applied to a policy or endorsement. Inherent in the more complex systems is the concern for unfair discrimination.

b. Underwriting Practices

The examiner should review relevant underwriting information; e.g., the title insurance company's underwriting guidelines, underwriting bulletins, agency agreements and correspondence with title insurance agents. The examiner may review interoffice memoranda and title insurance company minutes for indications of anti-competitive behavior or unfairly discriminatory practices. The examination team also will use the above information to determine title insurance company compliance with its manuals and guidelines. The examiner should confirm that the title insurance company underwriters and title insurance agents consistently apply the title insurance company guidelines for all business selected. The examination team should verify that the title insurance company has correctly classified insured individuals.

File documentation should also be sufficient to support underwriting decisions made. Underwriting decisions that are adequately documented generally afford management of the title insurance company the opportunity to know what business it has selected through its underwriters and title insurance agents. The examiner should verify that properly licensed and appointed (where applicable) title insurance agents have been used in the production of business.

Any practice suggesting anti-competitive behavior may involve legal considerations which should be referred to insurance department legal counsel. Ultimately, the information so obtained may be useful in drafting legislation or regulations.

c. Use of Correct and Properly Filed Forms and Endorsements

The examination team should verify that all policy forms and endorsements used have been filed with the appropriate regulatory authority, if applicable. Additionally, the examination team should verify the consistent and correct use of policy forms and endorsements. The examiner should also be mindful of possible outdated forms or endorsements. If coverages and riders requested by the applicant are not issued, proper notification should be provided to the applicant. In some cases, supplemental applications are appropriate.

d. Unfair Discrimination

The examination team should be mindful of company underwriting practices that may be unfairly discriminatory. The classification of insureds into rating or underwriting groups must be based on sound business or actuarial principles. Failure to follow established rating and underwriting guidelines may result in unintentional yet unfair discrimination. Unfair trade practice acts and related regulatory rules adopted by the applicable jurisdiction also may prohibit specific underwriting practices.

e. Use of Proper Disclosures, Buyers' Guides and Delivery Receipts

The examiner should inquire into any reinsurance agreements or affiliated business arrangements or agreements with a third-party whereby insurance is arranged, reinsured, purchased through or ceded on title business written on personal or commercial properties. Errors should be noted with regard to overcharges or undercharges.

f. Statistical Coding

The examiner should review the title insurance company's statistical coding procedures. Coding on individual policies should be current and accurate. The examiner should determine to what statistical agencies the title insurance company reports its rating/underwriting data.

3. Tests and Standards

The underwriting and rating review includes, but is not limited to, the following standards addressing various aspects of the title insurance company's underwriting activities. The sequence of the standards listed here does not indicate priority of the standard.

STANDARDS
UNDERWRITING AND RATING

Standard 1
Re-issue and refinance credits are applied consistently in compliance with statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ New business application

_____ Policy schedules A and B

_____ Settlement statement and HUD-1 form

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)

Review Procedures and Criteria

A copy of the previously issued title insurance policy should be maintained on file.

Documentation should be maintained to ensure there was adequate inquiry made regarding the existence of a prior title insurance policy.

STANDARDS
UNDERWRITING AND RATING

Standard 2
The title insurance company does not engage in collusive or anti-competitive underwriting practices.

Apply to: All title insurance companies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Underwriting files

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

Any practice suggesting anti-competitive behavior may involve legal considerations which should be referred to insurance department legal counsel. This would include engaging in collusive underwriting practices that may inhibit competition.

The examiner should be aware of unlawful pricing and other prohibited anti-competitive acts or practices.

STANDARDS
UNDERWRITING AND RATING

Standard 3
Charges or fees other than premium for providing coverage are in compliance with statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Applicable state fee filings

_____ Settlement statement and HUD-1 form

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)

Review Procedures and Criteria

Review a random sample of real estate transaction closing files to determine whether charges and fees, other than premium, being charged to consumers are in accordance with applicable filings, laws, rules or regulations (if any). Review applicable statutes, rules, and regulations relating to such charges and fees. The laws in this area will vary widely by state from prior approved all inclusive rates to non-regulated rates and fees.

Review HUD-1 forms associated with the above random sample of real estate transaction closing files to confirm that all charges and fees identified above are disclosed on the HUD-1 form.

Review charges and fees to determine if such charges and fees are RESPA compliant.

STANDARDS
UNDERWRITING AND RATING

Standard 4
Other than closing or settlement protection, the title insurance company does not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement or closing services.

Apply to: All title insurance companies

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Settlement statement and HUD-1 form

Others Reviewed

_____ Case law for state impacted

_____ _____

_____ _____

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

Review all coverage being offered and/or issued by the title insurance company to determine if it is within the definition of title insurance under the applicable statutes, rules, and regulations.

Some jurisdictions require that all forms be filed and approved prior to use. In such jurisdictions, review forms to confirm that forms have been properly filed with the appropriate Department.

STANDARDS
UNDERWRITING AND RATING

Standard 5
The closing or settlement protection conforms to the terms of coverage and form of instrument as required by statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

_____ Case law for state impacted

_____ _____

_____ _____

NAIC Model References

Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)

Review Procedures and Criteria

Where permitted or required, determine if closing or settlement protection is being offered by the company and/or agent.

Confirm that any closing or settlement protection being offered is in a form that complies with the applicable statutes, rules, and regulations.

Some jurisdictions require that all closing or settlement protection forms be filed and approved prior to use. In such jurisdictions, review forms to confirm that forms have been properly filed with the appropriate Department.

STANDARDS
UNDERWRITING AND RATING

Standard 6
Reports and disclosures are made in accordance with statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)

Review Procedures and Criteria

The title insurance report and/or commitment shall be furnished to the purchase-mortgagor or its representative as soon as reasonably possible prior to closing if the report includes an offer to issue an owner's policy covering the resale of the owner-occupied residential property.

Documentation of the reason for delay is maintained for title insurance reports, which are not delivered prior to the day of closing.

Required disclosures are made on reports not delivered prior to the day of closing:

> "Please read the exceptions and the terms shown or referred to herein carefully. The exceptions are meant to provide you with notice of matters, which are not covered under the terms of the title insurance policy and should be carefully considered.
>
> It is important to note that this form is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land."

In accordance with applicable law, a written statement is provided or obtained when a lender's title insurance policy is issued in conjunction with a mortgage loan made simultaneously with the purchase of all or part of the real estate securing the loan where no owner's title insurance policy has been requested.

The notice must be provided to the purchaser-mortgagor at the time the commitment is prepared.

The notice shall explain that a lender's title insurance policy is to be issued protecting the mortgage-lender and that the policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased.

The notice shall explain what a title insurance policy insures against through the purchase of an owner's policy.

The notice shall explain that the purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner at a specified or approximate cost, if the proposed coverages or amount of insurance is not known.

Copies of written notices prepared when a lender's title insurance policy is issued in conjunction with a mortgage loan made simultaneously with the purchase of all or part of the real estate securing the loan where no owner's title insurance policy has been requested are maintained in the underwriting file for at least five years after the effective date of the policy.

STANDARDS
UNDERWRITING AND RATING

Standard 7
The title insurance company complies with statutes, rules and regulations regarding the recording, reporting and validation of revenue, loss and expense experience.

Apply to: All title insurance companies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Underwriting files

_____ Rating organization's coding manual

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

Validation may include certification by oath of the title insurance company's or title insurance agent's president, vice president or secretary.

Audits may be required by the insurance department. The audit should be conducted by an independent certified public accountant.

An actuarial certification is required to be filed with the title insurance company annual statement. The actuarial certification must conform to the NAIC annual statement instructions.

STANDARDS
UNDERWRITING AND RATING

Standard 8
All policies are correctly coded.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Underwriting files

_____ Title insurance company's rating system

_____ Title insurance company's coding manual

_____ Rating organization's coding manual

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Model Regulation to Require Reporting of Statistical Data by Property and Casualty Insurance Companies (#751)
Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)

Review Procedures and Criteria

Determine that the title insurance company confirms the coding as reported by the title insurance agent is correct and current in accordance with applicable statutes, rules and regulations.

Determine that the title insurance company promptly updates all coding manuals and programs.

Determine that the title insurance company correctly codes all policies according to current codes.

G. Claims

1. Purpose

The claims portion of the examination is designed to provide a view of how the title insurance company treats claimants and whether that treatment is in compliance with applicable statutes, rules and regulations. It is determined by testing a random sampling of files and applying various tests to open and closed claims. For purposes of this chapter "claim file" means the file or files containing the notice of claim; claim forms; settlement demands; claim investigation documentation; correspondence to and from insureds and claimants or their representatives; complaint correspondence; copies of claim checks or check numbers and amounts; releases; all applicable notices and correspondence used for determining and concluding claim payments or denials and any other documentation necessary to support claim handling activity.

The review is concerned with the title insurance company's claims practices for compliance with statutes, rules and regulations and policy provisions. In addition to the general areas of review discussed in Chapter 16—General Examination Standards, a loss statistical reporting survey should also be performed.

Determine to which statistical agencies the title insurance company reports its loss data. Review claim drafts to determine if loss data is correctly coded as to the proper line of business. Review drafts to determine if claim expenses are separated from claim payments. If the review indicates significant errors in coding, the data should be included in the report.

STANDARDS
CLAIMS

Standard 1
Indemnification of a proposed insured solely against the loss of settlement funds may only be made for events as authorized by statutes, rules or regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Title insurance company's claim manuals

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)

Review Procedures and Criteria

Where addressed by applicable statutes, rules and regulations, ensure that the closing or settlement protection only indemnifies against the following acts of a title insurance agent:

- Theft of settlement funds; and
- Failure to comply with written closing instructions by the proposed insured when agreed to by the title insurance agent relating to title insurance coverage.

STANDARDS
CLAIMS

Standard 2
Loss statistical coding is complete and accurate.

Apply to: All title insurance companies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Claim files

_____ Title insurance company's claims coding manual

_____ Title insurance company's coding system

_____ Rating organization's coding manual

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Model Regulation to Require Reporting of Statistical Data by Property and Casualty Insurance Companies (#751)
Title Insurers Model Act (#628)
Unfair Claims Settlement Practices Act (#900)
Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)

Review Procedures and Criteria

Determine that the title insurance company codes the correct loss data onto the draft copies or system.

Determine that the title insurance company promptly updates all coding manuals and programs.

Determine that the title insurance company accurately codes the loss amounts.

Determine that the title insurance company separates loss amounts from loss expense amounts.

H. Escrow, Settlement, Closing or Security Deposit Funds

1. Purpose

Title insurance companies, title insurance agents, approved attorneys and escrow companies provide services that reflect the unique nature of real estate transactions in our society. Services provided vary from one area of the country to another and may include acting as escrow agent, obtaining releases and conducting the actual closing or settlement. However, the essential purpose is the same; i.e., to assist the parties in real estate transactions by ensuring the acquisition or transfer of property interest can be effected with a maximum degree of efficiency, security and safety.

An escrow is a transaction in which an impartial third party acts in a fiduciary capacity as an agent for the seller, buyer, borrower and lender. In some states or jurisdictions, this function is performed by the title insurance company or agency.

The escrow holders have fiduciary and contractual responsibility for prudent processing, safeguarding and accounting for funds entrusted to them by escrow customers. Accordingly, this responsibility results in significant exposure to losses from inadvertent or intentional failure to execute their duties properly.

2. Techniques

The authority for review of escrow, settlement, closing and security deposit funds activities may or may not belong to the state insurance department. The examiner should ensure this area falls under their department's jurisdiction prior to review of these standards.

3. Tests and Standards

The escrow, settlement, closing and security deposit funds review includes, but is not limited to, the following standards addressing various aspects of these fiduciary responsibilities. The sequence of the standards listed here does not indicate priority of the standard.

STANDARDS
ESCROW, SETTLEMENT, CLOSING OR SECURITY DEPOSIT FUNDS

Standard 1
All escrow, settlement, closing or security deposit funds are submitted for collection to or deposited in a separate fiduciary trust account in a qualified financial institution promptly and in accordance with statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)

Review Procedures and Criteria

The funds are the property of the person(s) entitled to them and are segregated for each depository by escrow, settlement, security deposit or closing in the records which allows individual identification.

The funds are applied in accordance with the terms of the individual instructions or agreements by which the funds were accepted.

