



E-Commerce Trends Impacting the Business of Insurance

by Molly E. Lang, partner Nelson Levine de Luca & Hamilton

Insurance companies are becoming increasingly aware of the opportunities e-commerce presents with respect to making business more efficient and satisfying consumer expectations. As legislators and regulators alike recognize that insurers are quickly adopting electronic practices, a number of states are providing guidance on implementing electronic delivery of insurance communications in a compliant manner.

Earlier this year, the Virginia General Assembly extended a law regarding which insurance communications may be delivered electronically. In 2009, the state made the progressive steps of amending certain statutes relating to how specific notices could be delivered and adopting an insurance law concerning electronic transmission. Among other things, the 2009 changes expressly allowed insurance companies to provide nonrenewal notices to policyholders electronically as long as there was a mutual agreement to communicate in such a manner.

However, electronic delivery was specifically excluded as an option for notices of cancellation.

The most recent amendments extend the electronic delivery option in various statutes to include notices of cancellation. Effective July 1, 2013, there will be clear statutory authority for property and casualty insurers to electronically deliver notices of cancellation and nonrenewal

where certain conditions are satisfied. By adopting these amendments, Virginia legislators have afforded insurance companies and policyholders an even greater ability to communicate through their preferred channel.

Idaho is another state that recently enacted a law pertaining to electronic transactions. The statute, which also becomes effective July 1, 2013, provides that mandatory notices related to insurance transactions may be delivered by electronic means as long as the requirements of the state's version of the Uniform Electronic Transactions Act (UETA) are satisfied. Delivery by electronic means will be considered equivalent to any delivery method required under applicable insurance laws, including first class mail and certified mail.

It is becoming common for states to directly address the use of electronic records in the business of insurance, contemplating situations beyond those identified in the well-established parameters of the Electronic Signatures in Global and National Commerce Act (E-SIGN) and UETA. Jurisdictions such as Michigan and Virginia already have laws



WHAT'S INSIDE

- President's Remarks 3
- Farewell to Bill 3
- Examining Controls and Processes to Prevent the Submission of Inaccurate MCAS Data..... 4
- Less than 50 Days and Counting! 7
- Congratulations! 8
- The Disparate Impact Rule and Its Impact on State Insurance Regulation . 9
- The State of IT in Market Regulation.. 12
- Editor's Corner 16
- Your Generic Agent Advertising Questions Answered!..... 17
- IT Examination Procedures in Market Conduct Exams 19
- What's Happening at IRES?..... 22
- Meet Your Board: Tanya Sherman..... 23
- 'Zoning' In 24
- State Chapter News 26
- New Members & Designees 27
- Help Wanted!!!..... 28

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July 28-31, 2013
Career Development Seminar & Regulatory Skills Workshop
Portland, OR

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October 21-23, 2013
MCM™ Designation Course
Madison, WI

Watch the calendar at www.go-ires.org for more upcoming events.



allowing certain property and casualty insurance forms and endorsements that do not contain personally identifiable information to be posted to an insurer's publicly available website in lieu of any other method of delivery, provided certain conditions are met. Legislators in numerous other states are considering similar bills. Insurance companies should be cognizant of this relatively uniform legislation pending in various states throughout the country and evaluate how it may impact their business practices.

Kentucky has long been proactive in encouraging the use of electronic transactions in the context of insurance. In 2003, the state amended its general policy delivery statute as well as its policy renewal statute to expressly allow for electronic delivery of policies and renewal policies or certificates. Earlier this year, the Kentucky Department of Insurance (Department) provided regulatory guidance on electronic delivery of additional insurance communications. In an advisory opinion issued on February 19, 2013, the Department explained that where insurers are directed by statute to notify policyholders of cancellations, renewals, nonrenewals and premium increases, the notices may be delivered by electronic mail if the policyholder's email address is on file with the insurer and the policyholder has elected to receive such communications electronically. Insurers delivering such notices electronically are required to maintain proof of electronic mailing.

The Department further stated that to ensure the consumer protections contemplated by statutory notice requirements, insurers must make a specific disclosure to any policyholder of options for delivery methods. The disclosure must advise the policyholder to be diligent in updating the email address it provides to its insurer in the event it changes.

The Tennessee Division of Insurance issued a similar bulletin in January of 2012. The Kentucky advisory opinion and the Tennessee bulletin both impose consumer disclosure requirements above

and beyond what is required by the states' respective versions of UETA.

Additional insurance departments may publish their positions on the use of electronic delivery for mandatory notices. Advisory opinions, bulletins and the like could provide insurance companies with confidence that electronic delivery of such notices will suffice for purposes of market conduct exams and administrative proceedings. However, with the limited body of case law analyzing the application of electronic transactions in the context of insurance, insurance companies should develop internal procedures to mitigate potential litigation risks.

Another significant e-commerce trend directly relating to insurance involves the enactment of laws concerning electronic proof of insurance. In 2012, five states – Arizona, California, Idaho, Louisiana and Minnesota – adopted laws that allow motorists to establish proof of financial responsibility by using smart phones or other electronic devices to display insurance cards. The Property Casualty Insurers Association of America, which supports electronic proof of insurance laws, anticipates that over twenty additional states will consider electronic proof of insurance proposals this year.

As an increasing number of states permit the use of electronic proof of insurance, insurance companies may need to update their electronic capabilities and practices to ensure they are offering customers this additional service. Insurance companies that do not adapt their practices to take advantage of laws promoting the use of electronic proof of insurance may fail

to satisfy consumer expectations and preferences, and ultimately suffer in the competitive marketplace.

As e-commerce laws continue to develop, insurance companies implementing electronic transactions must make a number of strategic decisions regarding deployment of new processes. Such decisions include how to implement the change — i.e. by a single line of business, a specific product, a subsidiary company, according to the type of form or notice, or by some other method. Insurance companies also must be confident that the software they elect to utilize in e-commerce practices will produce comprehensive and reliable electronic evidence.

The world of e-commerce is evolving daily, and it is imperative that insurance companies understand and leverage the developments. The synthesis and adoption of e-commerce practices is an interdisciplinary project and will require collaboration among various departments within insurance companies, including legal and compliance, information technology, sales, marketing and customer service. ■

Molly E. Lang is a partner at Nelson Levine de Luca & Hamilton, a law firm focused on the business of insurance. Molly represents insurers and reinsurers in state and federal courts throughout the United States. She advises insurance companies on a broad range of compliance and regulatory matters, including legislative and public policy issues, market conduct and enforcement actions, corporate transactions and product development for all lines of insurance. Reach Molly at 614-456-1634 or mlang@nldhlaw.com.

Come to CDS. Stay to enjoy the Northwest!

When you're in Portland, you're only an hour away from the mountains, the Pacific Ocean, and the Columbia River. Look throughout this issue of *The Regulator*® for exciting things to do while you're in the Pacific Northwest. Whether you decide to rent a car and explore on your own or take a pre-planned tour, there's something for you!

President's Remarks

Allowing IRES to Evolve—Proposed 2013 Amendments to our Bylaws

by Mark A. Hooker, CIE, CPCU, FLMI, CWCP, CCP, MCM, AIRC, AAI, AU, AIS, LUTCF

Creatures that are unable to grow and adapt eventually die. The same can be said of our organization. IRES is now 26 years old. Some aspects of the bylaws which worked well for us in 1987, do not necessarily work as well in 2013.

The Board agreed it is time to reevaluate the identity of the IRES organization as well as the structure of our Board.

We felt some of our bylaws could use some general clean up.

As you may recall from an earlier column, I first asked the Past Presidents Council to take a look at the bylaws and make recommendations. The Past Presidents Council was consulted in order to insure that any changes would preserve the original intent that went into the development of our society.

The major proposed revisions include:

- Redefinition of certain membership types
- Allowance of Sustaining Members, under certain circumstances, to earn the AIE/ CIE designations
- Formalization of our practice of Honorary Memberships for Commissioners
- Increase in the number of Standing Committees from six to eight by retasking the Education Committee and establishing committees for CDS Standing, Public Relations, and External Communications
- Addition of service requirements for Members of the Board and the Executive Committee.

By now, you should have received an e-blast which was sent out to the entire membership requesting comments on the proposed Bylaws changes. Please review the entire document and send us your suggestions. The Board will consider them during its June meeting and

adopt those that seem to fit with the new Bylaws

and then create a ballot to be sent to all members for acceptance of the changes. The ballot will be sent to voting members via USPS postal mail as required by Article XIII Section 3 of our current bylaws.

I would like to personally thank the Past Presidents Council, **Doug Freeman, Tom Ballard, Bob Flege, Don Bratcher** and **Katie Johnson** for their tremendous effort on this project. **Katie** deserves a special shout out as she did yeomen's oar in formatting and organizing the changes. I look forward to your participation in IRES's evolution. ■

Mark Hooker is the chief market conduct examiner and market analysis chief for the State of West Virginia, Office of the Insurance Commissioner. Mark was elected to Insurance Regulatory Examiners' Society's board of directors in 2009, serving as its Education Committee chair from 2009-2012. He is currently the society's president. Mark was the 2012 recipient of the IRES President's Award.



Farewell to Bill

By Mark A. Hooker, IRES President

By now, most of you are aware of the sad and sudden passing of our friend, Bill McCune. Bill lost his life in a senseless act of violence in early April. The news spread quickly at the Spring NAIC National Meeting, and many expressed stunned disbelief when hearing about this tragedy.

Bill was the embodiment of the spirit of IRES.

His commitment to insurance education was strong and unwavering. Many of us revered his business card, which has to be the longest single collection of "letters" that I have ever seen.

I was fortunate to have met Bill early in my career and was at various meetings and functions with him over the years. I recall one NAIC conference call when I was really green and nervous about speaking up (if you can believe that!) When I finally did, Bill replied, "Good point, West Virginia" and that little

affirmation gave me the confidence to become more involved.

I asked IRES members to share their memories of Bill. I enjoyed reading them, and wanted to share some of them with you.

Here are excerpts from those reflections.



Scott Kipper, Commissioner, Nevada DOI

Bill was a kind and gentle man who touched the lives of everyone who met him.

The impact his personality and intellect made on the Division of Insurance will be felt for years to come.

We are truly saddened by this loss.

Tom McIntyre, Dixon- Hughes Goodman

At the 2012 fall NAIC meeting, Bill was talking to us and indicated he lost his phone. When questioned about it, he laughed and said that he dropped it in the toilet in the men's room, it flushed and his phone was gone. He was still laughing about it the next day when I saw him with a new phone. He was having trouble setting it up, so after we shared a laugh about the whole situation, I spent about a half hour with him accessing and recovering the data from his old phone.

Gary Kimball, Missouri DOI

Bill was an extraordinary, kind man, and will be sorely missed.

Mia Powell Lilly, Maryland State Treasurer's Office

The ultimate jack of all trades and master of many, he stressed education, professional development, and worked feverishly to provide us with the resources to advance. Professionally, no one could measure up to his experience and intelligence. He was the investigator of all investigators and could be expected to uncover all the dirt.

But, more importantly, he was the ABSOLUTE best story teller no surprise! I will always remember Bill for his rough edges, crooked smile, quirky sense of humor, unwavering support and big heart.

Betty M. Bates, DC Dept. Insurance, Securities and Banking

Reflections: I shall always remember the very first day that I met my friend and colleague Bill, as it was the infamous day in history of 9/11 (2001). That was Bill's first day of employment here at DISB

as the newly hired Manager, Market Conduct Examination Division. Since I had established the Division prior to transferring to the Fraud Bureau, Bill and I formed a unique professional bond. He had attained numerous designations, which certificates covered his office from wall-to-wall. I use to call him "Mr. Alphabet Man."

Also, he was a walking encyclopedia of vast and diverse knowledge.

I always enjoyed my conversations with him, and I miss those times.

Lee Backus, DC Department of Insurance, Securities and Banking

Billy (yes, I really called him Billy!) was a truly wonderful guy who loved learning, sharing and helping others.

If there wasn't an IRES, we would have to invent it just for him.

Examining Controls and Processes to Prevent the Submission of Inaccurate MCAS Data

By Scott Bryson, CISA, CISSP

The submission of Market Conduct Annual Statement (MCAS) data has evolved greatly over the past 10 years. In April 2011, the NAIC launched a newly designed collection and processing system for MCAS data which includes a user friendly online form. With the form, submitting the data is simpler than ever and even includes some basic data validation measures for those of us who have an

appreciation for controls. These measures are in the form of "edits" and provide a lower level of assurance that the data submitted is, indeed, accurate. This is a good start but makes one wonder how accurate the underlying data is and what controls are in place at the company to ensure data accuracy. The good news is examiners can achieve their data integrity objectives by performing a small amount of work.