Ensure the funds are handled as follows:

- Funds held in escrow are disbursed pursuant to the written instruction or agreement specifying how and to whom the funds should be disbursed;

- Funds held in a security deposit account are disbursed in accordance with the written agreement; and

- The written agreement for funds held in a security deposit account complies with requirements of statutes, rules and regulations:
    - The agreement includes what actions the indemnitor needs to take to satisfy his or her obligation under the agreement; and

    - The agreement includes the duties of the title insurance company and title insurance agent with respect to the disposition of the funds held.

- There is a requirement to maintain evidence of the disposition of the title exception or objection before any balance may be paid over to the depositing party or their designee.

STANDARDS
ESCROW, SETTLEMENT, CLOSING OR SECURITY DEPOSIT FUNDS

Standard 2
Interest received on funds deposited in connection with any escrow, settlement, security deposit or closing shall be paid in accordance with applicable statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)

Review Procedures and Criteria

Administrative costs (i.e.., the cost of maintaining the accounts) may be recovered from the interest.

Instructions for the funds or a governing statute may override this standard.

Refer to local statutes, rules and regulations relative to administrative/interest cost recovery. In the event of remittance delays that are contrary either to local law or the agency contract itself, the examiner may wish to explore the agency's financial condition vis-à-vis cash flow problems. If a pattern of delay exists relative to tax statements, and if funds are found to be commingled (i.e., funds in the premium account are being used in addition to an operating account; operating costs are being paid out of a trust account; etc.), for solvency reasons, examiners should report such findings to their appropriate financial examination section.

STANDARDS
ESCROW, SETTLEMENT, CLOSING OR SECURITY DEPOSIT FUNDS

Standard 3
Disbursements made from an escrow, settlement or closing account are done in accordance with statutes, rules and regulations.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)
Expedited Funds Availability Act, 12 U.S.C Section 4001 et seq. as amended, and related regulations of the Federal Reserve System

Review Procedures and Criteria

Files should be balanced prior to closing to ensure sufficient deposits have been made to equal calculated disbursements. Disbursements should be made only from collected funds related to the same escrow.

"Collected funds" as used herein means:

- Cash;
- Wire transfers that are received and available for disbursement;
- Certified, cashier and teller checks from an institution insured by the FDIC or the National Credit Union Share Insurance Fund;
- U.S. Treasury checks; or
- Checks that have cleared the banking system.

I. Title Insurance Producer (Agent) Licensing and Relations

Use the standards set forth below.

STANDARDS
TITLE INSURANCE PRODUCER (AGENT) LICENSING AND RELATIONS

Standard 1
Written underwriting contracts, which include required provisions, are in place between title insurance agencies and all applicable title companies, and business is not placed without a contract.

Apply to: All title insurance companies and title insurance agents

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Written agreements

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)

Review Procedures and Criteria

The agreement shall set forth the responsibilities of each party and explain the division of responsibilities if a particular function is a shared responsibility between the two parties.

The agreement should incorporate underwriting guidelines and limitations on title claims settlement authority.

The written agreement should include the following:

- Responsibilities of each party and division of responsibilities clearly specified;
- Provisions applicable to contract termination and notice of cancellation;
- Provisions specifying requirements for reporting and remittal of funds.
- Provisions related to the fiduciary capacity and handling of title insurance company funds;
- Provisions related to ownership and access to policy records, escrow files and claim files;
- Provisions applicable to assignment of the contract;
- Guidelines related to the basis of rates charged, types of risks which may be written, maximum limits of liability, territorial limitations, title searches, examinations and underwriting;
- Provisions regarding the reporting of claims, claim settlement authority and risk retention;
- Where prohibited, the contract may not permit title insurance agents to bind reinsurance on behalf of the title insurance company or appoint a title insurance sub-agent; and

- The title insurance agent shall not bind reinsurance or retrocessions on behalf of the title insurance company.

STANDARDS
TITLE INSURANCE PRODUCER (AGENT) LICENSING AND RELATIONS

Standard 2
Policies and premiums are reported and remitted on a timely basis.

Apply to: All title insurance companies and title insurance agents

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Listing of title insurance agent accounts current exceeding contract limits

_____ Title insurance agent and/or agency contracts

_____ Agency listing of issued and unexpired commitments where the final title insurance policy has not yet been issued

_____ Agency listing of issued title insurance policies that have not yet been reported to the title insurer

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurance Agent Model Act (#230)
Title Insurers Model Act (#628)

Review Procedures and Criteria

The focus of this standard relating to title insurance agent accounts current is to aid in the detection of fraud or misuse of funds held by the title insurance agent in a fiduciary capacity.

In many cases, title insurance premium is paid to the agency at the time of a real estate closing. Following the closing, certain conditions—such as mortgage releases or filings—may need to be met prior to issuance of the policy. Payment of premium to the title insurer by the agency often occurs after policy issuance. Examiners should request a listing of all files where agents have issued commitments but the final title insurance policies have not been issued. Preferably, the listing should provide an aging of those files. If not, the examiner should sample the files to determine the aging and reasons why final policies have not been issued. Examiners should determine what procedures are in place at the agency to follow up on those files to hasten completion, especially for those files in which premium payment has been received by the agency. In instances where a listing is not readily available, the examiner should physically inspect all locations where such files are stored to obtain an inventory or approximation.

Examiners should request a listing of all files where the agency has issued final title policies, but not yet reported the policies to the title insurer. Determine that reporting is being handled in accordance with the insurer/agency agreement and ascertain an estimated reporting date and reason for any policies outside the scope of that agreement.

For both issued commitments pending issuance of the title policy (where the agency has collected premium) and issued policies not yet reported to the insurer, the examiner should obtain an estimated premium owed. The examiner should determine that the agency has kept those funds available for remittance to the insurer.

Review a listing of title insurance agent accounts current.

Discuss excessive balances with the title insurance company.

Refer to the appropriate division within the insurance department, if necessary.

STANDARDS
TITLE INSURANCE PRODUCER (AGENT) LICENSING AND RELATIONS

Standard 3
The title insurance company maintains a record of financial stability for each title insurance agent under contract with the title insurance company.

Apply to: All title insurance companies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Errors and omissions, fidelity coverage and surety bonds

_____ Credit history report

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

Verify that errors and omissions, fidelity coverage and surety bonds are in place, if required by statutes, rules and regulations.

STANDARDS
TITLE INSURANCE PRODUCER (AGENT) LICENSING AND RELATIONS

Standard 4
The title insurance company conducts a review of underwriting, claims and escrow practices of the title insurance agent in accordance with statutes, rules and regulations.

Apply to: All title insurance companies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Insurer audit reports of agent reviews

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

This review should include a review of the title insurance agent's policy inventory and processing operations.

If the title insurance agent does not maintain separate bank or trust accounts for the premiums for each title insurance company the agent represents, the title insurance company shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title insurance agent.

Note: In some jurisdictions, the title insurance company is required to conduct this review on-site.

STANDARDS
TITLE INSURANCE PRODUCER (AGENT) LICENSING AND RELATIONS

Standard 5
The title insurance company maintains an inventory of all policy forms or policy numbers allocated to each title insurance agent.

Apply to: All title insurance companies

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Policy register, stock list, log or similar record

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Title Insurers Model Act (#628)

Review Procedures and Criteria

Reconcile policies on hand with the policy register, stock list, log or similar record, if applicable.

J. Special Considerations for Title Insurance Companies and Title Insurance Agents

In title insurance, there is risk elimination where potential defects that would produce loss are identified and specifically excluded from coverage or where certain risks may be over-insured, excluded or corrected. The policy is written to indemnify against losses to the title to real property, as stated in the policy on the date of policy issuance and has no expiration. Coverage is provided at any time thereafter, if the title was not as stated in the policy at that precise point in time.

Title insurance companies and title insurance agents may also be regulated or governed by banking authorities, the U.S. Department of Housing and Urban Development (HUD) or other authorities. In some states, title insurance statutes reference the federal Real Estate Settlement Procedures Act (RESPA), in which case the examiner should be familiar with the provisions of RESPA, 12 U.S.C., Section 2607, as amended. The Expedited Funds Availability Act, 12 U.S.C. Section 4001 et seq. as amended and related regulations of the Federal Reserve System should also be referenced.

Many of the requirements in this chapter are in accordance with the NAIC Title Insurers Model Act and the NAIC Title Insurance Agents Model Act. Examiners should be familiar with the applicable statutes in their jurisdiction and apply only those standards and tests suggested in this chapter that are based in statute, rule or regulation in their jurisdiction.

An examination of title insurance agencies should include verification of compliance with issues which are both common with other types of insurance and unique to title insurance. In addition to licensing, appointment, disclosure, policyholder treatment and record retention requirements, the examiner should review issues relating to referrals, controlled or affiliated business relationships, underwriting contracts with companies, bond and errors and omissions coverage requirements, escrow accounts and audits.

An understanding of terms, definitions and typical business practices which are unique to title insurance is also helpful. An example is the term “producer” as used by the title insurance profession. Whereas the term “producer” in most lines of insurance may be used to refer to an insurance agent or broker, the term “producer,” as it relates to title insurance, refers to persons involved in the buying and selling of real estate, mortgage loans, lenders or attorneys. It is significant that many in the title insurance profession do not view the property owner as their customer. They view persons involved in the buying and selling of real estate, mortgage loans, lenders or attorneys as their customer—as these are entities that frequently exercise the ability to select a title insurer or title insurance agent on behalf of the named insured. The examiner should be aware that in some jurisdictions, on a purchase transaction, policies are commonly issued to both an owner and mortgagee, while in other jurisdictions, policies may only be issued to a mortgagee, although the owner always has the option to purchase a policy. When the transaction involves a refinance, the mortgagee commonly purchases a policy but the owner does not.

In most jurisdictions, title insurance is a monoline policy, which can only be written by title insurance companies who are prohibited from writing any other line of business. In addition to issuing a title policy, in some jurisdictions, title insurance agencies may perform a variety of functions, including performing title searches, abstracting, performing underwriting functions, establishing and handling escrow funds and performing real estate closings. Approved attorneys, depending on the jurisdiction, will perform many of the same tasks as a title agent, but generally do not issue title policies. Approved attorneys are licensed by their local state bar association and are not licensed by the insurance department.

The agreement by the title insurer to provide the typical title insurance policy is usually referred to as a "commitment" or "preliminary commitment to title insurance." The commitment generally specifies what defects need to be corrected prior to title policy issuance, together with the conditions, exclusions or exceptions that will appear in the title policy, when issued. When issued, a title policy may cover the interests of the real estate lender or the buyer whose interests differ. Title insurance rates vary from state to state and are regulated in a variety of ways: promulgation, prior approval, file and use, use and file and no direct regulation. Under all of the above, there is usually a discount applied for simultaneously issued policies, refinancing or to a property for which a previous title policy was issued within some specified period of time.

In many instances, the examiner will need to access and review records at the title insurance agent's office during a title insurance company examination.

In some jurisdictions, there are "title plants" that duplicate the public record affecting real property and reorganize those records, typically by legal description. In those jurisdictions in which the title insurance agent builds, owns, controls or maintains a title plant used to search title preliminary to the issuance of a title policy, it is important that the examiners verify that there are appropriate standards for maintenance of the title plant. It is also critical that the insurer provide an adequate level of oversight of such an agent.

The examiners should request the following items upon initiating a title insurance agent examination:

- Issued commitment files with no policy issued;
- A listing of all files or orders in which commitments have been issued, but policies have not yet been issued (whether or not outstanding conditions have been met and reported);
- Issued policies not yet reported to the underwriter; and
- A listing of all issued title policies and endorsements for which reporting to the title insurer is pending or not yet accomplished, as of the date of the request.

K. Example Title Letter

DATE

Address

Re: Affiliated Business Arrangements

Dear

The ____ Division of Insurance is conducting an investigation of affiliated business arrangements ("AfBAs") in the title insurance industry. The Division is sending this letter to all title insurance agencies licensed in the State of _____ to facilitate the investigation. **Please respond to this inquiry within ten (10) business days from the date of this letter.**

According to _____ law, the term "affiliated business arrangements" means:

"Settlement producer" means:

"Affiliate" means:

State insurance commissioners are authorized to enjoin violations of the federal Real Estate Settlement Procedures Act (RESPA). RESPA defines an AfBA as:

(A)n arrangement in which (A) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally-related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.

12 U.S.C. § 2602(7). Furthermore, RESPA defines "associate" as follows:

The term "associate" means one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor or franchisee of such person; or (D) anyone who has an agreement, arrangement or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business.

12 U.S.C. § 2602(8).

Using the definitions contained in Division of Insurance regulation_____ and RESPA, respond to the following questions. Submit your response to the Division within seven (7) business days of the date of this letter. An officer of the company must attest to the accuracy of the responses and sign the responses. Failure to supply complete, signed responses within the seven (7) day time frame subjects your company

to monetary or other penalties pursuant to Division of Insurance regulation _____.