Considering it is 2013 and the majority of companies use computer systems for processing, this article assumes that the MCAS data is maintained electronically within an application or database.



The first step to any exam involving the storage and processing of data on systems is an IT general computer controls (ITGC) review. An examiner needs to verify that the ITGCs supporting the application(s) that contain the MCAS data are designed, implemented and operating effectively. As most companies already have their ITGC controls tested periodically as part of Sarbanes Oxley (SOX), Model Audit Rule (MAR) or Statutory Audits, this work has likely been done for you.

In the event prior testing has been performed, a reliance strategy may be used limiting the actual independent testing that needs to take place. Be sure to check that the testing was performed by a reputable firm with certified IT Security auditors and that the MCAS applications were within the scope of the work performed. Any deficiencies should be reviewed and evaluated as to the impact on the MCAS systems and integrity of data within them.

If testing has not been performed by others, or the testing performed is not satisfactory, utilize an industry standard IT Control framework such as those issued by ISACA's COBIT® or the National Institute of Standards and Technology (NIST) in order to develop an ITGC examination testing plan.

The testing should be focused on the application(s) that processes and stores MCAS data and the system software it resides on.

Just as with the reliance strategy, deficiencies should be evaluated to determine the potential impact to the integrity of MCAS data.

Once the ITGCs are confirmed to be in place and operating effectively, the next step is to determine if the process used to get the data from the MCAS application(s) into the hands of the individual(s) responsible for entering the

data is well controlled. This data extraction process can be simple or complex depending on whether the MCAS application(s) contains the actual data elements requested on the MCAS form. Considering that the interrogatories on the online form request very specific data, it is unlikely that the MCAS application(s) stores the exact data element requested.

Additionally, the raw data in its native format is not likely usable by the individual responsible for MCAS data input and will need to first be converted to a usable format by IT. As we know, MCAS data is to be submitted by insurance line of business and by state. The individual responsible for entering the data to the form is not necessarily savvy with regards to developing queries or generating custom reports that would present the data at this level. As such, the generation of the data file needs to include several steps and the processes supporting these steps:

- * Step 1 – Data Extraction, Import and Format
- * Step 2 – Query and Report Generation
- * Step 3 – Submission and Attestation

Data Extraction, Import and Format Processes

In order to generate a file with the necessary data elements into a format that is usable, the company will utilize some type of process to extract the data from the MCAS application(s). The process by which this data is extracted and subsequently imported is critical to the generation of accurate data. If the process does not include controls for ensuring data integrity, the potential risk for data quality issues is significant.

Considering companies will use the tools at their disposal, it is fair to assume that the source data will be extracted and brought into a tool such as Microsoft Excel (Excel) or Microsoft Access (Access) for further manipulation. This has been the case in my experience.

If the source application is able to generate a file in a format supported by one of these tools such as comma separated values or delimited, you can be fairly confident that the data maintains integrity through the import process.

Where problems can occur is when the source application is on a legacy platform that lacks the ability to generate a file that is cleanly imported by Access or Excel. In this case, the company's IT department needs to perform some sort of manual process to import the data.

This manual process poses a significant risk to data integrity and should be carefully evaluated by the examiner.

As an example, consider a legacy system that generates a report containing the MCAS source data in only a .PDF report style format. Each page of the .PDF includes report headers and footers, as well as column headings, report totals and counts, etc. Using functionality within Excel and Access, someone savvy with these tools could get the data from the .PDF into a tabular format. However, once the data is within the tabular format, a fairly significant manual cleanup effort must occur to remove the headers, footers, and other unwanted remnants from the source report. Needless to say, a lot could go wrong during this process.

Though possible, it is unlikely that the initial report generated contains all the necessary data elements to complete the MCAS form. So to add to the complexity, additional data may need to be appended to the base level data from the same and/or alternate sources. These additional imports need to be examined just as the original import was.

Lastly, the preparers of the data file may add their own data elements to the file, using a function or calculation, in order to present all the data elements required by the MCAS form. A prime example of

this is in Line 13-16 of the Life MCAS form requesting the number of years in the following groupings: Under 2 Years, Between 2 and 5 Years, Between 6 and 10 Years. The source application probably does not categorize data at this level. However, this is easily accomplished using a function in Excel, although it does represent another avenue for potential data issues. The function and/or calculation used should be reviewed by the examiner.

The end result is a data file that is the basis for the queries and reports used to report the MCAS data elements.

To ensure the data retained integrity through the extraction, import and formatting steps, the examiner should select records within the data file and tie the fields that make up the record back to the source data within the application(s) or their supporting database(s).

Generate Queries and Reports

The final data preparation step is to create a file (or files) that provide data at the level required by the MCAS form. Recall that data is to be reported by line of business and state. Though it is possible to create and utilize individual reports for each line of business by state, if a company must report to many states, several reports would need to be generated and analyzed which is not very practical or efficient. It is more likely that IT will use the data file and create pivot tables in Excel or a custom form in Access, thereby allowing for the ability to select the state and possibly other factors needed for a specific submission. The data can also be presented in a summary format with the actual value requested by MCAS as opposed to the raw data in the data file. If a pivot table or custom form is utilized, the examiner should review the coding to ensure the correct data is being included to reach the MCAS value.

Submission and Attestation

Using the reports developed by IT, the individual(s) responsible accesses the MCAS form and enters the values. An

officer of the company then “attests” to the submission by clicking a button on the online form. The examiner should perform a quick independent validation to confirm that the values entered match the reports developed. Additionally, the examiner should evaluate any evidence to show that a detailed review of the data was performed prior to attestation.

Final Thoughts

In summary, submitting MCAS data has come a long way over a decade. The submission of accurate data is of the utmost importance as regulators rely on this data to identify potential market conduct concerns. Submitting accurate data requires a company to implement controls around the processes that support the generation of its MCAS data.

The key processes that need to be controlled are the initial data extraction, import and formatting, generation of final queries and reports, and the submission and attestation.

The extent and complexity of the controls varies greatly depending on whether the process is highly manual or automated. The more manual the process, the more controls that need to be implemented. ■

Scott Bryson, CISA, CISSP, is a manager and IT specialist with Risk and Regulatory Consulting, LLC, where he performs risk based IT security and controls assessments and compliance consulting services for state regulators at a broad range of insurance entities. He specializes in IT Security controls assessment and compliance, with an emphasis on federal and state IT regulatory compliance (SOX, HIPAA-HITECH), IT controls design, SAS70/SSAE 16 assessments, disaster recovery, IT outsourcing and off-shoring, IT governance, business continuity, change management, information security, computer operations and e-business. Scott can be contacted at scott.bryson@riskreg.com or 860-543-0038.

Chartrand Communications Award

For over 20 years David Chartrand and his incredible associates, Susan Morrison, Elaine Bickel, Joy Moore, and Art Chartrand, were at the helm of IRES. Without the dedication and devotion of these diligent individuals, IRES would not be the organization that it is today.

The Chartrand Communications Award is to recognize those who have made a difference to IRES through their actions. Someone who has really strived to keep IRES moving toward the future. Someone who has helped increase membership and promoted IRES throughout the insurance community. Finally, someone who continually tries to make a difference in IRES.

Who is eligible?

All IRES members, sustaining members and organizations that have been involved with IRES for at least two years.

Nominations are being accepted until Thursday, June 13, 2013!

[Complete a nomination form](#)

Questions? Please contact Jeannette Plitt, Membership and Benefits-Awards Sub-Committee Chair, JeannetteP@OIC.WA.GOV.

IRES CAREER DEVELOPMENT SEMINAR & REGULATORY SKILLS WORKSHOP

JULY 28-31, 2013 | HILTON PORTLAND & EXECUTIVE TOWER | PORTLAND, OREGON

Less than 50 Days and Counting!

The Career Development Seminar and Regulatory Workshop – 2013!

That's right, "spring has sprung back" and both summer and The Career Development Seminar and Regulatory Skills Workshop (CDS/RSW) should be on your radar screens. Many of you may not know that this year's CDS theme "Regulatory Roses and Thorns" is based on the Portland Rose Festival, which is traced back to the Portland Rose Society, established in 1888. Rose Society member Georgiana Pittock, wife of Oregonian publisher Henry Pittock, organized the first rose show in a tent as a benefit for her church in 1889. In 1904, in conjunction with the rose show, the society hosted a "fiesta" featuring a parade and pageant and the annual celebration has continued.

Similar to Portland's Rose Festival's over 100 year history, the Insurance Regulatory Examiners Society (IRES) is proud of the fact that this is the 26th consecutive year that CDS/RSW has been offered to its members and even though a tropical storm impacted last year, our members still enjoyed a successful conference. This year's The Career Development Seminar and Regulatory Skills Workshop conference is being held from July 28-31, 2013 and the IRES Education Committee has been hard at work in developing a dynamic training agenda,

which you can review by accessing the following link:

http://www.go-ires.org/events/cds/2013/IRES_CDS13_GridFlyer_0605.pdf

Topics including IT/Social Media, Regulation and Beyond and of course information related to the health reform are all included. Many of the topics have been designed around the feedback provided by our members and are consistent with the Society's primary goals and objectives summarized as follows:

"The Insurance Regulatory Examiners Society (IRES) is an association of professional insurance regulators dedicated to consumer protection. IRES helps to promote fair, cost effective, and efficient insurance regulation by ensuring professionalism and integrity among the individuals who serve state and federal insurance regulatory bodies."

IRES is building on the success of last year's Regulatory Skills Workshop by offering a third day of training that will include important hands-on discussion related to exchanges, the sequestration, keys to successfully wrapping up an examination, fraud, ratemaking, and accreditation. These innovative sessions have been designed to share current and relevant information and to keep attendees engaged and interested.

CDS/RSW also represents a unique opportunity to engage and network with colleagues and share your insight on current topics and also to have a bit of fun! The IRES Education Committee has taken this mission very seriously and we have a number of fun events planned with more information to follow. Don't miss out!

So if you haven't registered, what are you waiting for?

Come to Portland and learn more about the Regulatory Roses and Thorns for 2013! [This link will conveniently take you to the IRES website where you can register for CDS/RSW and lodging.](#) We look forward to seeing you.....in less than 50 days! ■

Northwest Attractions: The Columbia River Gorge

To start you off: The Columbia River runs between Washington and Oregon for about 300 miles. Just outside of Portland is an area known as the Columbia River Gorge. Besides being beautiful country, it's also home to some pristine wind surfing locations, wineries, and hikes. Follow this link to see what else you can do along the Gorge: www.crgva.org

Congratulations!

2013 AI Gross Jim Long Rookie of the Year Scholarship Winners Announced

In 2012, IRES began awarding the Rookie of the Year scholarship. There are 4 awards given annual to one rookie in each NAIC zone. This award is named after two long-serving insurance commissioners who passed away shortly after retiring from their positions, North Carolina Insurance commissioner Jim Long and Virginia Commissioner of Insurance, Al Gross. Both of these commissioners were dedicated to serving their constituents. In reading about these men, the same attributes came up again and again – Dedicated, Leaders, Innovators, Mentors – neither were afraid to get involved in difficult issues and find solutions that look outside the box. Both men were recognized and touted as exceptional leaders by their peers and those who worked for them.

Al Gross was the Commissioner at the Virginia Bureau for 14 years. He began his career with the Bureau in 1981 as a trainee financial examiner. In 1996, he was appointed to the position of Insurance Commissioner. He was active at the NAIC, servicing as a member, vice-chair and chair for several financial committees including the Financial Conditions Committee and the financial Accreditation committee from 1998 through 2010. He was involved with formation of the IIPRC and remained on the oversight committee until his retirement in 2010. Commissioner Gross was awarded the NAIC Distinguished Member Leadership Award in 2010.

Jim Long served as the elected Insurance Commissioner in North Carolina for 24 years. He was the NAIC President in 1991 and served as the Immediate Past President 8 times. Before becoming the Insurance Commissioner, he was elected to the NC House of Representatives from 1971 – 1975. He served as Chief Deputy Insurance Commissioner before being elected to office in 1985.

He served as the Chair of the Information Resources Management Committee at the NAIC from 2002 – 2008. He was instrumental in moving the IIPRC forward and served on the management committee from 2005 – 2008. Commissioner Long was awarded the first NAIC distinguished member Leadership Award in 2008.

This year's recipients are

Midwestern Zone - Lee Ann Crow, Kansas

Ms. Crow has worked for the Kansas Insurance Department for less than two years utilizing her knowledge for both market conduct examinations as well as market analysis activities. In the past year, she has attained both her MCM designation as well as her APIR. She is currently pursuing additional training courses. Ms. Crow states that this scholarship will allow her to continue taking courses and seminars to increase her knowledge in Market Regulations. This would allow her to attend the 2013 CDS Workshop as well as take courses towards the AIE and CIE Designations.

Northeastern Zone - Adam Zimmerman, Maryland

Mr. Zimmerman has worked for the Maryland Insurance Administration just a little over one year as an insurance market data analyst. In the past year, he earned the MCM designation and completed the NAIC's Market Conduct Examination on-line course. Mr. Zimmerman states the award of this scholarship would allow him to attend and IRES seminar/workshop where he would be able to network/collaborate with both industry professionals and other nationwide state regulators. Sharing of knowledge as well as new ideas will prove beneficial to not only him but also his agency and colleagues.

Southeastern Zone - Desiree Mauller, West Virginia

Ms. Mauller has worked for the West Virginia Offices of the Insurance Commissioner less than two years as a Market Conduct Examiner. Ms. Mauller is currently pursuing her AIE designation. She has completed two courses towards this goal and is preparing for the third. She has obtained both the MCM and CWCP designations. Ms. Mauller states that receiving the MCM designation has proven to be the stepping-stone toward her eagerness to learn more about the insurance industry, even after 20 years in the private side of the industry. Being the newest member of her department, Ms. Mauller states that she looks forward to any additional training she may obtain.

Western Zone - Ashok Viswanathan, California

Mr. Viswanathan has worked for the California Department of Insurance Rate Regulation Branch for just over one year and has demonstrated exemplary skills in his analytical abilities. He is embarking on the studies required to earn a CPCU designation. Mr. Viswanathan states that one of his top priorities, as a state regulator is to have a thorough understanding of issues that are of concern to organizations dedicated to protecting consumers, with a primary focus on consumers within the insurance industry. Participating in a program offered by IRES would allow him to interact with other regulators to determine industry wide best practices and can provide me with a chance to further my knowledge of existing regulatory frameworks in force across the country. ■

The Disparate Impact Rule and Its Impact on State Insurance Regulation

by Elizabeth Tosaris



In March, 2013 a new federal regulation formalized years of effort by certain federal agencies to impose a disparate impact rule on homeowner insurers. Disparate impact rules prohibit facially neutral business practices if they have a disproportionate effect on protected classes of individuals. Promulgated by the Department of Housing and Urban Development (“HUD”), the rule in issue here concerns the possibility that the federal Fair Housing Act (the “Act”) may be violated if a facially neutral policy, such as the rating process for homeowners insurance, has a disparate impact on classes protected under the Act. As written, the rule specifically applies to homeowners insurers doing business in the United States.

During the public comment period for the rule, insurers expressed concerns that the rule could prohibit their use of legitimate, actuarially sound, risk-based methods for rating and underwriting insurance, and also could put them at odds with the existing regulatory oversight in each state where the company does business. Individual state regulatory agencies have not yet weighed in on the issue. This article considers the new rule from the perspective of state departments of insurance.

Background

Congress passed the Act in 1968 to prevent discrimination that restricted housing availability to persons on the basis of their race, color, or religion. As interpreted by the courts, even if there is no evidence of discriminatory intent, the Act can be violated if an entity’s policy or practice negatively -- and thus discriminatorily under the Act -- impacts those individuals protected under the Act when compared to those who are not in

a protected class. In other words, there can be a violation when a neutral policy has a disparate impact on a protected population as compared to the general public. The Act was amended in 1988 to add new protected classes (such as those with disabilities) and to increase HUD’s and the Department of Justice’s (“DOJ”) enforcement role by giving them the authority to act on individual complaints and to seek compensatory and punitive damages for persons aggrieved in both individual and pattern and practice cases.

In response to the 1988 amendments, government enforcement activity rose dramatically. On the grounds that homeowners insurance was required to receive a residential mortgage loan, and that a mortgage loan was necessary to obtain housing, the government’s efforts expanded to prevent discrimination in the provision of homeowners insurance¹. Consumer activists have also long sought to use the Act to prevent insurance companies from using risk-based methods of rating and underwriting on the grounds that this has led to redlining or unfair discrimination over particular geographic areas where certain minorities are concentrated. For instance, in 1996, a purported class action was brought against 25 insurers for allegedly discriminatory policies to deny homeowners insurance to residents of minority neighborhoods in Missouri². The suit failed to meet a number of procedural hurdles, and ultimately broke into separate actions brought against the individual original defendant insurers. As discussed in more detail later in this article, only one of the cases reached a decision on the issue of whether the action was sustainable in light of the states’ regulation of insurance, and, in that case, the plaintiff’s claims were dismissed because of Missouri’s existing rate regulation structure.

The New HUD Rule

The regulation in question (the “Rule”) is located at 24 CFR s. 100.5 et seq. and took effect on March 18, 2013. The Rule imposes liability on insurers if their rating plans result in a disparate impact on protected classes under the Act. In its summary of the Rule, HUD states that liability under the Act may be established if a neutral policy or practice has an unjustified discriminatory effect, even if that policy or practice was not adopted for a discriminatory purpose. HUD goes on to assert that the Rule is simply an effort to formalize the test that is currently used by HUD, other federal government agencies and most federal courts to determine whether there is in fact a discriminatory effect. Moreover, on the grounds that the Rule is no more than the codification of existing practice, it is applicable to pending and future cases.

The Rule delineates a three-part burden shifting test to determine whether there is disparate impact. Under the Rule, the charging party or plaintiff in an adjudication first bears the burden of proving that a challenged practice causes or predictably will cause a discriminatory effect on the basis of a protected characteristic. If the charging party or plaintiff meets this burden, the burden of proof then shifts to the respondent or defendant to prove that the challenged practice has a necessary and manifest relationship to one or more of its legitimate nondiscriminatory interests. If the respondent or defendant satisfies this burden, the charging party or plaintiff may still establish liability by demonstrating that the legitimate nondiscriminatory interest could be served by another practice that has a less discriminatory effect.

A number of insurers commented upon the rule. HUD rejected all their objections, as follows: ³

1. As to whether the application of the disparate impact rule would interfere with a state's regulation of insurance, HUD responded that HUD and the courts both have long interpreted the Act to apply to homeowners insurance, and that McCarran-Ferguson does not preclude HUD from issuing regulations that may apply to such insurance policies.
2. As to whether the test is appropriate where insurance is risk-based and often based upon a multivariate analysis, HUD responded that once a discriminatory impact is shown, the insurer still may defend the business justifications for its policies. As explained by HUD, "This burden-shifting framework distinguishes unnecessary barriers proscribed by the Act from valid policies and practices crafted to advance legitimate interests."
3. When asked to exempt insurance pricing for FAIR plans or establish safe harbors for certain risk-related factors, HUD responded that these precautions were unnecessary since an insurance practice with a legally sufficient justification will not violate the Act.
4. In response to the fact that insurers do not collect data on race and ethnicity of policyholders (and may even be prohibited from doing so by state insurance laws), HUD responded that the burden on insurers is no more difficult than the initial burden on the charging party or plaintiff to show a discriminatory effect.

The Doctrine of Reverse Preemption

Many in the industry question whether another federal act, the McCarran Ferguson Act, permits the Rule to stand. The McCarran Ferguson Act states

that, with a few exceptions, "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance." ⁴ This limitation on federal regulation of insurance is sometimes referred to as creating "reverse preemption" because the federal government's ability to regulate is preempted by state law, instead of the more usual situation where federal law preempts state law. However, as explained by the Supreme Court, the McCarran Ferguson Act does not automatically preclude the application of a federal law: "When federal law does not directly conflict with state regulation, and when application of the federal law would not frustrate any declared state policy or interfere with a state's administrative regime, the McCarran Ferguson Act does not preclude its application." ⁵

As mentioned above, in the mid-1990s, several suits and administrative complaints for alleged violations of the Act were brought against insurers for refusing to insure older and lesser-valued homes. Because these homes were located in neighborhoods with high numbers of minority residents, the suits alleged that the insurers' rating practices violated the Act. Specifically, the allegation was that the insurer's eligibility guidelines had an illegal disparate impact under the Act, even though the guidelines were not developed with the intent to discriminate based on color, national origin, etc.,. In response, the insurers argued that they were complying with rating schemes that were permitted – or even required -- under state regulatory law, and that the suit was reverse preempted. One of the progeny of the twenty-five insurer class action mentioned earlier in this article, squarely addressed the issue of whether state insurance rating laws would reverse preempt the Act. ⁶ In that case, the court held that the plaintiffs' insurance price discrimination claims, which were brought under the Act, were barred by the McCarran Ferguson. The court's

rationale was that enforcement of the Act in this context would impair the state's regulation of insurance. The court stated that risk discrimination was not race discrimination, and pointed out all the steps taken by the state to regulate rates charged, including the Director's power to sanction an insurer if the insurer has violated the state's rating rules.

More recently, application of the Act was tested in circumstances where insurers used credit scoring as part of their rating practices: A federal court certified a question to the Texas Supreme Court asking whether Texas law permitted insurers to price insurance by using a credit-score factor that had a racially disparate impact that, but for McCarran Ferguson, would violate the Act. ⁷ The Texas Supreme Court decided that while Texas law prohibited the use of race-based credit scoring, it permitted race neutral credit scoring, even if the credit scoring has a racially disparate impact. Further, the Texas Supreme Court held that "allowing a claim against Texas insurers for using completely race-neutral factors in credit scoring would frustrate the regulatory policy of Texas that the McCarran Ferguson Act is meant to protect, which is the continued regulation of the field of insurance by the states without unintentional congressional intrusion." ⁸

Impact on Departments of Insurance

In effect, the Rule could create a dual system of regulation of homeowners insurance, where the policy and concerns that traditionally govern rate regulation would have little importance in the oversight activities of the federal regulator. As with any dual system of regulation, there needs to be clear guidance for both the regulators and the regulated to understand their respective roles. However, the Rule itself does not provide any such guidance, and the resulting uncertainties are not addressed elsewhere. As a result, state departments of insurance could find both their regulated entities and their consuming public confused

about the state's role and authority: Consumers might be confused regarding the appropriate government agency to contact with their complaints, and states could begin receiving complaints about insurers' failure to comply with the Rule in favor of compliance with filed rating plans. In addition, insurers could be faced with choosing between compliance with the Rule and compliance with state insurance rate filing requirements.

If an insurer elects to comply with the Rule rather than the rates the insurer has filed with the state, the issue could come to the state's attention in a number of ways, including during a market conduct exam or during the investigation of a complaint. How will the state react if the insurer responds that its rating practices were required under the Rule? And for those companies that opt to comply with the Rule, and depending upon their market distribution and the diversity of their book of business, could there be solvency concerns if the rates charged are either not sufficient to meet the risks presented or are too high to compete with insurers able to offer lower rates?

Implementation of the Rule could also impact state FAIR plans for residential properties. To the extent that these plans are designed to subsidize insurance in geographical areas that would no longer need subsidies due to the Rule, the purpose of the plan would be eviscerated. States would need to respond to this possibility by carefully considering the relevance and necessity of their applicable FAIR plans, and by making modifications accordingly.

The existence of the Rule is also likely to result in new lawsuits by consumers and renewed enforcement efforts by HUD and DOJ. Given the subject matter, an affected state department of insurance might need to comment on the issues or otherwise become involved in the lawsuit. A court could then consider a state's position on whether the Rule frustrates a state's policy or would interfere with the state's administrative regime.⁹ Prior to the decision, all affected parties would be without guidance, and, even

when the guidance is issued in the form of a court decision, whether the guidance could be applied to all rating activity within the state remains to be seen, as this would depend upon the scope and finality of any ruling.

Conclusion

It is still too early to forecast the exact impact of the Rule. Since the Rule was enacted over objections from the insurance industry, there is a possibility of a legal challenge that invalidates the Rule. In addition, in the event of a likely increase in class action suits based upon the Rule, there is the possibility of case law that emerges to limit the application of the Rule to insurers. Aside from these possibilities, it still remains to be seen how the courts and the federal government will interpret the Rule in the insurance context. In the past, insurers have generally countered both government and private actions under the Act with the explanation that the risk profile for the affected properties drove the underwriting and rating decisions, and that the application of their rating plans and eligibility guidelines are not unfairly discriminatory. This argument likely will not change in any future dispute whether an insurance company has violated the Rule.

Accordingly, state departments of insurance should carefully monitor the application of the rule to insurers, so that they can anticipate and prepare for possible changes in the business that they regulate and the manner in which they regulate it. ■

Elizabeth Tosaris is a partner in Locke Lord LLP's Insurance Regulatory and Transactional Practice Group. With more than 20 years' experience in insurance regulation, Ms. Tosaris has represented insurers and other regulated entities, and even, on occasion, departments of insurance. For more information on Ms. Tosaris and her practice, please visit her on the web at <http://www.lockelord.com/etosaris/>.