Please note that in accordance with § _____, all working papers, claim files, recorded information and documents disclosed to the Division will be given confidential treatment until the informal investigation is concluded. If documentation submitted to the Division is additionally protected from disclosure under the exceptions to the _____Open Records Act of §_____, you must mark each document as confidential. In addition, you must submit an index of the documents that describes the content of each document, the basis for the claim of confidentiality and the supporting rationale for the claim. This index must accompany the documentation.

Finally, please be advised that you may or may not receive further correspondence from the Division concerning AfBAs, regardless of how you respond to the following question.

Is the title entity to which this letter is addressed, or any of its affiliates or associates, an affiliated business arrangement as defined by Division of Insurance regulation _____ or RESPA? Please mark the appropriate response:

□ YES □ NO

As an officer of the company who is authorized to sign on behalf of the company, I do hereby attest to the accuracy of the above responses.

Company Name (as licensed)

Company Officer (print full name) Title

Signature of Company Officer Date

Please return this entire letter with complete, signed response to:

_____*Division of Insurance* *Scan and e-mail to:*

or

Thank you for your cooperation and prompt response.

Very truly yours,

L. Example Title Interrogatory

Affiliated Business Arrangements Interrogatories

The following terms, definitions and law shall apply when answering all questions:

State Law Definitions:

"Affiliate" means

"Affiliated Business Arrangements"

See _____ Division of Insurance Regulation _____.

"Settlement producer"

"Title entity"

"Title insurance business"

Federal Law Definitions:

In addition to enforcing state laws, state insurance commissioners are authorized to enjoin violations of the federal Real Estate Settlement Procedures Act (RESPA). The following RESPA definitions shall also apply when answering these questions:

"Affiliate Relationship" means the relationship among business entities where one entity has effective control over the other by virtue of a partnership or other agreement or is under common control with the other by a third entity or where an entity is a corporation related to another corporation as parent to subsidiary by an identity of stock ownership. See 24 C.F.R. § 3500.15(c)(2).

"Affiliated Business Arrangement"

(A)n arrangement in which (A) a person who is in a position to refer
business incident to or a part of a real estate settlement service involving a federally-related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (B) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider.

See 12 U.S.C. § 2602(7).

"Associate"

(M)eans one who has one or more of the following relationships with a person in a position to refer settlement business: (A) a spouse, parent or child of such person; (B) a corporation or business entity that controls, is controlled by, or is under common control with such person; (C) an employer, officer, director, partner, franchisor or franchisee of such person; or (D) anyone who has an agreement,

arrangement or understanding, with such person, the purpose or substantial effect of which is to enable the person in a position to refer settlement business to benefit financially from the referrals of such business.

See 12 U.S.C. § 2602(8).

"Beneficial ownership" means the effective ownership of an interest in a provider of settlement services or the right to use and control the ownership interest involved even though legal ownership or title may be held in another person's name. See 24 C.F.R. § 3500.15(c)(3).

Please submit detailed written responses to the following questions along with the requested documentation to the Division within twenty (20) calendar days of the date of this letter. An officer of the company must attest to the accuracy of the responses and sign the responses. Failure to supply complete, signed responses within the twenty (20) day time frame subjects your company to monetary or other penalties pursuant to _____ Division of Insurance Regulation___.

Please note that in accordance with § _____ (state law cite), all working papers, claim files, recorded information and documents disclosed to the Division will be given confidential treatment until the informal investigation is concluded. If documentation submitted to the Division is additionally protected from disclosure under the exceptions to the _____Open Records Act., you must mark each document as confidential. In addition, you must submit an index of the documents that describes the content of each document, the basis for the claim of confidentiality and the supporting rationale for the claim. This index must accompany the documentation.

For each of the following questions, please be sure to include all relevant dates and provide full and complete copies of all relevant written documents to the Division of Insurance with your responses.

Identify any and all AfBAs that exist or have existed between and among the title entity to which this letter is addressed and any other title entities or settlement producers. Indicate the dates of creation of all such AfBAs and provide full and complete copies of all written documents relating to affiliation with all such AfBAs to the _____ Division of Insurance with your responses.

If no such AfBAs exist or have existed between and among your title entity and any other title entities or settlement producers, please indicate this fact and you do not need to answer the remaining questions. If you are unsure whether AfBAs exist or have existed, please respond to the following questions.

Explain in detail how and when the title entity to which this letter is addressed was initially capitalized and state the net worth for each year from January 1, 2000, to the present, explaining how this figure was derived. Respond to the following:

Provide a list of the names, addresses and occupations of all persons who contributed initial capital to the title entity to which this letter is addressed. Include the amount of capital obtained from each source and the respective capitalization ratios.

For each identified person, indicate whether this person took out a loan to cover any part of his/her contribution to the initial capital of the title entity to which this letter is addressed. Indicate the dollar amount and source of the loan.

For each identified person, state whether the title entity to which this letter is addressed has or has ever had any loan agreements with the identified person. Indicate the dates of all such loan agreements and provide full and complete copies of all written documents relating to all such loan agreements to the Division of Insurance with your responses.

Provide full and complete copies of any and all financial pro forma statements prepared by or for the title entity to which this letter is addressed. Indicate the date(s) on which each financial pro forma statement was prepared.

For each financial pro forma statement provided, explain in detail the reason(s) the financial pro forma statement was prepared.

For each financial pro forma statement provided, identify all persons who were involved in the preparation of the financial pro forma statement.

Has the title entity to which this letter is addressed ever owned or been owned, in whole or in part, by one or more settlement producers? If so, respond to the following:

Provide a list of the names, addresses and occupations of any and all settlement producers who have, in whole or in part, owned or been owned by the title entity to which this letter is addressed.

For each identified settlement producer, state the commencement date of the ownership arrangement(s) between the settlement producer and the title entity to which this letter is addressed. Provide full and complete copies of all written documents relating to the commencement of the ownership arrangement(s).

For each identified settlement producer, state the termination date of the ownership arrangement(s) between the settlement producer and the title entity to which this letter is addressed. Provide full and complete copies of all written documents relating to the termination of the ownership arrangement(s).

For each identified settlement producer whose ownership arrangement(s) with the title entity to which this letter is addressed was terminated or otherwise extinguished, state the reason(s) for the termination of the ownership arrangement(s) on the identified date(s). Provide full and complete copies of all written documents substantiating the reason(s) for the termination of the ownership arrangement(s).

For each identified settlement producer, indicate whether the ownership arrangement(s) between the settlement producer and the title entity to which this letter is addressed was adjusted or changed in any way. Indicate the date(s) on which the identified ownership arrangement(s) was adjusted or changed and provide full and complete copies of all written documents relating to any adjustments or changes that were made in the ownership arrangement(s).

For each identified settlement producer whose ownership arrangement(s) with the title entity to which this letter is addressed was adjusted or changed, state the reason(s) for the adjustment or change in the ownership arrangement(s) on the identified date(s). Provide complete copies of any and all written documents substantiating the identified reasons for the adjustments or changes in the ownership arrangement(s).

Provide a complete list of all employees who are currently or have ever been employed by the title entity to which this letter is addressed and indicate their dates of employment. Respond to the following:

Provide a complete list of the names and job titles of all employees of the title entity to which this letter is addressed.

For each identified employee, identify any and all affiliated or associated businesses for which he/she performs services.

For each identified employee, identify any and all unaffiliated businesses for which he/she performs services.

Explain the proportion of time allotted by each such employee to each affiliated and/or unaffiliated business as a percentage of 100 percent.

Provide a complete list of the names and job titles of all employees who are not full-time employees of the title entity to which this letter is addressed.

For each identified part-time employee, identify any and all affiliated or associated businesses for which he/she performs services.

For each identified part-time employee, identify any and all unaffiliated businesses for which he/she performs services.

Explain the proportion of time allotted by each such employee to each affiliated and/or unaffiliated business as a percentage of 100 percent.

Explain in detail the specific job functions performed by each identified employee.

Explain in detail all services provided by the title entity to which this letter is addressed that have not already been identified as being performed by the identified employees of the title entity to which this letter is addressed.

Identify all employment-related licenses held by each identified person; e.g. title insurance producer, real estate agent, attorney, etc.

Provide full and complete copies of all 1096 (Annual Summary and Transmittal of U.S. Information Returns) forms filed with the IRS by or for the title entity to which this letter is addressed.

Provide full and complete copies of all Unemployment Insurance Quarterly Wage and Tax Reports filed with the State of _____ by or for the title entity to which this letter is addressed.

Provide a list of the names and job titles of all persons not listed above who manage or have ever managed the business affairs of the title entity to which this letter is addressed and indicate their dates of employment.

Respond to the following:

Describe when, how and by whom each identified person is compensated.

Describe the job-related duties performed by each identified person.

Identify any and all affiliated or associated businesses for which each identified person performs or has performed services, and describe those services.

Identify any and all unaffiliated businesses for which each identified person performs or has performed services, and describe those services.

Does the title entity to which this letter is addressed perform any of the following core title services: (1) title searches, (2) title examinations; (3) abstracts; (4) title evaluations to determine insurability; (5) prepare and/or issue title commitments and/or title policies; (6) maintain policy records; (7) receive premiums; (8) closing and settlement services; (9) solicit and negotiate for the issuance of your title commitments; (10) maintain escrow accounts? If so, please respond to the following for *each* of the above core title services:

Provide a list of the names and job titles of all persons who have performed each core title service for the title entity to which this letter is addressed from January 1, 2000, to the present.

For each identified person, state the number of each core title service performed per year by that person for the title entity to which this letter is addressed from January 1, 2000, to the present. In addition, state this number as a percentage of the total number of each core title service performed per year by the title entity to which this letter is addressed.

For each identified person, state the name of any and all employers of that person.

For each identified employer, state whether that employer is an affiliated or associated business.

For each identified employer, state whether the employer is a settlement producer and describe how they meet this definition as described in _____ Division of Insurance Regulation ____.

For each identified person, describe in detail the specific activity or activities performed to accomplish the identified core title services.

For each identified person, state the name of the business that appears on each person's paycheck and/or paystub.

Has the title entity to which this letter is addressed ever contracted out any part of its work relating to the performance of title services? If so, please respond to the following:

Provide a list of all persons to whom the title entity to which this letter is addressed has contracted out any part of its work relating to the performance of title services.

Identify all licensed producers who conduct or have conducted title insurance business for the title entity to which this letter is addressed. For each identified licensed producer, indicate the dates that the licensed producer conducted business for your title entity.

Identify all underwriters for whom the title entity to which this letter is addressed is or has been authorized to conduct title insurance business. For each identified underwriter, indicate the dates that your title entity was authorized to conduct title insurance business for the underwriter and provide full and complete copies of all underwriting agreements to the Division of Insurance with your responses.

For each identified person, state whether that person is or was an affiliate or associate of the title entity to which this letter is addressed.

For each identified person, state whether that person is or was a settlement producer, and describe how they meet this definition as described in _____ Division of Insurance Regulation _____.

Identify any and all agreements, written or oral, that the title entity to which this letter is addressed has made relating to the contracting out of any part of its work relating to the performance of title services. Indicate the date on which each agreement was made and provide full and complete copies of all such written agreements.

Identify any and all payments that the title entity to which this letter is addressed has made or received for the contracting out of any part of its work relating to the performance of title services. Indicate the date on which each payment was made and provide full and complete copies of all written documents relating to all such payments.

Has the title entity to which this letter is addressed ever rented office space, facilities, items or services *to* or *from* any other title entities or settlement producers? If so, respond to the following:

Describe in detail all rented spaces, facilities, items or services. Indicate the date(s) for which each identified space, facility, item or service was rented and provide full and complete copies of all written documents relating to all such rental agreements.

State the amount of rent paid for each identified space, facility, item or service and explain how the identified amount was derived.

State the name of the person(s) from whom each identified space, facility, item or service was rented.

Are any of the persons identified affiliates or associates of the title entity to which this letter is addressed? If so, please identify their affiliations or associations.

Are any of the identified persons settlement producers, as defined in regulation ____? If yes, please identify in what capacity they are settlement producers.

Respond to the following questions concerning (1) affiliated settlement producers; (2) affiliated title entities; (3) unaffiliated settlement producers; and (4) unaffiliated title entities:

Since January 1, 2000, has the title entity to which this letter is addressed attempted to obtain business from one or more settlement producers and/or title entities affiliated or associated with the title entity to which this letter is addressed? If so, respond to the following:

Provide a list of all affiliated settlement producers and/or title entities that the title entity to which this letter is addressed has attempted to obtain business from since January 1, 2000.