¹ See Bill Lann Lee, *An Issue of Public Importance: The Justice Department's Enforcement of the Fair Housing Act*, 4 *Cityscape: A journal of policy development and research* 3, 35 (1999), <http://www.huduser.org/Periodicals/CITYSCPE/VOL4NUM3/lee.pdf>. See also, *United States v. American Family Mutual Insurance Co.*, No. 95-C-0327, (E.D. Wis., March 30, 1995), which resulted in one insurer entering into a consent decree settling a charge of illegal race discrimination. Under the terms of the consent decree, the insurer agreed to a number of changes to its procedures, including an agreement to stop excluding homes solely on the basis of age or sales price of the home and to provide a new custom value insurance policy designed to make replacement cost insurance more widely available.

² *Canady v. Allstate Ins. Co. et al.*, No. 96-0174, 1997 WL 33384270, at 8 (W.D. Mo. June 19, 1997), *aff'd*, 162 F.3d 1163, 1998 WL 403200 (8th Cir.1998), cert. denied, 525 U.S. 1104, 119 S.Ct. 871, 142 L.Ed.2d 772 (1999); *Canady v. Allstate Ins. Co.*, 282 F.3d 1005 (8th Cir.2002).

³ Supplementary Information on Final Rule, 78 Fed. Reg. 32, (Feb. 15, 2013)

⁴ 15 U.S.C. s. 1012(b)

⁵ *Humana, Inc. v. Forsyth*, 525 U.S. 299, 310 (1999)

⁶ *Saunders v. Farmers Insurance Exchange*, 515 F. Supp.2d 1009 (W.D. Mo., 2007)

⁷ *Ojo v. Farmers Insurance Group, Inc.*, 356 S.W. 3d 421 (2011)

⁸ *Id.* at 434.

⁹ See *Humana*, 535 U.S. at 313-314 [deciding whether imposition of RICO remedies was reverse preempted by McCarran Ferguson and noting that the forum state had not filed any brief at any stage in the lawsuit alleging that the relief sought would frustrate any

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The State of IT in Market Regulation

by Jerry Link, MCSE, CCA, Director of IT, INS Services, Inc.

I remember as if it was yesterday; I was 12 yrs old and I had entered the city's first ever computer science competition. I worked all summer long, writing in Basic language on my Atari 800 computer with a television as the monitor and the blinking cursor always eager for input. Three months later and 5,400 lines of code, I had developed my first video game. It was an action/role-play adventure called, "James Bond 007." Similar to the ever-popular Commodore 64 and Apple 2e game called Zork; for all you classic gamers, but with graphics and sound. It was ahead of its time; I was convinced of its superiority, ingenuity, and well let's be frank, it was fun. I think my parents saw early on my gift of all things tech, and as they bought my now civil engineer brother model planes, cars, and ships every Christmas and birthday, I received either a new computer or accessory for the computer. My dad was an electrical engineer and he made sure we were always exposed to math and sciences and in fact, encouraged us along those lines. He would include mathematics in our daily language, something like, "I think we need to dig a hole 4 feet down; do you know how many inches that is?" As I get older, I find myself doing the same with my 10 year old son.

It wasn't until I went to college that computers jumped back in my life and this time it was dominated by Windows 3.1 and Windows NT. As I entered corporate America, Windows 95 and NT were dominating and corporations really didn't understand technology and how to use it to expand and increase efficiencies. Business led and IT followed, but the IT function was never fully incorporated into everyday business decisions such as operations, finance and accounting, logistics, administration, etc. We were all known as the company's "Computer Guy." Now every large organization has a CIO and realizes the potential of IT and how it can increase productivity and efficiency, and reduce overall costs. Nowhere

is this more apparent than in the insurance companies and banks we examine for market, financial, and IT solvency.

We as examiners must stay ahead, or at the very least parallel the technologies and policies that we enforce upon these entities.

But have we? What are the IT requirements to ensure security, efficiency, and cost effectiveness? Do states have uniformity and standards that are shared and implemented amongst each other? What technologies are available and are we as examiners using the correct tools to examine these companies properly? What is available and how can we implement them in our examination process? Can we make them more user-friendly and compatible to increase the efficiency of the examination process? Is TeamMate the right product for us and are we using it to its full capacity? If not, why aren't we? What is the future of TeamMate and IT in market regulation? These are some of the questions we will pose, discuss, and examine in this article.

If we look at the role of IT in modern day market regulation and more specifically, State insurance market regulation, the transition to an electronic medium is relatively new. Some of you may remember performing insurance examinations with pencil and paper. However, the younger generation has rarely completed an exam outside of TeamMate. There's that word. It has been part of my life, my very soul if you will since 2004.

I was a Systems Engineer for a state insurance department when I was first introduced to TeamMate. I was hired to design a more efficient way to utilize IT in the function to support our Insurance Regulatory Bureaus and in particular how to use and support TeamMate.

When I arrived in late 2004, they were using TeamMate r7, installed both on local laptops and desktops, using a process called replication and using a Network Attached Storage device (NAS) for examination staff running exams at the insurance companies' sites. As you all know, it is important to allow the exam staff to be able to share and access the TeamMate projects and data files, so in essence, they are collaborating and storing all the examination data on this NAS. My initial assessment was that this process was at the very least insecure, unstable, unreliable, inefficient and an administrative and support nightmare for the IT department. The success of examinations of billion dollar companies, and months, sometimes up to 18 months of work relied on the functionality of a \$300 piece of hardware. Let alone, the fact that it was left behind daily at the company site. Never mind the fact every time you wanted to connect on VPN you ran the risk of disconnecting from the NAS and potentially losing all your work and corrupting the project for everyone else. Then when the examination was completed, the NAS was brought in to the Department and so the examination data, including the TeamMate project, moved to internal department servers for access by internal department staff and archiving for the purpose of NAIC accreditation. What is even more perplexing is that most of this process was handled by the exam staff and not IT professionals. Next, let's throw in the mix of replicas and backups and you have the combination of potential disasters. If any of you have done an exam under these conditions, you have a nightmare story or two that you can laugh about now but at the time lost a few hairs to the stress gods.

This type of setup and work process was similar if not more advanced than other states that had not implemented

TeamMate and were barely using computers to run exams at all. I had spent my entire career up until that point in the private sector and had worked the majority of that time for a Navy Defense Systems contractor and one of the largest telecommunications companies in the world. During that time, I got my feet wet on different systems. However, remote solutions was a new idea; a company called Citrix was leading the pack in providing solutions for running applications remotely thanks to the increased broadband speeds and Microsoft Terminal Server technology. My employer at the time sent me to be trained in designing and supporting Citrix environments. Wall Street firms had started to use it and other Fortune 500 companies had implemented similar infrastructures. With my newly trained skill sets in Citrix and understanding of the business process and requirements for the design, I was designated project lead and charged with the task of designing and using Citrix to deploy customer and billing applications to our 2,000 customer care reps in four different locations around the country. Within six months, all customer care reps at our company were using Citrix to launch all applications. So, when I was employed by the state, I naturally saw the fit between TeamMate and Citrix and set out again to design an environment that allowed users of different locations access to applications via the web.

Many state insurance agencies have since implemented Citrix for the purpose of deploying TeamMate but find added issues in supporting the environment. I have attended many TeamMate User Forums and the same problems we face as an industry; others are facing in other industries as well. I am asked about a plethora of complex problems and issues using TeamMate on Citrix environments every time I attend a TeamMate User Forum. The majority of the problems organizations face in using the TeamMate applications deployed on Citrix can be summed up by two factors: Improper design and lack of experienced support. Many of the organizations I have worked

with allow IT professionals who do not have the expertise in Citrix and TeamMate to setup, configure, deploy, and support TeamMate environments running on Citrix. Citrix design and support is a specialized skill set that requires specialized training and experience including industry standard accreditations. We should also require our support staff to have experience in supporting the TeamMate applications and more importantly expertise in supporting TeamMate on Citrix. If Citrix environments are designed from the beginning by a Citrix expert for the purpose of deploying TeamMate and its supporting applications; then you will find this allows the support function to be more pro-active instead of re-active. Cloud technologies allow IT to design and provide pro-active solutions more easily accessible to users and quickly deploy upgrades, updates, patches, and new software to an entire user group or groups instantly.

I heard the term Cloud computing for the first time at an IT conference in the late 90's where Steve Jobs was a guest speaker.

During his presentation, he spoke mostly about the future of remote application deployment and the devices and software that IT professionals would have at their disposal in the very near future. Now, looking back, it is obvious and easy to say, "Well of course," but you have to understand that he was talking about an age when devices didn't matter. Operating systems will no longer control how we use software; going back to terminal days of the late 70s and early 80s. He spoke of controlling your computer with a touch screen and said we had the broadband to thank for these new ideas and reached up in the sky as to point to an infinite possibility. Someone jokingly chirped, "Yeah right, we'll put it in the Cloud!"

Many considered Steve Jobs a genius and innovator but I truly believed that he

was a master systems integrator. What is an iPod but an mp3 and portable video player with an LCD and integrated mouse as a control mechanism? Manufacturers already had these on the shelves but individually, Steve put them all together and it was genius. What is the iPhone but a smart phone with iPod like function and accessibility to music, video, and apps? This conference opened my eyes to the future of IT. Systems integrators are the new inventors of tomorrow and I wanted to understand what makes a great systems integrator. To integrate systems that were once separate or unmanageable together and to make them work more smoothly took a very good understanding of all systems and applications. As we look at Cloud technologies, it makes sense to integrate systems so we can publish required applications to an examination staff via the World Wide Web. Now let's take it further.

What if we are able to publish all applications that are needed to run an entire exam and make it accessible via a secure website and it can be accessed by any device anywhere in the world? Now we are talking! That is examination software in the Cloud. In order to do this well and make it user friendly and most importantly make sure the applications that were designed for desktops can perform quickly or maybe even faster than they were designed to be, we must be experts in integrating systems. This is a major undertaking but a must to design unique environments such as this. Thanks to my years in the private sector designing Citrix systems and my work with the state agencies supporting insurance examiners, I had the perfect skill sets to accomplish this goal. One thing we cannot ignore is the importance of understanding the business process, one that a Deputy Insurance Commissioner taught me when I worked for him all those years. His leadership and guidance during those years was an integral part of my concept and design behind the idea to run examinations in the Cloud. We IT professionals must understand how

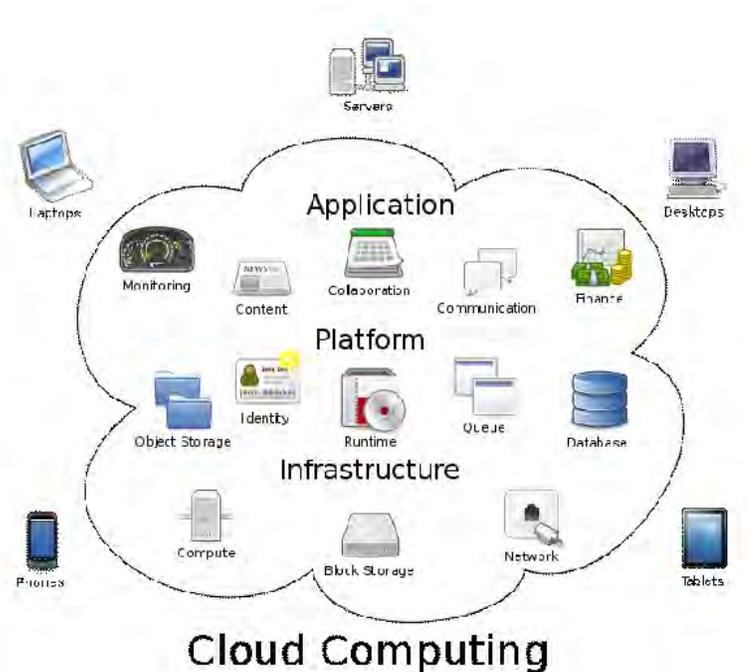
our users work and what is important to them so we can formulate concepts and designs, or in this case integrate for their specific purpose. All that was needed was to learn Cloud technologies.

The Merriam-Webster dictionary defines Cloud computing as, “Cloud computing refers to the delivery of computing and storage capacity as a service to a heterogeneous community of end-recipients. The name comes from the use of clouds as an abstraction for the complex infrastructure it contains in system diagrams. Cloud computing entrusts services with a user’s data, software and computation over a network. It has considerable overlap with software as a service (SaaS). End users access cloud-based applications through a web browser or a lightweight desktop or mobile app, while the business software and data are stored on servers at a remote location. Proponents claim that Cloud computing allows enterprises to get their applications up and running faster, with improved manageability and less maintenance, and enables IT to more rapidly adjust resources to meet fluctuating and unpredictable business demand. Cloud computing relies on sharing of resources to achieve coherence and economies of scale similar to a utility (like the electricity grid) over a network (typically the Internet). At the foundation of Cloud computing is the broader concept of converged infrastructure and shared services.”

There are three most commonly used forms of Cloud technology, SaaS (software as a service), PaaS (platform as a service), and IaaS (infrastructure as a service). All three are considered Cloud computing technology. The most commonly used is Gmail; Gmail is a Web accessible email application that runs on a web browser and hosted in the Google datacenter; this is a perfect example of SaaS. Another is Rackspace; they provide hosting of your physical infrastructure only, so you do not have physical equipment in-house. Rackspace houses IT equipment and IT staff are given access to them via the Web; this is considered IaaS. Our design at INS Services, Inc. to

integrate all software required to run an insurance examination (Market Conduct, Financial, IT, and Financial Analysis) is considered Platform as a Service, simply because we are doing more than providing applications on the Web, we are also managing backend systems, securing and managing data, managing both user and system credentials, and storing all of that in an offsite physical datacenter for physical security, backup, and redundancies. Following is an example of these

to coordinate our data, efforts, and time, especially for multi-state exams. We all know how logistically difficult it is to coordinate a multistate exam, and in recent years we have been spoiled as far as IT is considered because a common version of TeamMate has been used. TeamMate R8 for the most part is a good desktop application. Similar to Windows XP, it has been around for years; we all learned on the job and devoted a lot of time troubleshooting and understanding



three cloud technologies in visual format.

With the technology that is available today and the mediums to deliver technology, there should not be an organization that is not using what is right in front of them. Bill Gates said that we are in the horse and buggy age of computing and with computing processors increasing exponentially every six months and the network bandwidths doubling every year, if you are not hosting your examinations in the cloud in the near future, then you will be in the horse and buggy age. That will inherently create disastrous outcomes for insurance examinations. As one state advances, another will be left behind and in the insurance regulatory industry; we need

how the application works and can have a conversation amongst users on how to fix the majority of the issues. TeamMate R8 was designed as a desktop application and so users were able to troubleshoot their own installs and it was easy to manage, although time-consuming and exhausting at first, a stable application. We were spoiled.

Now with the end of life support for R8 fast approaching and the introduction of Teammate R9 and R10 we are left with a bucket full of problems. Each application has its own and unique problems. With the introduction of Teammate R9, CCH ushered in the ability to fully integrate all of the TeamMate components such

The State of IT – continued from page 14

as TeamCentral and TeamRisk. This required install and management of a central database which in turn requires more support from your IT staff. However, all three different versions are not compatible with each other, and if your organization has Teammate R9.1.1, you cannot open a R9.1.2 or R9.1.3 project. We IT professionals found this to be a problem on every level.

What about TeamMate R10? As I mentioned before, all three applications are not compatible with each other, so as some organizations look to upgrade to R10 for its more stable design and compatibility with the newer MS Office versions and an industry that requires efficient, proper, and secure communication and coordination with each other, we are left with three applications not designed to be compatible. This more than anything else is the most important and dire challenge we must all face as TeamMate users in the Insurance Regulatory industry.

We must find a standard; not just in the application version, but also in the work process; a central repository of technology specifically designed and supported for the purpose of state insurance regulation. This was and will ever be my charge; I left the state and now work for INS Services, Inc. I could not provide my designs and solutions to other states as a state employee. Now that I work in private industry again, I can focus on this task. I believe that we at INS Services, Inc. have accomplished this goal with our new Cloud designs. These designs can and will provide a standard to all state insurance regulatory agencies. They allow an entire agency to work from anywhere, at anytime, with any device, with all applications required to run an entire insurance exam from a secure web without a VPN client. All data is therefore housed in a datacenter and not on individual machines where they could be lost or corrupted and easily accessible. The Cloud is great for that purpose; if your computer breaks, you can login to the environment on any other device and all your work is still there waiting for

you. We at INS Services are also introducing Virtual Desktops and the INS Fileshare environment to our customers as well and feel that the future of examinations is in the Cloud.

Teammate, ACL, MS Office, Adobe Pro are all solid applications. The problem is in how we use and support them.

I honestly believe there is a major disconnect between examiners and IT professionals in state government. To properly implement and support Teammate in a Cloud design you must first be an expert in Teammate, both in its use and support. You must also be an expert in cloud technologies so you can properly support your people and the systems required to run your environment. You must also have a great understanding of the market conduct examination process so you know how your users work and what they need to efficiently complete an exam and allow us also to understand the NAIC accreditation process. Understanding this will help design the other pieces in your cloud environment; and of course, providing great customer service for all applications to your users. If TeamMate and its other applications are not working properly, the examination suffers so we must provide great customer service with speed and accuracy.

In designing our Cloud infrastructure at INS Services, Inc, we took all these considerations and made it available in most cases, within a week, another positive about Cloud. If we can consider how long the design, testing, implementation, and deployment it takes for state IT, then we can really appreciate what the Cloud can do for all of us. We now have the option to avoid so many of the mistakes we have made in the past and demand something better. Costs can be allocated to the insurance companies you are examining. It is in the truest sense a service you are purchasing and not hardware, software, or personnel; but, a service much like the kinds of other

services you purchase for the purpose of the examination. For most departments the expense is insignificant considering the cost of one exam or all your exams in one year. The value far exceeds any other value added component in an exam and in some cases costs less than your staff's travel expenses alone. In choosing the correct vendor to provide this solution, you must take into account all the areas I spoke of earlier: expertise in Citrix and Teammate; Cloud design experience; state insurance examination experience; NAIC accreditation knowledge; and of course, great customer service. I can't think of a reason why anyone would want to take on all of these responsibilities when you can contract them out to certified experts and gain years of expertise, and, have it available and supported for you in a week so that you and your staff can login and do what you do best, examinations.

I look forward to seeing all of you at the annual IRES conference where I'm presenting and demonstrating how to use Cloud technologies in market conduct examinations.

By the way, to finish my story about my first computer science competition; I came in second; the 14 year old who won wrote an accounting program called Quick Bookkeeping; sound familiar?

■
Mr. Link, Director of IT for INS provides IT hosting services. Jerry is a systems engineer, nationally recognized for his designs in virtualization, Cloud technologies, and implementation of audit software including the TeamMate Suite of applications. Due to his efforts and expertise, Citrix Systems has recently awarded him with the Silver medal status and INS as an Authorized partner. He is a former Senior Citrix Engineer and TeamMate IT administrator for the Commonwealth of Pennsylvania, and his innovative designs have been implemented in several states for greater IT efficiencies.

Editor's Corner

Musings from the Pacific Northwest

by Leslie Krier, AIE, Co-Editor of *The Regulator*®



I was recently in Houston. Outside of our hotel, they were running the Shell Eco Marathon Americas 2013. From my room, I could watch these cars (and there were more than 140 of them!) run around the circuit. I called them go-carts on steroids, but they were much more than that. Designed by college and high school kids from the inside out, these little cars competed to see how far they could go on a single gallon of fuel. The winning vehicle travelled 3,587 miles. That is equivalent of driving from the Canadian border in Blaine, Washington to Key West, Florida. On one gallon of fuel.

There were teams from small and big colleges, and from all size high schools. Two teams were from a little town about 50 miles from Seattle, on the way to Stevens Pass. There are only about 3,400 people in Granite Falls, WA yet they found a way to encourage and send two high school teams to the competition.

What became obvious to me as I watched the race progress over 3 days is that these kids must have some pretty remarkable people behind them, constantly encouraging them to think outside the box. Instead of saying “We can’t” or “We’ve always done it this way”, they say “How else can we get to our goal?” or “What haven’t we tried yet?” In other words, they’ve adopted an attitude of change and are looking for ways to make it happen instead of ways to make it fail.

So, if these kids can find ways to make a gallon of gasoline last from the NW corner to the SE corner of this country, then why can’t we, as insurance regulators, find ways to do more with less? Is it because we don’t have enough leaders willing to encourage us to look outside the box for solutions? Is it because we’ve become complacent with the way things are and it’s easier to complain about it

than it is to do something about it? One of my favorite sayings comes to mind – if you aren’t part of the solution, then you are part of the problem. Is this the legacy we really want to leave in our wake?

If the schools were filled with people who only found the negative side of the situation, then they would likely not continue on in their quest for the ultimate eco-car. Critics could say that the car isn’t really big enough to hold more than one person, or it isn’t fast enough to make the trip from Washington to Florida in a realistic amount of time. Again, ways to fail, not ways to succeed.

The point is that we need to find a way to start making changes.

You start with something small and make it into something big.

I’ll bet that in the next 10 years, as these kids progress from being high school students to college students to members of the work force, and as they refine their visions and experiments, that not only will that one gallon propel a vehicle for 3, 587 miles, it will do so in a vehicle that carries a family of 4 and travels 100 miles per hour.

All because these students are encouraged to think outside the box, to try new ideas, to throw out those that don’t work and to build on those that do. We need

to take a page from these kids. I don’t know about you, but I want to be one of those behind the “kids” who are looking for ways to change IRES and insurance regulation. Not every idea is going to be successful, but that’s okay! Not every change is going to be one that propels us forward but at least we’re moving!

I encourage the Executive Committee and Board of Directors to continue finding ways to make IRES meaningful to both existing and new members, to identify and be involved in those areas of insurance regulation that are vital to our members, and to encourage an attitude of change while preserving the purpose of our organization. Congratulations on initiating programs like CICS and MCM which are both innovative and encourage participation of non-traditional market regulation staff. On next year’s combined Market Regulation School and CDS. On updating the By-Laws.

Now, what’s next? If you have any ideas about how we can encourage change, please let us know by dropping a line to The Editor, at TheRegulator@go-ires.org. And, I hope you enjoy this issue with a little of this and a little of that – kind of a potpourri of regulatory ideas! ■

Leslie Krier

Northwest Attractions: Wine Country

Washington and Oregon are home to many wineries. Want to get a little taste of the northwest by doing some winery hopping? Try these websites:

www.washingtonwine.org • www.winesnw.com/index.html
www.oregonwinecountry.org

Your Generic Agent Advertising Questions Answered!

By C.J. Rathbun, Consultant First Consulting & Administration, Inc.

Do you ever wonder if your company will be held responsible for a contracted agent's "generic" ad? Of course a carrier who is the underwriting insurer is clearly responsible for any marketing and advertising which references its own company or its own products.

The question an industry friend recently posed, though, is about where responsibility falls for 'generic' ads created by an agent who is likely appointed by her company and a number of others.

She says, "We know that this ad promotes our lines of insurance in general and could result in the sale of a product underwritten by my company."

In today's regulatory climate, as insurance compliance and risk officers increase their awareness of exposure and escalate their risk management efforts, this situation certainly should be addressed.

As a consultant, I have a number of agency clients who use our advertising compliance review service. The ads we see are all non-company specific, and the agent or agency is appointed with at least a handful of carriers. The answers below reflect my experiences in advertising compliance training, interchanges with regulators, and hands-on review for over 15 years.

If an ad piece mentions a company or its product, the referenced company must review for compliance. However, any insurance regulator would likely tell us that along with insurers' responsibility for branded advertising, it is equally clear that there is also a responsibility for compliance of generic advertising. If the agent creates it, s/he is responsible for the compliance of the piece, and should be informed (hopefully by every contracted company) of that responsibility. The agent/agency needs to have a process firmly in place by which a reasonable

assurance of regulatory compliance is achieved.

"Do insurers require a compliance review of such generic ads by their internal staff prior to use?"

While it would be easy enough for the agent to submit a piece to one company, submitting it to all companies s/he is contracted with could be burdensome. Even more challenging would be a situation in which the agent receives conflicting opinions as to what constitutes compliant language. Enough regulatory grey areas, as well as an ample variety of company interpretations and branding standards, exist to potentially create an untenable situation for the agent.

Additionally, many insurers I work with have limited resources with which to ensure advertising compliance for company- and product-specific pieces. They simply have too few resources to devote to also review generic pieces that may sell their products.

On the other hand, as one regulator stated (and other regulators have agreed), if the ad can reasonably be assumed to be selling your product, then you are responsible for the compliance of the piece. For instance, if the agent is contracted with five companies that sell the same type of products that you sell, but they sell your policies 90% of the time, then s/he needs to understand that you do become responsible for the ad.

"In that instance, would the company require its company's name on the ad?"

This is a company decision, and one that can be negotiated with your best agencies (those with larger blocks of your business and with an ethical commitment). Whichever way your company decides to go – require review but no company name, or require review and some level of company branding – the same standard should be applied consistently to

all agents/agencies in the same position. Consider the amount of business the agent does with your company as a percentage of his/her book of business, and set a threshold that provides some degree of confidence for your company.

"What about agent-created generic advertising of products where states require advertising to be filed (Long Term Care for instance)? Is the agent responsible to file them or is my company?"