For each identified affiliated settlement producer and/or title entities, describe in detail any and all marketing or advertising used from January 1, 2000, to the present by the title entity to which this letter is addressed in its attempt to obtain business from the affiliated settlement producer.

For each identified affiliated settlement producer and/or title entities, describe in detail any and all marketing or advertising agreements made with the affiliated settlement producer from January 1, 2000, to the present in its attempt to obtain business from the affiliated settlement producer.

Include all relevant dates and copies of all related documents.

Since January 1, 2000, has the title entity to which this letter is addressed received business from one or more settlement producers and/or title entities affiliated or associated with the title entity to which this letter is addressed? If so, respond to the following:

Provide a list of the names and addresses of all affiliated settlement producers and/or title entities that the title entity to which this letter is addressed has received business from since January 1, 2000.

For each identified affiliated settlement producer and/or title entities, indicate both the total number of customers and the total dollar amount of business received from the affiliated settlement producer and/or title entities from January 1, 2000, to the present.

Include all relevant dates and copies of all related documents.

Since January 1, 2000, has the title entity to which this letter is addressed sent business to one or more settlement producers and/or title entities affiliated or associated with the title entity to which this letter is addressed? If so, respond to the following:

Provide a list of the names and addresses of all affiliated settlement producers and/or title entities to which the title entity to which this letter is addressed has sent business since January 1, 2000.

For each identified affiliated settlement producer and/or title entities, indicate both the total number of customers and the total dollar amount of business sent to the affiliated settlement producer and/or title entities from January 1, 2000, to the present.

Include all relevant dates and copies of all related documents.

Does a settlement producer who refers business to the title entity to which this letter is addressed receive any services or products at a below market or discounted rate from an affiliate of the entity to which this letter is addressed?

Provide a list of the names and addresses of all settlement producers and affiliates of the entity to which this letter is addressed who receive or give services or products at a below market or discounted rate, as well as identification of which services or products are provided.

Identify all relevant documentation, including documentation consulted to prepare your responses. In addition, you may provide any other documentation, including a position statement, which you feel is relevant to this inquiry.

Please attach the following attestation form to the back of your written responses. Electronic answers will NOT be accepted. Please mail or hand-deliver your written responses and supporting documents to:

_____ Division of Insurance

Please direct any inquiries concerning the above questions to:

Attn:

As an officer of the company to which this letter is addressed, who is authorized to sign on behalf of the company, I do hereby attest to the accuracy of the above responses.

Company Name (as licensed)	Company Address
Company Officer (print full name)	Title
Signature of Company Officer	Date

This letter commences an informal investigation of your company's practices. Your responses to these questions must be postmarked no later than twenty (20) calendar days from the date of this letter to avoid imposition of monetary penalties permitted under_____.

M. Sample Checklist

TITLE INSURANCE COMPANY CHECKLIST OF EXAMINATION REQUIREMENTS

All documents, lists and reference materials must be prepared for the period under examination and be ready at the commencement of the examination. If there were any substantive changes during the period under examination—i.e. a rate change or substantive underwriting rule change—your documents must so note and specifically describe how this change was implemented. Whenever possible, please supply the requested information in electronic format.

ADDITIONAL REQUESTS FOR INFORMATION MAY BE MADE BY THE EXAMINERS AT ANY TIME DURING THE EXAMINATION PROCESS.

1. Provide a brief narrative history of its business in general and specifically in (state). Include, at a minimum, the state(s) in which the company is licensed to do business, when the company was licensed in (state), premium writings as of the last day of the examination period for the line of business being examined and any other historically significant detail pertinent to (state). Provide an annual statement for the period(s) under examination.

2. Identify all internal audits performed by the company from the beginning date of the examination period to the present and provide a copy of same.

3. Provide a specimen of each policy and endorsement form in use during the examination period; include samples of manuscripted endorsements when applicable. Prepare a copy of all title insurance rate filings applicable to the period under examination and stamped by the (state) Division of Insurance. Provide a schedule of fees and charges for closing and settlement services, which has been stamped by the (state) Division of Insurance.

4. Provide a copy of the company's antifraud plan, if required by statute.

5. If the company possesses its own title plant, provide a detailed explanation of the company's procedures for the maintenance of this title plant.

6. Provide a copy of the underwriting rules, manual, guidelines, memoranda and directives and procedures manuals applicable to (state) business written during the period under examination.

7. Provide a copy of the (state) claims manual, guidelines, memoranda, directives and procedures for the processing of claims during the period under examination.

8. Provide a copy of all promotional and advertising materials utilized by the company or its agents during the period of examination.

9. Provide a list of all promotional and advertising activities—including, but not limited to, products, services, seminars, conventions, gifts and prizes—utilized by the company or its agents during the period of examination. Outline any incentive programs available to realtors, lenders, builders, et al., provided by the company or its agents during the period of examination.

10. Provide a list of policies issued during the period under examination. Include at least the policy number, effective date, named insured, named lender/mortagee, amount of coverage and premium.

11. Provide a list of claims made during the period under examination. Include at least the claim number, named insured, date claim made and status; i.e., open/amount reserved and closed/amount paid.

12. Provide a list of all affiliated entities.

13. Provide a list of all disbursements pertaining to advertising, sales and marketing and promotional activities.

THE FOLLOWING SECTION F UNDERWRITING AND RATING STANDARDS AND SECTION G CLAIMS STANDARDS ARE EXCERPTED FROM CHAPTER 16—GENERAL EXAMINATION STANDARDS OF THE *MARKET REGULATION HANDBOOK*

STANDARDS
UNDERWRITING AND RATING

Standard 1
The rates charged for the policy coverage are in accordance with filed rates (if applicable) or the regulated entity's rating plan.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ New business application

_____ All underwriting information obtained

_____ Rating manuals

_____ Policy declaration page

_____ Underwriter's file or notes on a system log

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Property and Casualty Model Rating Law (File and Use Version) (#775)
Property and Casualty Model Rating Law (Prior Approval Version) (#780)
Property and Casualty Commercial Rate and Policy Form Model Law (Condensed) (#777)
Small Employer and Individual Health Insurance Availability Model Act (#35)
Stop Loss Insurance Model Act (#92)
Individual Health Insurance Portability Model Act (#37), Sections 5A–H, 5J, 5K, 7 and 9
Medicare Supplement Insurance Minimum Standards Model Act (#650)
Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (#651)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Verify all rating factors, including class, territory, symbol assignment, surcharges, deductible factors and increased limit factors.

If no source document application exists, review what procedures the regulated entity has in place to determine the accuracy of the information that was given to issue the policy.

Calculate the policy premium to verify it is in accordance with filed rates.

Verify that the proper rules are being used.

Verify that the filed implementation date is used uniformly, including at different branches.

Confirm that rates in use were filed and approved prior to use, where required.

Confirm that rates in use have been submitted as required, if system is other than prior approval.

Verify the basis of premium is correct.

Verify that the protection classes and other rating factors are correct.

Verify that the rating rules are properly utilized. The examiner should be alert for incorrect interpretation of rating rules.

When conducting an examination on workers' compensation, it is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

Automation Tip:
Obtain from the regulated entity a data file that contains new business written during the examination period. The file should contain policy number, policy form, address, territory code or any other rating factor that is standardized by the regulated entity. Obtain from the regulated entity a data file that contains these standardized rating factors. For example, if the regulated entity underwrites by county, then obtain a data file that contains the county codes and a new business file that contains the policyholder's county. Compare the two files to see if the appropriate rating code is being applied. Since variations can happen, ask for explanations only in areas where the error rate is unacceptable.

STANDARDS
UNDERWRITING AND RATING

Standard 2
All mandated disclosures are documented and in accordance with applicable statutes, rules and regulations.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Underwriting or policy files

_____ Lapsed policies

_____ Rating/Quote information provided electronically

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Cancer Insurance Shopper's Guide
Model Regulation to Implement the Individual Health Insurance Portability Model Act (#119)
Small Employer and Individual Health Insurance Availability Model Act (#35)
Accident and Sickness Insurance Minimum Standards Model Act (#170), Section 5
Model Regulation to Implement the Accident and Sickness Insurance Minimum Standards Model Act (#171), Sections 8A(10) and 8A(11)
Consumer Credit Insurance Model Act (#360)
Individual Health Insurance Portability Model Act (#37), Section 11
Unfair Trade Practices Act (#880)
Long-Term Care Insurance Model Act (#640)
Long-Term Care Insurance Model Regulation (#641)
Life Insurance Disclosure Model Regulation (#580), Section 5A(1)
Life Insurance Illustrations Model Regulation (#582)
Consumer Credit Insurance Model Regulation (#370)
Charitable Gift Annuities Model Act (#240)
Charitable Gift Annuities Exemption Model Act (#241)
Bulletin pertaining to Voluntary Expedited Filing Procedures for Insurance Applications Developed to allow Depository Institutions to meet their Disclosure Obligations under Section 305 of the Gramm-Leach-Bliley Act
Group Life Insurance Definition and Group Life Insurance Standard Provisions Model Act (#100)
Military Sales Practices Model Regulation (#568)

Group Health Insurance Standards Model Act (#100)
Medicare Supplement Insurance Minimum Standards Model Act (#650)
Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (#651)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Verify that written notice of Medicare supplement replacements are provided to applicants and existing insurers and that appropriate buyer's guides are used.

Verify that appropriate notices regarding credit-related coverages are documented.

Verify that notices regarding the existence of health insurance pools are provided, where applicable.

Review other notices and disclosures required by various jurisdictions.

Determine if state law requires that telephone help numbers be provided, including state insurance department telephone numbers and addresses.

Determine if changes in coverage are disclosed in a timely manner.

Determine if the regulated entity underwriting guidelines comply with applicable statutes, rules and regulations.

Determine if mandated optional coverages are disclosed and documented.

Verify that quotations are made accurately and in a timely manner.

Verify that delivery receipts are obtained where necessary.

Verify that changes in rates are disclosed in a timely manner and in accordance with applicable statutes, rules, regulations and policy provisions.

Determine if the regulated entity is in compliance with rules related to fair marketing.

Verify that the *Shopper's Guide to Cancer Insurance* complies with required disclosures and policy limitations.

Ensure disclosures to consumers represent the applicable consumer protections required by state law, including:

- Limits on preexisting condition exclusions;
- Prohibitions on discrimination based on health status and related factors;
- Guaranteed renewals for all policies, with certain exceptions;
- Limits on the factors that can be used to establish and change premium rates; and
- Descriptive information about all available health benefit plans.

Ensure the regulated entity maintains complete and detailed descriptions of its rating and underwriting practices for individuals and small groups at its principal place of business.

Where required, individual accident and sickness insurance policies shall include with delivery or application an outline of coverage, in a prescribed format. Outlines of coverage delivered in connection with individual hospital confinement indemnity, specified disease or limited benefit health insurance coverages to persons eligible for Medicare by reason of age shall contain language that indicates "This policy IS NOT A MEDICARE SUPPLEMENT policy. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the regulated entity."

Insurers shall give any person applying for specified disease insurance a buyer's guide approved by the insurance commissioner. Direct response insurers shall provide the buyer's guide upon request, but not later than the time the policy is delivered.

For credit disability income products:

Ensure the debtor is provided a disclosure with the following information prior to the election to purchase insurance:

- That the purchase of consumer credit insurance is optional and not a condition of obtaining credit approval;
- If more than one kind of consumer credit insurance is being made available to the debtor, whether the debtor can purchase each kind separately or the multiple coverages only as a package;
- The conditions of eligibility;
- That, if the consumer has other insurance that covers the risk, he or she may not want or need credit insurance;
- That within the first thirty (30) days after receiving the individual policy or group certificate, the debtor may cancel the coverage and have all premiums paid by the debtor refunded or credited. Thereafter, the debtor may cancel the policy at any time during the term of the loan and receive a refund of any of the unearned premium. However, only in those instances where insurance is a requirement for the extension of credit, the debtor may be required to offer evidence of alternative insurance acceptable to the creditor at the time of cancellation;
- A brief description of the coverage, including a description of the amount, the term, any exceptions, limitations and exclusions, the insured event, any waiting or elimination period, any deductible, any applicable waiver of premium provision, to whom the benefits would be paid and the premium rate for each coverage or for all coverages in a package; and
- That, if the premium or insurance charge is financed, it will be subject to finance charges at the rate applicable to the credit transaction.

For long term care products:

Verify that written notice of long term care replacements are provided to applicants and existing insurers, suitability worksheets are completed and submitted and that appropriate buyer's guides and contract or policy summaries are used.