The requirement to file advertising primarily applies to some life and health products, although an insurance commissioner can require any given company to file any of their advertising. A commissioner would generally require advertising filing as a response to systemic problems in that area of the company.

The answer to this filing question is a little complicated. Another one of our staff was asked by his agency client to file their generic television advertisement in all states. The ad was a lead piece for the agency and mentioned the names of four insurers with which the agency was contracted without specifying policy forms. States all require that insurers' advertising for that particular product be filed, but we were not sure what a state's stance on this agent piece, especially noting company names, might be.

Because we felt that this ad was actually the responsibility of the companies, we sent requests to the four carriers to file the advertising with the states at the agency's expense. Two of the four agreed to do so in their admitted states. The other two did not agree that they were responsible for the compliance or the filing of the ad.

We filed the TV ad in the admitted states on behalf of the two companies. A few regulators stated that the other

Your Generic Agent – continued from page 17

two companies should file it as well, but the majority reviewed and commented on it without such a requirement. In some cases, the state statutes/laws or the regulatory interpretation of same, did not agree across state lines so we received conflicting objections. While the agency was quite willing to make changes as required by a state, it became impossible to comply with every change for a TV ad that would be broadcast across state lines. The agency finally determined they would withdraw their request in some cases, adding a disclaimer for states' residents where the ad was not approved and foregoing selling products from that advertisement in those states.

We filed the TV ad in the remaining states on behalf of the agency. The majority of those states responded that they did not want to see the agent piece at all, it was not required, or they did not have authority to review it. We know that state resources, like company compliance departments, may be limited, and states want to apply the workload to larger potential risks. Those regulators did specify, however, that the agency is responsible for ensuring that the piece is compliant.

After months of struggling – just because they wanted to do the right thing – the agency was able to make sufficient use of the TV ad to make the cost worthwhile.

Another question I am beginning to hear more often is this.

“We have independent agents who purchase leads from a third-party lead-generation vendor. Are we responsible for compliance of the direct mailers sent out by the vendor for this purpose?”

Agents are responsible for advertising they create. Companies are responsible for in-house or agent-originated advertising of their company or products. This scenario wherein the vendor creates these mailers may typically result in the agent never even seeing the actual postcard.

Kansas reissued a 1991 Bulletin early last year ([Bulletin 2012-1](#)) on this very topic. One paragraph states:

Despite what appears to be an assumption held by a number of advertising firms and the insurance producers subscribing to their services, the fact that these advertisements originate with third party, non-insurance entities does not create a “regulatory buffer” between the Department and insurance companies and/or their agents. Insurance companies and/or their agents are responsible for the content of advertisements distributed directly and on their behalf and are subject to potential regulatory action for the failure of any advertisements to comply with Kansas law.

As indicated, the independent agents contracted with your company need to know that they are being held responsible, definitely in Kansas and likely in many other states, as well.

Additionally, I have worked with third party lead-generating companies who have run into trouble with regulators for non-compliant lead-generation mailers. One firm that was creating and distributing postcards to procure leads for their agent clients was held responsible by the state, along with the agents and companies. One of the stipulations by that Department of Insurance to the firm was that advertising which targets citizens of their state always be reviewed by a compliance partner before mailings could resume.

Which brings me to the last question we will want to address on the topic.

“What resources would an agent have to help ensure advertising is compliant?”

1. Some larger agencies have their own compliance person who can review advertising as part of their responsibilities. The agency is responsible to ensure that their person is trained and/or experienced in such a way that might carry credibility with a regulator.

2. If they are tied to a national marketing organization, it may have a compliance professional trained in advertising review.
3. They can find compliance partners, typically consulting companies who perform advertising compliance reviews as one of their services.

Regulatory requirements differ between advertising of property/casualty and title insurance and advertising of life, annuity and health/accident insurance. However, all lines of insurance advertising require (a) review for compliance, (b) a tracking and identification system, and (c) a compliant retention schedule.

When utilizing any of the three resources above, agents are still responsible to establish a procedure that ensures consistent handling of marketing materials, including making the required changes and having a system which double-checks those changes. Agents/agencies are also required to maintain documentation of those compliance reviews on file a certain number of years in case of regulatory inquiries because of complaints. The number of years may vary from state to state, and if the agency is regional or national, it will need to typically maintain files for five years.

Companies who are mindful of advertising risk will do well to communicate the expectations and requirements discussed above to their independent agents. They need to clearly understand not only what your company's responsibility is for making their branded materials compliant, but also the extent of their responsibilities when they create advertising that the company will not be reviewing. ■

C. J. Rathbun, CCEP, FLMI, HIA, AIRC, ACS www.linkedin.com/in/cjrathbun/

A Senior Consultant with First Consulting & Administration, Inc. in Kansas City, MO, she specializes in advertising compliance and operational risk compliance.

Additional information at www.firstconsulting.com

IT Examination Procedures in Market Conduct Exams: Taking a Deeper Look

by Alan Gutierrez-Arana, CISA, CRISC



While many industries adopted the use of computing resources with the dissemination of the personal computer in the 80s, the automation of insurance processes dates from the late 70s. Insurance companies were early adopters of automation tools for policies, claims and premiums processing and also pioneers in the development of in-house dedicated application software. Today, almost every single insurance company utilizes some type of software to compile processes and store financial and customers' information, bringing high levels of complexity to the way transactions flow and data is aggregated and processed.

The scenario described above, presents not one, but multiple challenges to the market conduct examiners. Departing from a simple question (is data accurate?), examiners have to consider three basic steps in data management: **input**, **processing** and **output**.

Input, Processing and Output

Data input processes can be as simple as an operator typing information provided by a customer in a policy form, to specialized OCR (optical character recognition) software that scans the fields in a policy form and transforms the information into digital data.

Processing includes formatting the information gathered through the input process into data that can be read by the software applications. In the case of insurance data processing, calculations are part of the data processing step; algorithms-based rates and other types of calculations are applied to the data initially received during the input step.

Output includes the generation of reports, views and printable data; this is the final product in the form of "soft"

(screen visualization) copies or "hard" (printed) copies.

Data Integrity and Related Controls

Data integrity is based in the principles of consistency and accuracy. When calculations are applied to data, integrity must be ensured, even when data is transformed by those calculations. How can examiners gain assurance that data has maintained its integrity throughout the input, processing and output cycle? This is where controls come into play. In the case of automated processing, information technology controls (IT controls) play a critical role in maintaining data integrity. IT controls are a collection of measures executed by people or systems with the purpose of guaranteeing that data maintains its integrity through the entire process. IT controls are commonly group in two major categories: **IT general computer controls** and **IT application controls**.

IT General Computer Controls

By definition, information technology computer controls are activities performed inside the IT environment with the purpose of guaranteeing data and processes integrity. IT general computer controls are commonly divided into the following domains:

- Logical security: these are controls associated with the management of access to the systems and information stored and processed by those systems
- Change Management: the controls associated with the modification, update and decommission of systems, software and hardware that is part of the IT infrastructure supporting the business processes

- Systems Development Life Cycle (SDLC): all application software that is supported or created (coded) by a company must be subject to a formal SDLC in order to guarantee that it is possible to trace the translation of business requirements into algorithms and routines. These will compose the different modules of the application software utilized to automate business processes like financial management, policy management, premiums processing, and claims processing.

IT Application Controls

IT application controls are a "deeper" layer of controls in the IT environment. These controls are implemented around the input, processing and output processes executed by the systems supporting a company's business function.

Application controls can be manual controls executed by operators and related staff or automatic controls executed by routines coded in the application software. Examples of these controls are batch job execution checklists (manual) and alert flags and messages displayed by the application software to indicate any abnormality in the processing of data or instructions (automated).

Why are these controls necessary?

Without effective IT general computer controls, reliance cannot be placed in the integrity of the data stored or processed by the company's IT systems.

Your Generic Agent – continued from page 19

Overview of IT Related Examination Procedures in the NAIC Market Regulation Handbook

The NAIC Market Regulation Handbook, in its general examination standards related to operations and management described in chapter 16, considers computer systems as part of the market conduct examination procedures. The Market Regulation handbook states:

*“The examiners should determine the types of controls, safeguards and procedures for protecting the **integrity** of the computer information. The focus in this case is on those records subject to a market conduct examination that are maintained in electronic format, such as, **but not limited to**, underwriting files, claims files, rate and form filings, complaint files, statistical data used to support rates, etc.” (pg. 207)*

Furthermore, Standard 2 of Chapter 16 of the NAIC Market Regulation handbook clearly refers to review of the IT computer controls in place at the examined company:

*“The regulated entity has appropriate controls, safeguards and procedures for **protecting the integrity** of computer information” (pg. 211).*

According to the handbook guidance, as part of the market conduct examination procedures, the examiner should “ensure there is adequate security of applicant/insured data during the electronic transfer of data. Identify any areas where the applicants/insured’s privacy is not properly protected” (pg.211).

The IT related standards documented in Chapter 16 of the handbook are also applicable to examination procedures for

Property & Casualty, Title Insurance, Life & Annuity, Health, and other types of insurance operations listed in the handbook.

NAIC Market Regulation Handbook Appendix F: an overlooked tool in the assessment of IT controls?

In more than one exam in which the author of this article has been involved as the IT specialist, the use and even the existence of the market regulation handbook Appendix F has been part of the discussions within the examination team. One of the reasons why Appendix F is somewhat unknown is due to the fact that the handbook does not include Appendix F. It is made available for download via the State Net website. However, Appendix F is referenced in several chapters as the tool for understanding the IT control environment in the company under examination. Appendix F covers the following IT areas:

- A. MANAGEMENT AND ORGANIZATIONAL CONTROLS
- B. LOGICAL AND PHYSICAL SECURITY (Systems/Environment and applications access)
- C. APPLICATION MANAGEMENT
- D. DISASTER RECOVERY/CONTINGENCY PLANNING
- E. OPERATIONS AND PROCESSING CONTROLS

The areas listed and described in Appendix F provide a significant coverage of the control areas that examiners should expect to find in the IT environment of an insurance company. Examiners

conducting market conduct exams should consider using Appendix F as part of the examination procedures, independently of the size of the company. This is a tool that has proven to be a useful resource in understanding how the companies deal with the inherent risks associated with IT environments.

Application Software Assessment Techniques in Market Conduct Exams: going the extra mile.

When conducting the field work in exams when I receive printouts like claims reports, filings, policy counts, etc. I always ask myself: How do I know that this data output I am looking at is accurate? What are the checks and balances that the system executed to guarantee that the information I am looking at is the real picture?

These questions tend to open a Pandora’s Box. While IT general computer controls and application controls address many of the possible inherent risks an examiner may find during an exam, there is a deeper layer that is not normally covered: programming routines. If a company uses commercial application software (also known as Off-the-Shelf for obvious reasons) to automate its business processes, the common rule is that changes to the source code done by the company’s internal development team are not allowed unless specific clauses are detailed in the contract with the vendor of the application software.

But the reality of insurance companies is quite different from other markets. Since the late 70s and early 80s, insurers typically internally developed their own application software and systems to process claims, premiums and policies. Many of those systems are still part of the core applications and systems in use at medium and large insurance companies. The in-house development of application software continues a solid trend in the insurance industry. While the initial applications were developed to run in mainframe environments using languages like COBOL, FORTRAM and other

Northwest Attractions: Oregon Coast

Think that you might like to put your toes into the Pacific Ocean? Head west from Portland and you will hit the coast. Due west and south is the Oregon Coast—home to Cannon Beach, Haystack Rock, Lincoln City, and more.

www.theoregoncoast.info • www.visittheoregoncoast.com
www.traveloregon.com/cities-regions/oregon-coast

Your Generic Agent – continued from page 20

older generation development languages, companies continue to develop their own applications using next generation languages for other types of computing environments like Microsoft Windows.

Following the Bread Crumb Path

How to determine if you should go down the path of reviewing programming routines? If a company has established solid systems development life cycle (SDLC) and change management controls, documentation and historic trails of coding and changes to code should be available. Examiners should look for information related to proposed changes to the application or system routine(s), impact analysis, authorization, and results of the implementation of the code or the code change into the production environment. If this information has been documented following a mature change management process, understanding the nature of the routines that process insurance related data should be an easy task and identification of control points will be transparent to the examiner. Some of the characteristics of programming under a mature SDLC and change management control environment are:

- Version control process is in place
- Change management log is embedded in the precompiled code with programmer's signature
- Code is properly indented
- Modified code is commented and not deleted
- Naming conventions are utilized in accordance with guidelines
- Modular Top-Down flow is utilized

If you find the characteristics listed above as part of a system or application software documentation, the level of confidence on the control environment could be considered high and the output data produced by the systems supporting the business processes can be considered reliable.