Ensure the entity maintains, at its home office or principal office, a complete file containing one specimen copy of each disclosure document authorized and used by the entity (i.e., buyer's guide, contract, outline of coverage, statement of policy information for applicant, etc.). The file should contain one copy of each authorized form for a period of three (3) years following the date of its last authorized

use. Many jurisdictions have repealed the requirement for policy summaries if the product is declared to be marketed with an illustration that meets the requirements of statutes, rules and regulations.

For workers' compensation products:

When conducting an examination on workers' compensation, it is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
UNDERWRITING AND RATING

Standard 3
The regulated entity does not permit illegal rebating, commission-cutting or inducements.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Complaint files/log

_____ Underwriting files

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Unfair Trade Practices Act (#880)
Producer Licensing Model Act (#218)
Interest-Indexed Annuity Contracts Model Regulation (#235)
Consumer Credit Insurance Model Regulation (#370)
Individual Health Insurance Portability Model Act (#37), Section 11
Title Insurers Model Act (#628)
Title Insurance Agent Model Act (#230)
Medicare Supplement Insurance Minimum Standards Model Act (#650)
Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (#651)

Review Procedures and Criteria

Check commission schedule for inappropriate variances.

Determine that producer commissions adhere to the commission schedule and, if not, verify that the file documented reflects reasons for the variance.

Check billings and invoices for varying commission percentages.

Check regulated entity advertising for indications of illegal commission-cutting or inducements.

STANDARDS
UNDERWRITING AND RATING

Standard 4
The regulated entity's underwriting practices are not unfairly discriminatory. The regulated entity adheres to applicable statutes, rules and regulations and regulated entity guidelines in the selection of risks.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ New business application

_____ All underwriting information obtained

_____ Regulated entity's underwriting guidelines

_____ Underwriting bulletins

_____ Declination procedures

_____ Agency agreements and correspondence with producers

_____ Interoffice memoranda and regulated entity minutes

_____ Policy declaration page

_____ Underwriter's file or notes on a system log

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Insurance Fraud Prevention Model Act (#680)
Model Regulation on Unfair Discrimination in Life and Health Insurance on the Basis of Physical or Mental Impairment
Model Regulation on Unfair Discrimination on Basis of Blindness or Partial Blindness (#888)
Unfair Trade Practices Act (#880)
Title Insurers Model Act (#628)
Title Insurance Agent Model Act (#230)
Military Sales Practices Model Regulation (#568)

Medicare Supplement Insurance Minimum Standards Model Act (#650)
Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (#651)
Small Employer and Individual Health Insurance Model Act (#170)
Group Health Insurance Standards Model Act (#100)

Review Procedures and Criteria

Review relevant underwriting information to ensure that no unfair discrimination is occurring according to the state's definition of unfair discrimination.

Determine if the regulated entity is following its underwriting guidelines, and that the guidelines conform to state laws and are not unfairly discriminatory.

Determine, if required, that the regulated entity's underwriting guidelines have been filed with the insurance department.

Review interoffice memoranda for evidence of anti-competitive behavior.

Underwriting guidelines may vary by geographic areas in the jurisdiction and, therefore, such guidelines should be reviewed for each regional office being examined.

Ensure the regulated entity does not discriminate against individuals by using any of the individual's past lawful travel or future lawful travel plans to refuse life insurance, refuse to continue existing life insurance, or limit the amount, extent or kind of life insurance available to an individual.

Ensure the regulated entity's procedures are in compliance with the Genetic Information Nondiscrimination Act.

Some indication of industry underwriting practices may be obtained by a survey of residual markets (FAIR Plan and JUA), surplus lines markets and consent-to-rate filings.

Inconsistent handling of rating or underwriting practices, even if not intentioned, can result in unfair discrimination, including requests for supplemental information.

Examine new business applications for the required fraud warning statement.

STANDARDS
UNDERWRITING AND RATING

Standard 5
All forms, including contracts, riders, endorsement forms and certificates are filed with the insurance department, if applicable.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ New business application

_____ Policy determination page

_____ Regulated entity's approval register

_____ Insurance department's approval for forms and endorsements

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Health Policy Rate and Form Model [Act] [Regulation] (#165)
Individual Health Insurance Portability Model Act (#37), Sections 7 and 9
Insurance Fraud Prevention Model Act (#680)
Unfair Trade Practices Act (#880)
Group Health Insurance Standards Model Act (#100)
Medicare Supplement Insurance Minimum Standards Model Act (#650)
Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (#651)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Determine if the forms and endorsements have been filed. Where required, determine that either prior approval has been obtained or that applicable waiting periods following the filing have been met.

Determine if the regulated entity lists on the summary page all forms that constitute a part of the contract.

Examine new business applications for the required fraud warning statement.

When conducting an examination on workers' compensation, it is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
UNDERWRITING AND RATING

Standard 6
Policies, riders and endorsements are issued or renewed accurately, timely and completely.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Underwriting files

_____ Application

_____ Underwriting procedure manuals

_____ Underwriting and binding guidelines

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Anti-Arson Application Model Bill (#715)
Improper Termination Practices Model Act (#915)
Property Insurance Declination, Termination and Disclosure Model Act (#720)
Automobile Insurance Declination, Termination and Disclosure Model Act (#725)
Consumer Credit Insurance Model Regulation (#370)
Consumer Credit Insurance Model Act (#360)
Health Policy Rate and Form Model [Act] [Regulation] (#165)
Uniform Individual Accident and Sickness Policy Provision Law (#180), Sections 2A(7), 2B(5) and 5C
Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act (#171), Sections 6G and 8A(2)
Administrative Procedure Relative to Renewability and Cancellation Provisions in the Approval of Accident and Health Policies Drafted In Accordance with the Uniform Individual Accident and Sickness Provision Law, Section 8
Individual Health Insurance Portability Model Act (#37), Sections 6, 7, 8 and 11
Medicare Supplement Insurance Minimum Standards Model Act (#650)
Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (#651)
Small Employer and Individual Health Insurance Model Act (#170)
Group Health Insurance Standards Model Act (#100)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)

Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Determine if policies and endorsements are issued in appropriate time frames.

Verify how much time elapses between completion of the application and issuance of coverage. Note that this standard may need flexibility or special application when dealing with assigned risk plans, joint insurance arrangements, anti-arson applications, FAIR (Fair Access to Insurance Requirements) plans or other involuntary business.

Review new issues prior to mailing to ensure correct procedures, forms, disclosures, etc., are used.

When conducting an examination on workers' compensation, it is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
UNDERWRITING AND RATING

Standard 7
Rejections and declinations are not unfairly discriminatory.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Policy contract

_____ Notice of declination

_____ Regulated entity guidelines for cancellation/nonrenewal/declination

_____ Producer records/issued policies and declinations

Others Reviewed

_____ The Genetic Information Nondiscrimination Act (GINA)

_____ _____

NAIC Model References

Insurance Information and Privacy Protection Model Act (#670), Sections 10-12
Small Employer and Individual Health Insurance Model Act (#170)
Group Health Insurance Standards Model Act (#100)
Medicare Supplement Insurance Minimum Standards Model Act (#650)
Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (#651)
Unfair Trade Practices Act (#880)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Determine if the regulated entity provides valid reasons for rejection/declination when required.

Determine if the regulated entity responds to inquiries from the applicant regarding the specific reason(s) for adverse underwriting decisions. Was the adverse underwriting decision based on previous adverse underwriting decisions?

Determine if the regulated entity uses valid reasons for rejection/declination and documents these reasons.

Review the regulated entity's procedures for rejection/declination to determine if the regulated entity is following its own guidelines.

Determine if the regulated entity monitors agency rejection/declination for appropriate practices.

Review for any unfairly discriminatory practices.

Verify appropriate refund has been made to the applicant.

When conducting an examination on workers' compensation, it is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
UNDERWRITING AND RATING

Standard 8
Cancellation/nonrenewal, discontinuance and declination notices comply with policy provisions, state laws and the regulated entity's guidelines.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Policy contract

_____ Notice of cancellation/nonrenewal

_____ Agent/MGA's/Underwriter's file or notes on a system log

_____ Producer records/notices issued

_____ Insured's request (if applicable)

_____ Regulated entity cancellation/nonrenewal guidelines

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Property Insurance Declination, Termination and Disclosure Model Act (#720)
Automobile Insurance Declination, Termination and Disclosure Model Act (#725)
Improper Termination Practices Model Act (#915), Section 8A
Unfair Trade Practices Act (#880)
Group Coverage Discontinuance and Replacement Model Regulation (#110)
Individual Health Insurance Portability Model Act (#37), Section 11
Long-Term Care Insurance Model Act (#640)
Medicare Supplement Insurance Minimum Standards Model Act (#650)
Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (#651)
Small Employer and Individual Health Insurance Model Act (#170)
Group Health Insurance Standards Model Act (#100)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Determine if the reason for cancellation/nonrenewal or declination was valid according to policy provisions and state law.

Review the regulated entity's procedures for cancellation/nonrenewal and declinations to determine if the regulated entity is following its own guidelines.

Review regulated entity-initiated cancellations and consider a separate sample for insured-initiated cancellation.

Determine if the regulated entity monitors agency cancellation, declination and nonrenewals for appropriate practices.

Review for any unfairly discriminatory practices.

Review declinations, including declinations made by producers on behalf of the regulated entity. Declinations shall, as required, include the specific reasons for the declination.

Review notice of cancellation/nonrenewal to determine that it was mailed or delivered by the insurer to the first named insured's last known address.

When conducting an examination on workers' compensation, it is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

Automation Tip:
Obtain from the regulated entity a data file of all cancellations/nonrenewals and declinations during the examination period. Include in the file the policy number, the date the notice was generated/mailed and the effective date of the cancellation/nonrenewal or declination. Using either a spreadsheet or database (if the file is quite large, use ACL), calculate the number of days between the date the regulated entity represents the notice was generated/mailed and the effective date of the cancellation/nonrenewal or declination. Using ACL or some other sampling software, select a sample of cancellation and premium notices that appear to conform to state requirements. Request documentation that the notice was mailed on the date reported by the regulated entity. Also extract a report of all notices which apparently fail to comply with state requirements and submit to the regulated entity for explanations.

STANDARDS
UNDERWRITING AND RATING

Standard 9
Rescissions are not made for non-material misrepresentation.

Apply to: All regulated entities

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ List of rescinded policies

_____ Underwriting files and supporting documentation, including claim files

Others Reviewed

_____ Case law for state impacted

_____ _____

_____ _____

NAIC Model References

Improper Termination Practices Model Act (#915)
Unfair Trade Practices Act (#880)
Long-Term Care Insurance Model Act (#640)
Medicare Supplement Insurance Minimum Standards Model Act (#650)
Model Regulation To Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act (#651)
Group Health Insurance Standards Model Act (#100)

Review Procedures and Criteria

Determine if rescinded policies indicate a trend toward post-claim underwriting practices.

Determine if decisions to rescind policies are made in accordance with applicable statutes, rules and regulations.

STANDARDS
CLAIMS

Standard 1
The initial contact by the regulated entity with the claimant is within the required time frame.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Regulated entity's claims procedure manuals

_____ Claims training manuals

_____ Internal regulated entity's claims audit reports

_____ Claim files

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Unfair Claims Settlement Practices Act (#900)
Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)
Unfair Life, Accident and Health Claims Settlement Practices Model Regulation (#903)
Title Insurers Model Act (#628)
Title Insurance Agent Model Act (#230)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Review the regulated entity's procedures, training manuals and bulletins to determine if regulated entity standards exist. Determine whether the regulated entity's standards comply with applicable statutes, rules and regulations.

Determine if initial contact procedures are in place and in compliance with the mandated time frame. Perform a time study of acknowledgment times.

Determine if initial contact with claimants meets required contract standards.

Determine if subsequent responses and claim handling delay notices comply with applicable statutes, rules and regulations.

When conducting an examination on workers' compensation, it is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
CLAIMS

Standard 2
Timely investigations are conducted.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Regulated entity's claims procedure manuals

_____ Claims training manual

_____ Internal regulated entity's claims audit reports

_____ Claim bulletins

_____ Antifraud procedures

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Unfair Claims Settlement Practices Act (#900)
Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)
Unfair Life, Accident and Health Claims Settlement Practices Model Regulation (#903)
Consumer Credit Insurance Model Act (#360)
Title Insurers Model Act (#628)
Title Insurance Agent Model Act (#230)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Review the regulated entity's procedures, training manuals and claim bulletins to determine if regulated entity standards exist and whether standards comply with state statutes.