The Black Box Scenario

In the event that the insurer has not established mature processes for SDLC and change management, the examiner is faced with a significant challenge: what are the routines and algorithms inside the system? How do I determine whether the actual data output produced by the system is accurate?

When applications are incorrectly coded or controls are not implemented around changes to the algorithms and other elements of the code, the probability that the data output produced by the system is inaccurate is relatively high. Some of the signals that examiners should look for are the amount of manual corrections done by the insurer to its policies, premiums and claims data. If the number of corrections is high, it is clear that application controls are not effectively addressing the risks associated with automated processing and the examiner should determine if the data produced by the systems can be considered reliable or if detailed testing is required. If the assistance of IT specialists with programming knowledge is available, the examiner should consider the review of the application code considering the following programming best practices:

- Precision, clarity, lack of ambiguity
- Consistency
- Relevancy
- Testability
- Traceability

If the characteristics above are found during a code review exercise, the application output can be considered reliable.

In a Nutshell

The chances of finding automated systems processing policies, premiums and claims in an insurance company are almost a certainty for the examiners conducting market conduct examination procedures. While the majority of companies have implemented SDLC and change management process controls around these processes and control maturity has been achieved, there will always be where those controls are not implemented or are not operating in an effective manner. The utilization of Appendix F of the NAIC Market Regulation handbook is a good first step to understand the control environment around the automated processes utilized by the insurer to process data related to policies, claims and premiums.

If the examiner is faced with an environment in which controls have not been implemented or are not in a mature stage, conducting a more in-depth analysis of the application code combined with detailed testing of the data during the input, processing and output should be considered as part of the examination process. ■

Alan Gutierrez-Arana, a director with Risk & Regulatory Consulting, has over 15 years of experience providing IT security and controls assessments, and regulatory compliance consulting services for a broad range of insurance, banking, finance and high technology entities. He specializes in IT controls assessment and compliance, federal and state IT regulatory compliance (NAIC, SOX, PCI-DSS, HIPAA-HITECH, BASEL II, FFEIC), controls design and implementation, disaster recovery, IT outsourcing and off-shoring, IT governance, business continuity, change management, information security, and e-business; his client portfolio includes several insurance departments, Fortune 100 and Fortune 500 companies."

Northwest Attractions: Mount St. Helens

Ever seen an active volcano? The visitor center at Mount St. Helens is just a couple of hours north of Portland.

www.mountsthelens.com/visitorcenters.html

What's Happening at IRES?

The Latest Committee News

by the IRES Executive Committee Members

The Executive Committee

Chair: IRES President Mark Hooker
(mark.hooker@wvinsurance.gov)

- Transmitted IRES's Model Training Plan and Suggested Improvements for Market regulation to NAIC D Committee Chair Commissioner Sharon Clark (KY)
- Entered into an Agreement with the IRES Foundation for the 2014 Joint Market Regulation Forum
- Coordinated Briefings on IRES's mission and advantages of membership to all NAIC Zones and the NAIC Spring National Meeting in Houston
- Appointed Erin Mizra (Wisconsin) as newest member of the Board of Directors

Accreditation and Ethics Committee

Chair: Parker Stevens
(parkerstevens@examresources.net)

- **MCM™ classes for 2013** – Doug Freeman and his ensemble of dedicated volunteers had the first class of the year in New York City which was a huge success. The next scheduled class is in conjunction with the IRES Foundation School in Savannah, GA, which is already SOLD OUT!!! The remaining classes are in Richmond, VA, Portland, OR, and Madison, WI. More information is available on the IRES website at www.go-ires.org/events/mcm2013.
- **New Designation** – AMCM – This subcommittee lead by Tom Ballard has been busy working to develop the AMCM designation which is a follow-up to the MCM course. The pilot AMCM class will also

take place at the IRES Foundation School in Savannah, GA. Please look for information on this new IRES designation in the coming months.

Budget & Finance Committee

Chair: Joe Bieniek
(joe.bieniek@firstconsulting.com)

- Continue to review all invoices and pay bills monthly
- We review our financial statements and general ledger entries monthly
- Reviewed our January 1 Directors and Officers policy for accuracy
- The Board approved the Committee recommendation to approve our unaudited 2012 financial statements
- We have begun to complete our IRS tax return filing which is due May 15
- Hopefully by the time you read this we will have posted on the IRES website the 2012 financial statements and the Board approved 2013 budget
- We are nearly complete in the event cancellation claim due to Tropical Storm Isaac that somewhat impacting the ability of some people to travel to the CDS

Meetings and Elections Committee

Chair: Tom Ballard
(tballard@tlbcsllc.com)

- Slate for the upcoming election is being worked on.
- Site for 2015 IRES meeting is down to Charleston, SC and Miami/Ft. Lauderdale area.
- St. Louis has been approved for the 2014 joint meeting with the Foundation. The contract for St. Louis has been approved and signed.

Membership and Benefits Committee

Chair: Tanya Sherman
(tsherman@risdelaware.com)

- Chartrand Communications Award nominations are currently being accepted until June 13, 2013
- Next State Chair call is June 25, 2013 at 3:00 Eastern
- Upcoming Webinars:
 - Financial Economic Conditions/ Catastrophes and Impact to Market Regulation (TBD)
 - Promotional IRES CDS Webinar (not available for CE's) (June 12th)

These committees are staffed by volunteers. If you are interested in participating in one of the committees listed above, please contact the committee chair. Alternatively, you may contact the IRES office at info@go-ires.org. Thank you for volunteering!

Northwest Attractions: Pacific Coast Lighthouses

Like lighthouses? There are many located on the coast within a couple hours' drive from Portland. Check them out:

www.lighthouseinformation.com/pacific-northwest-lighthouses.html
www.unc.edu/~rowlett/lighthouse/wa.htm

The Next in the Series – Meet Your Executive Board: Tanya Sherman

by Tanya Sherman

Hello IRES members,
I'm Tanya Sherman and this year I am a member of the Executive Committee of IRES as well as the Chair of the Membership and Benefits Committee.

I've been an official member of IRES since 2005 and served on a variety of committees before becoming a member of the Board of Directors in 2012, when I also joined the Executive Committee.

Prior to 2005, I was an active presenter for IRES, mostly on NAIC software applications changes and the developing Market Analysis process. Although I am new to the Executive Committee, I have been very active with the Membership and Benefits Committee with positions previously as the Chair of the State Chair subcommittee, the Chair of the Webinar subgroup, and as a member of the Website subcommittee.

This year, I chair the IRES Membership and Benefits Committee. This committee is responsible for Webinars, the IRES State Chairs, the Al Greer/Chartrand Communications awards, as well as the general and sustaining memberships. There are a number of opportunities for all individuals to provide input and we are always welcoming people with great ideas to join. Please let me know if you are interested in presenting for a webinar, if you have mad skills of organization, are creative and need an outlet, or if you have positive ideas to share on how to keep IRES the best organization for insurance regulators.

I am currently the Sr. Market Analysis Manager for the Delaware Department of Insurance (DOI) and for INS Regulatory Insurance Services, Inc. (INS RIS). I conduct market analysis, including Market Conduct Annual Statement analysis, for Delaware and provide training on the market analysis process for other states.

Prior to joining the Delaware DOI and INS RIS teams, I worked for the NAIC as an independent consultant designing, facilitating and implementing the Market Analysis Techniques classroom and online courses. I also previously worked for the NAIC as a Market Analyst within the NAIC's Market Regulation Division. While in that role, I worked with state regulators and other officials on market regulatory issues. Key duties in the position included performing market analysis on nationally significant insurance companies, identifying market trends, supporting many of the Market Regulation Working Groups, and facilitating training for state regulators and industry professionals.

In 1991, I graduated from the University of Kansas in Lawrence with a Bachelor's degree in Marketing and Advertising and minors in English, Anthropology and Film.

I married my High School sweetheart, Cris, many, many years after graduation. We live in Kansas City, with our son, Mason, who is 6, going on 13. We enjoy traveling, biking and outdoor adventures, especially with our two very active dogs, Bear and Rusty. I previously worked in the restaurant industry and have

continued to pursue a love for cooking. Most recently I have started a BBQ team and we are competing periodically, as well as providing catering for small and sometimes large events. I also keep busy by volunteering for my son's school events as a photographer, and am the former president, former secretary and current treasurer of my neighborhood homes association.

I do hope that you will be in attendance at the IRES CDS this year in Portland, Oregon! If you see me in the halls, please stop and introduce yourself. And as always if you have ideas to share about membership, new ideas for the organization or ideas for webinars, please feel free to e-mail me at tsherman@insris.com. ■



Note: The Editorial staff will have a short article in each edition to introduce you to the Executive Committee members and the committees they chair. Each executive committee member is charged by our by-laws with the responsibility of chairing one of our standing committees. Too often, these dedicated people don't get the recognition they deserve and so this feature will allow us to give them credit for the great work they do, and it will allow you, our members, to meet the people responsible for making IRES such a success. We hope that you enjoy this article.

‘Zoning’ In

Northeastern Zone

By Jason M. Kurtz

New York State New York’s Department of Financial Services Establishes Mediation Program For Sandy Claims

The New York Department of Financial Services (DFS) recently announced that it has established an insurer-funded mediation program for resolving disputed Superstorm Sandy claims. The program allows homeowners dissatisfied with insurers’ handling of their Sandy-related claims to participate in a voluntary, non-binding mediation process administered by the American Arbitration Association (AAA). New York’s mediation program addresses real and personal property claims resulting from Superstorm Sandy that do not involve damages to motor vehicles and that do not fall under the purview of the National Flood Insurance Program. According to the DFS, insurers are required to participate in mediation proceedings in good faith and must pay for the AAA’s costs. The DFS further stated that carriers representing 90 percent of the market in areas impacted by Superstorm Sandy have already resolved 87 percent of the approximately 432,000 non-flood claims that have been noticed.

New York Lays Foundation For Reform of Force-Placed Insurance Industry

Following its recent settlement with Assurant, the nation’s largest “force-placed” or “lender-placed” insurer, the DFS issued a letter to state insurance commissioners across the country urging them to adopt a similar settlement model. The DFS letter, written by Superintendent Benjamin Lawsky, encourages state regulators to implement reforms that will “root out the kickback culture” pervasive in the force-placed insurance industry



and “lower rates for hard-working homeowners.” A recent DFS investigation found that premiums charged to homeowners for force-placed insurance had been “two to 10 times higher” than premiums for voluntary insurance, despite the more limited scope of coverage provided by the force-placed insurance. Some of the terms of the March 21st settlement with Assurant included restitution for affected homeowners, a \$14 million penalty, and a set of new reforms to be followed by Assurant’s force-placed insurance program in New York. As a result of the DFS agreement with Assurant, the Federal Housing Finance Agency has proposed a ban on commissions on force-placed policies to banks servicing loans owned or insured by Fannie Mae and Freddie Mac.

New Jersey DOBI Proposes Rule to Promote Health Care Appeals Program

New Jersey’s Department of Banking and Insurance (DOBI) has proposed a rule that would set forth new notice requirements for hospitals and doctors to inform patients about a DOBI-administered program, the Independent Health Care Appeals Program (IHCAP), which calls for challenging health insurers when it is determined that a service is not medically appropriate and should not be covered. According to the proposed rule - which specifies the size, content and format of the notices, hospitals and physicians would be required to post notices in their patient waiting rooms in order to notify patients about the IHCAP program and how to apply for it. IHCAP, which was enacted in 2012, allows patients to have an independent panel of physicians review coverage denials once they have gone through the insurer’s internal appeals process. The program also permits health care providers to challenge denials on behalf of insureds. The sponsors of the proposed rule argue that notice requirements are needed to spread awareness of IHCAP,

which the rule sponsors believe is an under-utilized program. According to a DOB spokesperson, IHCAP handled 665 cases in 2012. The current proposed notification rule is subject to a 60-day comment period which ends on May 31, 2013.

Southeastern Zone

By Scott G. Paris

Mississippi Adopts NAIC’s Suitability in Annuity Transaction Model Regulation

Effective April 10, 2013, Mississippi insurance regulations will require producers, when recommending the sale or replacement of an annuity, to ensure that the consumer will benefit from, and is reasonably informed about, the annuity being purchased. Prior to selling an annuity, producers must attempt to obtain a consumer’s suitability information. When an annuity is being exchanged or replaced producers should consider surrender charges, changes in the annuity benefits and whether the consumer has exchanged or replaced another annuity within the preceding 36 months. Under the new regulation, producers selling annuities must complete an approved training course. Insurers, general agents, independent agencies and insurance producers must maintain the records used to make recommendations for the sale of annuities for five years. Insurers must also develop training, compliance and reporting procedures to ensure that annuities sold comply with suitability requirements.

Kentucky Issues an Opinion Letter on the Assessment of Life Insurance Policies

On March 1, 2013, the Kentucky Insurance Department issued an Opinion



Letter addressing a perceived conflict between KRS 304.14-250(1), which provides that a policy may or may not be assignable as provided by its terms, and KRS 302.15-717(1)(p)(3) which prohibits life insurance policies from being non-assignable for life settlement purposes. The Opinion Letter provides that while an insurer may include language in a life policy providing that it is not assignable, an insurer may not impede the assignment of a policy for life settlement purposes.

Alabama Issues a Bulletin on Disclosures Accompanying Personal Lines Surplus Line Policies

On April 2, 2013, the Alabama Insurance Department issued a bulletin providing a revised form to be provided to insureds who purchase personal lines coverage placed with an unauthorized insurer. The form is to be provided by the surplus lines broker to the retail broker to be signed by the insured. The surplus line brokers must request that retail producers have the insured date and sign the written statement form on or before the policy's effective date. If the surplus line broker does not receive a signed copy within the thirty days, the broker must make one additional written request for the form.

Mandatory Notices in Kentucky May be Delivered Electronically If Certain Conditions are Satisfied

The Kentucky Department of Insurance issued an Advisory Opinion finding that mandatory notices can be delivered to policyholders by electronic mail where: (1) the policyholder's electronic mail address is on file with the insurer; and (2) the policyholder has previously elected to receive communications of cancellations, renewals, nonrenewals, and premium increases through electronic mail. Specific disclosures that must be made to the policyholder and other conditions are set forth in the Advisory Opinion. The Department cautions insurers utilizing electronic delivery to maintain proof of electronic mailing.

Midwestern Zone

By Molly E. Lang

Department of Insurance and Financial Services Established in Michigan

The Michigan Department of Insurance and Financial Services (DIFS) began operations on March 18. DIFS was created by Executive Order 2013-1

and now assumes oversight responsibilities of the previous Office of Financial and Insurance Regulation (OFIR). According to DIFS's initial press release, transforming OFIR into a state department will allow for the development of effective partnerships to address issues of insurance availability and affordability, enable direct advocacy and education of legislative proposals affecting the insurance and financial services sectors, and promote direct control of all aspects of programs designed to focus on consumer protection, education and outreach.



Committee May Study Direct Repair Programs in Iowa

Iowa Senate Bill 42 seeks the establishment of an interim study committee to evaluate direct repair programs used by certain automobile insurance companies. The study would include a review and analysis of the impact direct repair programs have on auto body repair shops, insurance costs and Iowa consumers. The bill proposes that the committee be comprised of legislative members as well as eleven public members including four members of the automobile insurance industry, four representatives of auto body repair shops, and three consumers.

Kansas Law Prohibiting Subrogation Clauses Clarified

Kan. Stat. Ann. § 40-1-20 was amended to clarify that the prohibition against subrogation clauses applies to all health insurers, not just entities expressly identified as insurance companies. The amendment also makes it clear that the

prohibition extends to provisions in a policy that have a purpose or effect similar to that of a subrogation clause.

North Dakota Insurance Department May Obtain Tax Information of Agents Under Investigation

North Dakota's tax commissioner may now disclose certain confidential tax information to the state's insurance commissioner when insurance agents are being investigated for fraud or other license violations. The North Dakota Insurance Department supported House Bill 1098 as a measure to stop agents from engaging in fraudulent schemes such as stealing consumer premiums without providing the bargained for coverage.

Western Zone

By Benjamin C. Chynsky

Hawaii Expands Online Insurance Comparison Program

Hawaii's Insurance Division is expanding the types of insurance rate comparisons that Hawaii residents can find on its website. The rate comparisons give consumers a view of what different insurance companies charge for coverage. In addition to rate comparisons for car insurance, the Insurance Division will now offer rate comparisons for homeowners, condo and renter's insurance. There are a variety of factors that appear to influence rates, including elevation and wind resistance for hurricanes.



PCI Criticizes Proposed Bills on Bad Faith in Oregon

According to the Property Casualty Insurers Association of America (PCI), several bills proposed in Oregon could present consumers with nearly \$200 million in cost increases. PCI is urging Oregon lawmakers to reject the bills that either establish private rights of action for first party/third party claims, or

extend the state's Unfair Trade Practices Act to insurers. Kenton Brine, PCI assistant vice president, said the "real intent" of the bills is to force insurers to settle for more money. Brine urged Oregon lawmakers to consider the cost increases resulting from similar expansions of bad faith laws in California, Florida and Washington.

Arizona Bill Changes Law on Workers Comp for Professional Athletes

An Arizona House committee approved a bill already passed by the state Senate that will prohibit professional athletes in Arizona from filing for workers' compensation in other states. Professional athletes can sometimes file for workers' compensation in another state if they also played games in that state. The teams or their insurers pay claims filed by the players. Professional teams reportedly expressed concerns that professional athletes were filing claims in California

because it has more lenient rules for certain injuries. Lawyers for the NFL and MLB players' unions testified that players rejected efforts to ban the practice in collective bargaining agreements.

Texas Lawmakers Consider Windstorm Insurance Reform

Texas state lawmakers are considering how to revamp the Texas Windstorm Insurance Association (TWIA). TWIA is the nonprofit residual insurer that provides hail and wind insurance for coastal residents following a catastrophic loss. Claims from Hurricane Ike in 2008 substantially depleted TWIA's financial reserves. The Texas Insurance Commissioner proposed putting TWIA into receivership. However, the State Senate is considering several bills that seek to avoid receivership. TWIA's Board of Directors has shelved consideration of receivership until its May 21st meeting. ■

"Zoning In" is developed by members of Nelson Levine de Luca & Hamilton's Insurance Regulation Practice Group. With a team of professionals that includes former insurance regulators, Nelson Levine assists insurance companies with a broad range of regulatory issues affecting the business of insurance. Monthly contributors to "Zoning In" include: Susan T. Stead (614-221-7543, sstead@nldhlaw.com), Molly E. Lang (614-456-1634, mlang@nldhlaw.com), Peg Ising (non-lawyer consultant, 614-456-1632, pising@nldhlaw.com), Jason M. Kurtz (212-233-2633, jkurtz@nldhlaw.com), Scott G. Paris (212-233-2716, sparis@nldhlaw.com), and Benjamin C. Chynsky (212-233-2974, bchynsky@nldhlaw.com).

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State Chapter News

Louisiana

by Linda Gonzales, State Chair

The Louisiana Chapter held a State Chapter Meeting on February 21, 2013. The speaker was Mike Boutwell, Assistant Commissioner of Licensing and Compliance. Mr. Boutwell presented "Don't Work With Blinders On" with a PowerPoint presentation that provided valuable insight into the need to know what each division in your office does, how each section relates to each other and how the inter-workings of all the sections together makes the Department work more efficiently. The more efficient the Department works, the better the service that can be provided to consumers. There were 68 attendees.

The Louisiana Chapter held a State Chapter Meeting on March 21, 2013. The speaker was Neysa Hurst, Assistant Director of Consumer Affairs. Ms. Hurst presented "Homeowner Insurance

Review" with a PowerPoint presentation that provided valuable insight into what is and is not covered under a homeowners policy, the rights and responsibility of the policyholder and the insurance company, explanation of some of the endorsements, exclusions, deductibles, the need for a property inventory list, and other related questions as they arose. There were 37 attendees.

Virginia

by Greg Lee, State Chair

At the February 27, 2013 meeting of The Virginia State Chapter of IRES, Katie Johnson, Special Projects Coordinator of the Property & Casualty Division of the Bureau of Insurance, presented an in-depth analysis of the current legislative process in Virginia and how it impacts issues related to insurance regulation. 8 members were in attendance. During the meeting, Will Felvey was elected

President, Greg Lee was elected Vice President, and Ruth Davis was elected Secretary.

California

by Polly Chan, State Chair

Polly Chan, CA State Chair and current Board member, has been promoted to be the Bureau Chief of the LA2 Rate Filing Bureau, Rate Regulation Branch. Congratulations to Ashok Viswanathan, who is now the Rookie of the Year 2013. On April 24, 2013, Joel Laucher, Deputy Commissioner of the Rate Regulation Branch, conducted a very informative seminar on Personal Auto Training. ■

Editor's Note: Thank you to Linda, Polly and Greg for submitting state chapter updates. If your state chapter is holding a meeting or if something occurs that involves an IRES member in your state, please let us know at TheRegulator@go-ires.org. We will include it in the next issue.

New Members

Welcome!

The following members have joined IRES since the last issue of *The Regulator*®. Visit the online member directory to learn more about them—and please join us in welcoming them!

GENERAL MEMBERS

- ★ Abdul Akhand
- ★ Janet Cheng
- ★ LeeAnne W. Creevy, MCM
- ★ David Dachs, MCM
- ★ Ventura De La Rosa III
- ★ Jennifer Frederick, MCM
- ★ Carol Frye
- ★ Mark Griggs
- ★ Douglas Hartz
- ★ Pamela Johnson
- ★ Jose Joseph, AIE
- ★ Jonathan Landry

- ★ Wayne Longmore
- ★ James Morris, AIE
- ★ Matt Odle
- ★ Sandra J. Olson, MCM
- ★ John Raymond
- ★ Michael Ricker
- ★ Danielle Rogacki
- ★ Steve Schelin
- ★ Gerry Smith
- ★ James A. Vanden Branden, CPA
- ★ Tony D. Venturella
- ★ Ashok Viswanathan
- ★ Kelly West
- ★ James Young, CPCU, AIM, AIC,

HONORARY MEMBERS

- ★ RaymondG. Farmer
- ★ Nick Gerhart
- ★ Todd E. Kiser
- ★ Angela Weyne Roig

SUSTAINING MEMBERS

- ★ Janette Adair, MCM
- ★ Kyle Belvill, MCM
- ★ Robin S. Coe
- ★ Stacy Coleman
- ★ Deborah T. Grantham, MCM
- ★ Stephanie L. Hufford
- ★ Kori Johanson, MCM
- ★ Patricia Kraven
- ★ Michele MacKenzie
- ★ Monica D. Milner, MCM
- ★ Mary Quell
- ★ Ian Saiz
- ★ Lanie Schleef, MCM
- ★ Kim Sliva
- ★ Beth Tacey
- ★ Mary Tresnak, MCM
- ★ Jimmy L. Whitt, MCM
- ★ Joseph Wilson

New Designees

Congratulations!

The following members have received their Accredited Insurance Examiner (AIE™), Certified Insurance Examiner (CIE™), Certified Insurance Consumer Service Representative (CICSR), or Market Conduct Management (MCM™) designation since the last issue of *The Regulator*®.

Please join us in congratulating them!

AIE™

- ★ Mary Masi, AIE
- ★ Grant Shintaku, AIE
- ★ James Morris, AIE
- ★ Jose Joseph, AIE

CIE™

- ★ Robert A. Parsons, CIE, MCM, CICSR

- ★ Cynthia A. Wood, CIE, MCM
- ★ Joanne S. Bennett, CIE, CPCU

MCM™

- ★ Janette Adair, MCM
- ★ Michael D. Alexander, MCM
- ★ Becky Areheart, MCM
- ★ Michael Bailes, MCM, SC
- ★ Frank Bayless, MCM
- ★ Kathleen Belanger, MCM, NH
- ★ Larissa A. Blevins, MCM
- ★ John E. Boehmler, MCM
- ★ Nancy M. Bogner, MCM
- ★ Melissa Camp, MCM, CIA
- ★ David Dachs, MCM
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- ★ Jennifer Frederick, MCM
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- ★ Deborah T. Grantham, MCM
- ★ Sandra Halladay, MCM, UT
- ★ John K. Hemstad, MCM, NM
- ★ Denise Lamy, AIE, MCM, CPCU, NH
- ★ Jonathan Landry, MCM
- ★ Joy Little, MCM, CPA, CFE, Unaffiliated
- ★ Pamela McKenzie, MCM, AIP, AIS, AINS
- ★ Monica D. Milner, MCM
- ★ Aimee Mitrogogos, MCM
- ★ Nicolas S. Morris, MCM
- ★ Marcian Mortimer, MCM
- ★ Wendy Nesmith, MCM
- ★ Connie S. Nowland, MCM, UT
- ★ LaChelle R. Olive Simmons, MCM
- ★ Sandra J. Olson, MCM, WI



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To submit articles, photographs, or calendar items, contact: IRES, 1821 University Ave W, Ste S256, St. Paul, MN 55104; email TheRegulator@go-ires.org; phone 651-917-6250; fax 651-917-1835.

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CONTRIBUTORS

Scott Bryson
Polly Chan
Benjamin Chynsky
Linda Gonzales
Alan Gutierrez-Arana
Mark Hooker
Leslie Krier
Jason Kurtz
Molly E. Lang
Greg Lee
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