Determine if investigations are initiated and concluded in compliance with state statutes.

When conducting an examination on workers' compensation, it is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
CLAIMS

Standard 3
Claims are resolved in a timely manner.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Regulated entity's claims procedure manuals

_____ Claims training manuals

_____ Internal regulated entity's claims audit reports

_____ Review of canceled claim checks

_____ Claim files

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Unfair Claims Settlement Practices Act (#900)
Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)
Unfair Life, Accident and Health Claims Settlement Practices Model Regulation (#903)
Consumer Credit Insurance Model Act (#360)
Title Insurers Model Act (#628)
Title Insurance Agent Model Act (#230)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Review the regulated entity's procedures, training manuals and claim bulletins to determine if regulated entity standards exist and whether standards comply with state statutes.

Determine if claim resolutions—i.e., liability, determinations, coverage questions and claims payment—are made in accordance with state requirements. Perform time studies to measure the settlement time of claims.

When conducting an examination on workers' compensation, it is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

Automation Tip:
Obtain from the regulated entity a listing of claims closed with payment or claims closed without payment by claim feature. Include in the file the claim number(s), date the claim was reported to the regulated entity, the first payment date (if applicable), and the date the claim feature was closed. Using ACL, a database or spreadsheet, calculate the number of days from the date the claim feature was closed to the date the claim was reported. Group the number of days in any appropriate time periods, for example, 1 to 15 days, 16 to 30 days, etc., and perform a count on each time period. Investigate any patterns of untimeliness.

STANDARDS
CLAIMS

Standard 4
The regulated entity responds to claims correspondence in a timely manner.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Regulated entity's claims procedure manuals

_____ Claims training manuals

_____ Claim files

_____ Electronic claims correspondence

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Unfair Claims Settlement Practices Act (#900)
Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)
Unfair Life, Accident and Health Claims Settlement Practices Model Regulation (#903)
Consumer Credit Insurance Model Act (#360)
Title Insurers Model Act (#628)
Title Insurance Agent Model Act (#230)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Review the regulated entity's procedures, training manuals and claim bulletins to determine if regulated entity standards exist and whether standards comply with state statutes.

Determine if correspondence related to claims is responded to in accordance with state requirements.

When conducting an examination on workers' compensation, it is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
CLAIMS

Standard 5
Claim files are adequately documented.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Regulated entity's claims procedure manuals

_____ Electronic records of claims activities

_____ Claims training manuals

_____ Internal regulated entity's claims audit reports

_____ Claim bulletins

_____ Claim files

_____ Claim forms

Others Reviewed

____ _____

_____ _____

NAIC Model References

Insurance Fraud Prevention Model Act (#680)
Unfair Claims Settlement Practices Act (#900)
Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)
Unfair Life, Accident and Health Claims Settlement Practices Model Regulation (#903)
Title Insurers Model Act (#628)
Title Insurance Agent Model Act (#230)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Review the regulated entity's procedures, training manuals and claim bulletins to determine if regulated entity standards exist and whether standards comply with state statutes.

Determine if quality of the claim documentation meets state requirements.

Determine if claim files retention/destruction program meets state requirements.

Determine if claim files documentation is sufficient to support or justify the ultimate claim determination.

When conducting an examination on workers' compensation, it is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
CLAIMS

Standard 6
Claims are properly handled in accordance with policy provisions and applicable statutes (including HIPAA), rules and regulations.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Regulated entity's claims procedure manuals

_____ Claims training manuals

_____ Internal regulated entity's claims audit reports

_____ Claim bulletins

_____ Regulated entity's claim forms manual

_____ Regulated entity's subrogation and salvage logs

_____ Claim files

_____ Regulated entity's depreciation schedules

_____ Auto—total loss evaluation procedures

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Insurance Fraud Prevention Model Act (#680)
Unfair Claims Settlement Practices Act (#900)
Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)
Unfair Life, Accident and Health Claims Settlement Practices Model Regulation (#903)
Retained Asset Accounts Sample Bulletin (#573)
Consumer Credit Insurance Model Regulation (#360)
Long-Term Care Insurance Model Act (#640)
Coordination of Benefits Model Regulation (#120)
Off-Label Drug Use Model Act (#148), Section 4

Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Review regulated entity procedures, training manuals and claim bulletins to determine if regulated entity standards exist and whether standards comply with state statutes.

Determine if the regulated entity's procedures provide for the detection and reporting of fraudulent or potentially fraudulent insurance acts to the commissioner.

Determine if claim handling meets state-specific statutes and regulations as applied to total loss evaluations, sales tax payment, disposition of salvage, correct payees, improper release of claims, proper payment of non-disputed claims and proper referral of suspicious claims.

Determine if coverage was checked for proper application of deductible or appropriate exclusionary language.

When conducting an examination on workers' compensation, it is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
CLAIMS

Standard 7
Regulated entity claim forms are appropriate for the type of product.

Apply to: All regulated entities

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Claim forms for product being examined

_____ Electronic claims notification screens

_____ Claim files

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Insurance Fraud Prevention Model Act (#680)
Unfair Claims Settlement Practices Act (#900)
Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)
Unfair Life, Accident and Health Claims Settlement Practices Model Regulation (#903)
Standardized Health Claim Form Model Regulation (#30)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Determine if claim form(s) include appropriate content and are used appropriately. Use of inappropriate forms should be documented and included in the exam report.

Review claim forms as they are encountered in the file reviews.

Examine all claim forms for the required fraud warning statement.

When conducting an examination on workers' compensation, it is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
CLAIMS

Standard 8
Claim files are reserved in accordance with the regulated entity's established procedures.

Apply to: All regulated entities

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Regulated entity's claims procedure manuals

_____ Claims training manuals

_____ Internal claims audit reports

_____ Individual claim file

_____ Average reserve data

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Unfair Claims Settlement Practices Act (#900)
Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)
Unfair Life, Accident and Health Claims Settlement Practices Model Regulation (#903)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Review the regulated entity's claims procedure manuals for established reserving practices.

Determine if individual reserves are evaluated and posted.

Determine if reserve adjustments are made.

Determine if reserves are excessive/inadequate.

Determine if reserves are reduced, if a redundancy is apparent.

When conducting an examination on workers' compensation, it is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
CLAIMS

Standard 9
Denied and closed without payment claims are handled in accordance with policy provisions and state law.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Regulated entity's claims procedure manuals

_____ Claims training manuals

_____ Internal regulated entity's claims audit reports

_____ Claim bulletins

_____ Claim files

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Insurance Fraud Prevention Model Act (#680)
Unfair Claims Settlement Practices Act (#900)
Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)
Unfair Life, Accident and Health Claims Settlement Practices Model Regulation (#903)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Determine if denied and closed without payment claims are based on policy provisions and applicable state statutes and regulations.

Determine if notices of claim denials reference specific policy provisions or exclusions.

Determine if the regulated entity provides claimants with a reasonable basis for the denial, when required by statutes, rules or regulations.

Where required, determine if claimants are provided with instructions for having rebuttals to denials reviewed by the insurance department or by the regulated entity.

Determine if the regulated entity refers suspicious claims to a regulatory authority/law enforcement agency, when appropriate.

When conducting an examination on workers' compensation, it is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
CLAIMS

Standard 10
Canceled benefit checks and drafts reflect appropriate claim handling practices.

Apply to: All regulated entities

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Cashed benefit checks and drafts

_____ Regulated entity's claims procedure manuals

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Unfair Claims Settlement Practices Act (#900)
Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)
Unfair Life, Accident and Health Claims Settlement Practices Model Regulation (#903)

Review Procedures and Criteria

Perform a time study on canceled claim checks or drafts to ascertain whether claim proceeds are being promptly mailed or delivered.

Determine if canceled checks include the correct payee and are for the correct amount.

Ascertain whether payment checks indicate the payment is "final" when such is not the case.

Ascertain whether checks or drafts purport to release the insurer from total liability when such is not the case.

Review endorsements to see if they are consistent with the payee name listed on the check.

If drafts are used, ascertain whether there is prompt clearance by the insurer.

STANDARDS
CLAIMS

Standard 11
Claim handling practices do not compel claimants to institute litigation, in cases of clear liability and coverage, to recover amounts due under policies by offering substantially less than is due under the policy.

Apply to: All regulated entities

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Closed litigated claim files

_____ Regulated entity's claims procedure manuals

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Unfair Claims Settlement Practices Act (#900)
Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)
Unfair Life, Accident and Health Claims Settlement Practices Model Regulation (#903)

Review Procedures and Criteria

Review a sample or entire population of closed litigated claim files, if feasible. Determine if litigated files indicate problematic claim handling practices. If warranted, notify the insurance department's financial examination division.

Note: The examiner should review applicable state statutes to determine which particular claims should adhere to this standard. For example, bodily injury claims may not readily fit this standard.

Chapter 17—Conducting the Property and Casualty Examination

IMPORTANT NOTE:
The standards set forth in this chapter are based on established procedures and/or NAIC models, not on the laws and regulations of any specific jurisdiction. This handbook is a guide to assist examiners in the examination process. Since it is based on NAIC models, use of the handbook should be adapted to reflect each state's own laws and regulations with appropriate consideration for any bulletins, audit procedures, examination scope and the priorities of examination. Further important information on this and how to use this handbook is included in Chapter 1—Introduction.

This chapter provides a suggested format for conducting property/casualty insurance regulated entity examinations. Procedures for conducting life and health insurance regulated entity examinations and other types of specialized examinations—such as managed care organizations, third-party administrators and surplus lines brokers—may be found in separate chapters.

The examination of property/casualty insurance operations may involve any review of one or a combination of the following business areas:

A. Operations/Management
B. Complaint Handling
C. Marketing and Sales
D. Producer Licensing
E. Policyholder Service
F. Underwriting and Rating
G. Claims

When conducting an exam that reviews these areas, there are essential tests that should be completed. The tests are applied to determine if the regulated entity is meeting standards. Some standards may not be applicable to all jurisdictions. The standards may suggest other areas of review that may be appropriate on an individual state basis.

When an examination involves a depository institution or their affiliates, the bank may also be regulated by federal agencies such as the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board, the Office of Thrift Supervision (OTS) or the Federal Deposit Insurance Corporation (FDIC). Many states have executed an agreement to share complaint information with one or more of these federal agencies. If the examination results find adverse trends or a pattern of activities that may be of concern to a federal agency and there is an agreement to share information, it may be appropriate to notify the agency of the examination findings.

A. Operations/Management

Use the standards for this business area that are listed in Chapter 16—General Examination Standards.

B. Complaint Handling

Use the standards for this business area that are listed in Chapter 16—General Examination Standards.

C. Marketing and Sales

Use the standards for this business area that are listed in Chapter 16—General Examination Standards and the standards set forth below.

STANDARDS
MARKETING AND SALES

Standard 1
The regulated entity's mass marketing of property/casualty insurance is in compliance with applicable statutes, rules and regulations.

Apply to: All regulated entities

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ New business policy forms

_____ Advertising materials

_____ Disclosure materials

_____ Marketing complaints

_____ Underwriting guidelines

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Mass Marketing of Property and Liability Insurance Model Regulation (#710)
Group Personal Lines Property and Casualty Insurance Model Act (#760)

Review Procedures and Criteria

Review documentation in new business policy files to determine a legitimate basis for the group. If not evident from the file, request additional documentation from the regulated entity to verify that the group is not fictitious.

Review underwriting guidelines, new business policy files, advertising materials, disclosure materials and complaints to verify:

- Compulsory participation not required for employment or group membership;
- Tie-in sales are not a condition of purchase; and
- Disclosures are provided, as required.

D. Producer Licensing

Use the standards for this business area that are listed in Chapter 16—General Examination Standards.

E. Policyholder Service

Use the standards for this business area that are listed in Chapter 16—General Examination Standards and the standards set forth below.

STANDARDS
POLICYHOLDER SERVICE

Standard 1
Claims history and loss information is provided to the insured in a timely manner.

Apply To: All regulated entities

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Claim files

_____ Regulated entity's procedures manuals

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Unfair Trade Practices Act (#880), Section 4 (O)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Review sample claim files to determine if the regulated entity is providing loss information for the three previous years to the first named insured within 30 days of receipt of the written request, including:

- On all claims, the date and description of occurrence and the total amount of payment; and
- For any occurrence not included above, the date and description of occurrence.

It is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

F. Underwriting and Rating

Statistical Coding

In addition to the general standards, the examiner should review the regulated entity's statistical coding procedures. Coding on individual policies should be current and accurate. The examiner should determine to what statistical agencies the regulated entity reports its rating/underwriting data.

The examiner should confirm that the regulated entity is using the most current codes, classes, territories, town protection classes, ZIP codes, etc.

Errors should be noted with regard to overcharges or undercharges.

Additional introductory material is located in Chapter 16—General Examination Standards.

STANDARDS
UNDERWRITING AND RATING

Standard 1
Credits, debits and deviations are consistently applied on a non-discriminatory basis.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Underwriting files and supporting documentation

_____ Insurance department approval of deviations (if applicable)

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Property and Casualty Model Rating Law (File and Use Version) (#775)
Property and Casualty Model Rating Law (Prior Approval Version) (#780)
Property and Casualty Commercial Rate and Policy Form Model Law (Condensed) (#777)
Unfair Trade Practices Act (#880)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Credits and deviations should be filed, where required.

Determine if credits and deviations are applied consistently.

Determine if the reasons for use of credits and deviations are documented.

Verify proper handling of consent-to-rate or excess rate forms.

It is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
UNDERWRITING AND RATING

Standard 2
Schedule rating or individual risk premium modification plans, where permitted, are based on objective criteria with usage supported by appropriate documentation.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Underwriting files, including the Individual Risk Premium Modification (IRPM) worksheet

_____ Schedule rating worksheet where IRPM worksheet is used

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Property and Casualty Model Rating Law (File and Use Version) (#775)
Property and Casualty Model Rating Law (Prior Approval Version) (#780)
Property and Casualty Commercial Rate and Policy Form Model Law (Condensed) (#777)
Unfair Trade Practices Act (#880)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Verify that the application of the plan complies with limitations imposed by the state.

Verify that changes in the amounts of credit or debit are supported by documentation or an explanation that is consistent with the change. Also verify that the basis for use is appropriate (i.e., based on objective criteria, not on perceived competitive pressures).

Determine if the regulated entity is adjusting individual premiums to target premium levels for competitive reasons. Typically, the test for this is to review the documentation in the underwriting files.

It is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
UNDERWRITING AND RATING

Standard 3
Verification of use of the filed expense multipliers; the regulated entity should be using a combination of loss costs and expense multipliers filed with the insurance department.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ National Council on Compensation Insurance (NCCI) pure premium tables

_____ Regulated entity's filed multipliers that modify the NCCI's (or similar advisory organization) filed loss costs

_____ Rate charts by classification codes (charts maintained at the regulated entity level)

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Property and Casualty Model Rating Law (File and Use Version) (#775)
Property and Casualty Model Rating Law (Prior Approval Version) (#780)
Property and Casualty Commercial Rate and Policy Form Model Law (Condensed) (#777)

Review Procedures and Criteria

Obtain from the regulated entity the filed expense multipliers which were applicable at the inception of the policy. (This filing should be stamped either "Approved" or "Filed" by the insurance department.)

Obtain the regulated entity's table of rates for each classification code. Check the sample's premium audit data (showing the actual rate charged to an employer for individual classification codes) against the table of rates, which includes the NCCI's (or similar advisory organization) loss costs and the filed expense multiplier, to verify accuracy.

The regulated entity's documents should be reviewed. Any additional areas or lack of information should be discussed with the regulated entity's management.

STANDARDS
UNDERWRITING AND RATING

Standard 4
Verification of premium audit accuracy and the proper application of rating factors.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Insurance department approved and/or filed rating plans, including risk modification plans

_____ Copies of cost containment certificates and loss improvement criteria to determine cost containment discount

_____ Final rate manual tables by classification codes applicable to the period under examination (tables maintained at the regulated entity level)

_____ Workers' Compensation Experience Modification Rating Sheets pertaining to the policy sample (experience modifiers as published by the NCCI and similar advisory organizations)

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Property and Casualty Model Rating Law (File and Use Version) (#775)
Property and Casualty Model Rating Law (Prior Approval Version) (#780)
Property and Casualty Commercial Rate and Policy Form Model Law (Condensed) (#777)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

The purpose of this review is to determine that the final premium charged to the employer is being applied correctly, fairly and consistently.

The sample's premium audits should contain specific information on each policy. The sample's information should be compared to the NCCI unit statistical report and to the company's rating plan, to verify accuracy in the application and reporting of the following factors when applicable:

- Premiums by classification code;
- Payroll exposure;

- Schedule rating;
- Cost containment discount;
- Premium discounting;
- Designated medical provider discount;
- Expense loading;
- Application of the correct experience modifier;
- Small employer discount;
- Discount for rehiring previously disabled employees; and
- Any other rating elements.

The company documents should be reviewed. Any additional areas or lack of information should be discussed with company management. It is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
UNDERWRITING AND RATING

Standard 5
Verification of experience modification factors.

Apply to: All workers' compensation examinations

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Premium audit reports from the policy sample

_____ Experience rating rules published by the NCCI (and similar advisory organizations)

_____ Workers' compensation experience modification rating sheets pertaining to the policy sample (experience modifiers pertaining to the policy sample as published by the NCCI and similar advisory organizations)

_____ Unit statistical reports pertaining to the policy sample and used to report the regulated entity's information (data) to the NCCI and similar advisory organizations

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Property and Casualty Model Rating Law (File and Use Version) (#775)
Property and Casualty Model Rating Law (Prior Approval Version) (#780)
Property and Casualty Commercial Rate and Policy Form Model Law (Condensed) (#777)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

The experience modifier issued by the NCCI (and similar advisory organizations) should reflect the information reported to the NCCI (or similar advisory organization) using the unit statistical reports. Experience modifiers should be reconciled to what is reported on the unit statistical reports and what is shown on the workers' compensation experience modification rating sheets.

Net loss reporting should be properly applied to both large and small deductible policies.

The regulated entity's documents should be reviewed. Any additional areas or lack of information should be discussed with the regulated entity's management.

STANDARDS
UNDERWRITING AND RATING

Standard 6
Verification of loss reporting.

Apply to: All workers' compensation examinations

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ NCCI (and similar advisory organizations') rules governing the reporting of losses on unit statistical reports

_____ Loss data pertaining to the policy sample and maintained by the regulated entity

_____ Unit statistical reports pertaining to the policy sample and used to report regulated entity information to the NCCI (and similar advisory organizations)

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Property and Casualty Model Rating Law (File and Use Version) (#775)
Property and Casualty Model Rating Law (Prior Approval Version) (#780)
Property and Casualty Commercial Rate and Policy Form Model Law (Condensed) (#777)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Losses under each policy should be clearly and accurately maintained at the regulated entity, so that paid amounts, reserves and deductibles can be easily reviewed. The sample data should be compared to the unit statistical reports to verify accuracy of reporting of the following items:

- Paid losses;
- Paid loss adjustment expenses;
- Net of deductible reporting on the unit statistical reports;
- Adjustments to reserves and revised unit statistical reports; and
- Any other adjustments, such as subrogation.

The regulated entity's documents should be reviewed. Any additional areas or lack of information should be discussed with the regulated entity's management.

STANDARDS
UNDERWRITING AND RATING

Standard 7
Verification of the regulated entity's data provided in response to the NCCI call on deductibles.

Apply to: All workers' compensation examinations

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ The NCCI (or similar advisory organization) data call and resulting report made by the insurance regulated entity to the NCCI (or similar advisory organization)

_____ Loss data pertaining to sample policies written on a deductible basis and maintained by the regulated entity

_____ Unit statistical reports pertaining to sample policies written on a deductible basis and used to report regulated entity information to the NCCI (and similar advisory organizations)

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Property and Casualty Model Rating Law (File and Use Version) (#775)
Property and Casualty Model Rating Law (Prior Approval Version) (#780)
Property and Casualty Commercial Rate and Policy Form Model Law (Condensed) (#777)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Note that a new sample (the "deductible sample") should be taken for this standard, sampling only policies with deductibles (both large and small deductibles).

During this exam, it should be verified that losses are reported on the unit statistical reports to the NCCI (or similar advisory organizations) net of deductibles. The Independent Deductible Data Call that the NCCI requests should be reported gross, including the deductibles. This must be verified with the policy sample, unit statistical reports and loss data maintained by the regulated entity.

The regulated entity's documents should be reviewed. Any additional areas or lack of information should be discussed with the regulated entity's management. It is recommended that separate samples be

obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
UNDERWRITING AND RATING

Standard 8
Underwriting, rating and classification are based on adequate information developed at or near inception of the coverage rather than near expiration, or following a claim.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Application

_____ Underwriting files

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Unfair Trade Practices Act (#880)

Review Procedures and Criteria

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.

Determine if the initial underwriting of a policy is based on the information obtained after a claim is submitted.

STANDARDS
UNDERWRITING AND RATING

Standard 9
Audits, when required, are conducted accurately and timely.

Apply to: All auditable personal policies

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Underwriting files

_____ Premium audits pertaining to the policy sample

_____ Payroll records associated with the premium audits and with the policy sample

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Review Procedures and Criteria

Verify that all auditable commercial policies have a structured system for conducting payroll or other audits used to verify final premium.

Verify what is all auditable commercial policies' procedure for waiving audits. Verify that the basis is reasonable.

Determine what is all auditable commercial policies' time frame for completion of audits. Companies typically have a time frame for the completion of an audit following expiration.

Verify if all auditable commercial policies' auditors or independent auditors conduct audits.

Perform an independent verification to ensure that return premiums are received by insureds in a timely manner.

STANDARDS
UNDERWRITING AND RATING

Standard 10
The regulated entity's underwriting practices are not unfairly discriminatory. The regulated entity adheres to applicable statutes, rules and regulations and the regulated entity's guidelines in the selection of risks.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ New business application

_____ All underwriting information obtained

_____ Regulated entity's underwriting guidelines

_____ Underwriting bulletins

_____ Declination procedures

_____ Agency agreements and correspondence with producers

_____ Interoffice memoranda and regulated entity minutes

_____ Policy declaration page

_____ Underwriter's file or notes on a system log

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Insurance Fraud Prevention Model Act (#680)
Model Regulation on Unfair Discrimination in Life and Health Insurance on the Basis of Physical or Mental Impairment (#887)
Model Regulation on Unfair Discrimination on Basis of Blindness or Partial Blindness (#888)
Unfair Trade Practices Act (#880)
Credit Reports and Insurance Underwriting White Paper

Review Procedures and Criteria

Review relevant underwriting information to ensure that no unfair discrimination is occurring, according to the state's definition of unfair discrimination.

Determine if the regulated entity is following its underwriting guidelines, and that the guidelines conform to state laws and are not unfairly discriminatory.

Determine, if required, that the regulated entity's underwriting guidelines have been filed with the insurance department.

Review interoffice memoranda for evidence of anti-competitive behavior.

Underwriting guidelines may vary by geographic areas in the jurisdiction and, therefore, such guidelines should be reviewed for each regional office being examined.

Some indication of industry underwriting practices may be obtained by survey of residual markets (e.g., FAIR Plan, and JUA), surplus lines markets and consent-to-rate filings.

Inconsistent handling of rating or underwriting practices, even if not intentional, can result in unfair discrimination, including requests for supplemental information.

Examine new business applications for the required fraud warning statement.

STANDARDS
UNDERWRITING AND RATING

Standard 11
All forms and endorsements forming a part of the contract are listed on the declaration page and should be filed with the insurance department (if applicable).

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ New business application

_____ Policy declaration page

_____ Insurance department approval for forms and endorsements

_____ Regulated entity's files or register of approved forms

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Unfair Trade Practices Act (#880)
Insurance Fraud Prevention Model Act (#680)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Determine if the forms and endorsements have been filed.

Determine if the regulated entity lists all forms and endorsements that form part of the contract on the declaration page.

Examine new business applications for the required fraud warning statement.

It is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
UNDERWRITING AND RATING

Standard 12
Regulated entity verifies that the VIN number submitted with the application is valid and that the correct symbol is utilized.

Apply to: All automobile lines

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Underwriting files

_____ Regulated entity's rating system

_____ Regulated entity's symbol or Insurance Services Office (ISO) symbol manual

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Unfair Trade Practices Act (#880)
Insurance Fraud Prevention Model Act (#680)

Review Procedures and Criteria

Determine how the regulated entity checks the validity of the vehicle identification number (VIN) on the application. The regulated entity may use an automated program to verify the accuracy of the VIN.

Verify if the regulated entity is a member of or reports to any fraud detection bureau or organization. Some state statutes require reporting of suspected fraud.

Determine how a regulated entity handles updated symbols.

Determine if the correct symbol has been used.

STANDARDS
UNDERWRITING AND RATING

Standard 13
The regulated entity does not engage in collusive or anti-competitive underwriting practices.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Underwriting files

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Unfair Trade Practices Act (#880)

Review Procedures and Criteria

Any practice suggesting anti-competitive behavior may involve legal considerations that should be referred to insurance department legal counsel. This would include engaging in collusive underwriting practices that may inhibit competition; e.g., entering into an agreement with other companies to divide the auto market within the jurisdiction by territory.

The examiner should be aware of unlawful pricing and other prohibited anti-competitive acts or practices.

STANDARDS
UNDERWRITING AND RATING

Standard 14
The regulated entity's underwriting practices are not unfairly discriminatory. The regulated entity adheres to applicable statutes, rules and regulations in its application of mass marketing plans.

Apply to: All property and casualty companies with mass marketing plans

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ New business policy files

_____ Underwriting guidelines

_____ Canceled and nonrenewed policies

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Mass Marketing of Property and Liability Insurance Model Regulation (#710)
Credit Reports and Insurance Underwriting White Paper

Review Procedures and Criteria

Review documentation in new business policy files and underwriting guidelines to determine that the regulated entity does not apply underwriting standards to a mass marketing program that are more restrictive than those applied to an individually underwritten program.

Review underwriting guidelines, canceled and nonrenewed policy files to verify that failure of the employer or group to remit premium is not regarded as "nonpayment of premium" for the insured, unless the insured is sent appropriate notice and has failed to make timely payment.

Review underwriting guidelines and policy forms to verify that the employee or group member is given the right to continue coverage for sixty (60) days after leaving employment or the group.

Review canceled and nonrenewed policies to verify that the notice of right to employee or member is given at cancellation or nonrenewal; allowing the employer or group to provide additional explanation why the individual should not be canceled.

STANDARDS
UNDERWRITING AND RATING

Standard 15
All group personal lines property and casualty policies and programs meet minimum requirements.

Apply to: Group personal lines property and casualty insurance

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Master policy

_____ Program rules

_____ Certificates

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Group Personal Lines Property and Casualty Insurance Model Act (#760)

Review Procedures and Criteria

Check for state jurisdictional requirements regarding group policies.

Verify that conversion options are included in notices of individual terminations.

Determine that conversion policies issued on an individual basis effective upon termination or ineligibility date have coverage and limits at least equal to the minimum coverage and limits required by statute.

Determine that program rules do not contain any provision making participation in the group program a condition of employment or membership in a group, nor subject employees or members to any penalty for non-participation.

Determine that group coverage is not contingent upon the purchase of any other insurance, product or service.

Confirm that any experience refund or dividend is applied for the sole benefit of the insured employee or member to the extent that any experience refund or dividend exceeds the policy or certificateholder's contribution to the premium for the period covered.

STANDARDS
UNDERWRITING AND RATING

Standard 16
Cancellation/nonrenewal notices comply with policy provisions and state laws, including the amount of advance notice provided to the insured and other parties to the contract.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Policy contract

_____ Notice of cancellation/nonrenewal

_____ Insurance department's approval of forms

_____ Underwriter's file or notes on a system log

_____ Insured's request (if applicable)

_____ Regulated entity's cancellation/nonrenewal guidelines

_____ Certificate of mailing

_____ Producer records/notices issued

Others Reviewed

_____ _____

_____ _____

NAIC Model References
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Determine if the notice of cancellation/nonrenewal was valid according to policy provisions and state law.

Does the notice of cancellation include the specific reason for cancellation where required?

Are "adverse underwriting decision notices" provided where required?

Review cancellation notice and billing notices, grace period descriptions, reinstatement offers, lapse notices, etc., to ensure the form, if necessary, has been approved by the insurance department.

Review the notice and the certificate of mailing to ensure that adequate notice of cancellation/nonrenewal was provided to the insured and any mortgagees or lien holders.

Does the regulated entity lull insureds into a false sense of security through use of misleading billing notices, grace period descriptions, reinstatement offers, lapse notices, etc.?

If cancellation was at the insured's request, ensure that there is proper documentation.

STANDARDS
UNDERWRITING AND RATING

Standard 17
All policies are correctly coded.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Underwriting files

_____ Regulated entity's rating system

_____ Regulated entity's coding manual

_____ Rating organization's coding manual

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Model Regulation to Require Reporting of Statistical Data by Property and Casualty Insurance Companies (#751)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Determine that the regulated entity confirms that the coding as reported by the producer is correct and current.

Determine that the regulated entity promptly updates all coding manuals and programs.

Determine that the regulated entity correctly codes all policies according to current codes.

Determine that the regulated entity reviews data errors and subsequent changes are made.

It is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable) large deductible (if applicable) and PEO accounts.

STANDARDS
UNDERWRITING AND RATING

Standard 18
Application or enrollment forms are properly, accurately and fully completed, including any required signatures, and file documentation adequately supports decisions made.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Application

_____ Underwriting files

_____ Electronic documentation

_____ Policy

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Review Procedures and Criteria

Application should be complete and signed, where required (includes electronic signatures).

Determine that the underwriting file contains necessary information to tell the regulated entity what exposure it has.

Determine when and under what conditions the regulated entity requires a physical inspection, a motor vehicle report (MVR), an inspection report, a credit report or other underwriting information to confirm exposure or premium basis.

Verify that when a policy is issued on a basis other than applied for, that notice of an adverse underwriting decision is provided in accordance with applicable state statutes and regulations.

G. Claims

In addition to the general examination techniques, the examiner should define the scope of the property/casualty claims examination in terms of the lines of business and type of claims covered. Lines of business should be defined as specifically as possible; e.g., physical damage coverage rather than automobile coverage. Types of claims covered should differentiate between first-party and third-party claims or total losses and partial losses.

Claim procedure manuals, adjuster training manuals and claim bulletins should be reviewed. Regulated entity procedures for total loss settlement, salvage disposition and subrogation efforts should be determined. If the jurisdiction licenses company or independent adjusters, licensing records should be cross checked with claim adjustment records to assure that assigned adjusters are properly licensed.

a. Total loss survey

   Record identifying data, such as claim/policy number, date of loss and claimant's name. Review files for accuracy and adequacy of documentation. Review files for method of vehicle evaluation and compare with specific state requirements. Review reductions in value for appropriateness and accuracy. Review file for state-specific additions to value, such as sales tax or title fees.

   Review file for correct disposition of salvage and compliance with specific state requirements for disposition of title and registration.

b. Subrogation survey

   From the regulated entity's records, select a representative sample of the subrogated files with complete or partial recoveries. Record identifying data such as claim/policy number, date of loss and claimant name. Review files to determine if the subrogated amount included the insured's deductible. It should also be determined if the deductible was recovered and whether it was returned to the insured.

   If a partial recovery was made, was a pro rata amount returned? Specific state requirements should be reviewed to determine the regulated entity's compliance. Determine if the insured's recovery was reduced by collection charges. Determine if the specific state law permits the reductions. Determine if recovery was reduced by written or oral agreements with other companies. Determine if such agreement is in compliance with specific state laws.

c. Loss statistical reporting

   Determine to which statistical agencies the regulated entity reports its loss data. Review claim drafts to determine if loss data is correctly coded as to the proper line of business. Review drafts to determine if claim expenses are separated from claim payments. If the review indicates significant errors in coding, the data should be included in the report.

STANDARDS
CLAIMS

Standard 1
Regulated entity uses the reservation of rights and excess of loss letters, when appropriate.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Regulated entity's claim procedure manuals

_____ Claim training manuals

_____ Claim files

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Unfair Claims Settlement Practices Act (#900)
Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Review the regulated entity's procedures manual to determine if guidelines exist for the use of the reservation of rights letter and notice of excess of loss.

Claims where the regulated entity has reason to question coverage should have a reservation of rights letter sent to the insured.

Claims where it is apparent that the amount of loss will exceed policy limits should have an excess of loss letter send to the insured.

It is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
CLAIMS

Standard 2
Deductible reimbursement to insureds upon subrogation recovery is made in a timely and accurate manner.

Apply to: All regulated entities

Priority: Recommended

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Subrogation register

_____ Subrogation files

_____ Review the regulated entity's subrogation and recovery procedures

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Unfair Claims Settlement Practices Act (#900)
Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Determine if the regulated entity refunds deductibles from subrogation proceeds.

Determine if, upon complete recovery, the insured's deductible is promptly refunded.

Determine if refunds are made periodically on no less than a pro rata basis for long-term subrogation cases. Requirements may vary among states.

Determine if recovery payments are made to employees under workers' compensation, when applicable.

It is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

STANDARDS
CLAIMS

Standard 3
Loss statistical coding is complete and accurate.

Apply to: All regulated entities

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Claim files

_____ Regulated entity's claims coding manual

_____ Regulated entity's coding system

_____ Rating organization's coding manual

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Model Regulation to Require Reporting of Statistical Data by Property and Casualty Insurance Companies (#751)
Unfair Claims Settlement Practices Act (#900)
Unfair Property/Casualty Claims Settlement Practices Model Regulation (#902)
Guidelines for the Filing of Workers' Compensation Large Deductible Policies and Programs (#1970)
Guidelines for Regulation and Legislation on Workers' Compensation Coverage for Professional Employer Organization Arrangements (#1950)

Review Procedures and Criteria

Determine that the regulated entity codes the correct loss data onto the draft copies or system.

Determine that the regulated entity promptly updates all coding manual and programs.

Determine that the regulated entity accurately codes the loss amounts. Determine that the regulated entity separates loss amounts from loss expense amounts.

Determine that the regulated entity reviews data errors and subsequent changes are made.

It is recommended that separate samples be obtained for standard voluntary market, assigned risk (if applicable), large deductible (if applicable) and PEO accounts.

THE FOLLOWING STANDARD 9 IS REVISED IN CHAPTER 19—CONDUCTING THE LIFE AND ANNUITY EXAMINATION OF THE *MARKET REGULATION HANDBOOK*

STANDARDS
MARKETING AND SALES

Standard 9
Insurer rules pertaining to producer requirements with regard to suitability in annuity transactions are in compliance with applicable statutes, rules and regulations.

Apply to: All annuity products

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

_____ Policy/Other relevant files

_____ New business reports

_____ Policy/Underwriting file

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Suitability in Annuity Transactions Model Regulation (#275)
Suitability of Sales of Life Insurance and Annuities White Paper

Review Procedures and Criteria

Determine whether the insurer has elected to supervise its producers directly or whether the insurer has contracted with a third-party contractor to directly supervise its producers, and then apply the following review procedures accordingly. For purposes of this standard, "insurer" refers to whichever party (i.e., the insurer or third-party contractor) that is responsible for direct supervision of the producers.

If the insurer has a business rule that calls for completion of a fact-finder or similar disclosure document, review policy files to determine if forms have been completed regarding suitability.

Review policy files. Copies of sales material other than insurer-approved materials, if permitted, must also be in the file or made available to the regulator upon request.

Examine for effectiveness the insurer's system of verifying that, prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer obtained information concerning:

- The consumer's financial status;
- The consumer's tax status;
- The consumer's investment objectives; and
- Such other information used or considered to be reasonable by the insurance producer, in making recommendations to the consumer.

~~Examine for effectiveness the insurer's system of recording or monitoring whether an insurance producer proceeded with a sale that either may have violated the insurer's suitability procedures.~~

Examine for effectiveness the insurer's system of recording or monitoring whether an insurance producer proceeded with a sale that may have violated the insurer's suitability procedures, failed to comply with state laws or state regulations,or failed to comply with applicable FINRA rules.

Examine for effectiveness the insurer's system for review or oversight of sales transactions subject to a suitability requirement in cases where no suitability analysis was performed because the consumer:

- Refused to provide relevant information requested by the insurance producer;
- Decided to enter into an insurance transaction that was not based on a recommendation of the insurance producer; or
- Failed to provide complete or accurate information.

Review completed annuity transactions and compare the information obtained by the insurance producer to the type of product purchased to determine if the insurance producer had reasonable grounds for believing that the product was suitable on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

THE FOLLOWING STANDARD 4 IS REVISED IN CHAPTER 24—CONDUCTING THE SURPLUS LINES BROKER EXAMINATION OF THE *MARKET REGULATION HANDBOOK*

STANDARDS
PLACEMENT, CANCELLATION AND NONRENEWAL

Standard 4
The authorization to bind was provided before the binder was extended to the insured.

Apply to: All surplus lines brokers

Priority: Essential

Documents to be Reviewed

_____ Applicable statutes, rules and regulations

Others Reviewed

_____ _____

_____ _____

NAIC Model References

Review Procedures and Criteria

Applicable producer contracts between the insurer and surplus lines producer.