

Draft Pending Adoption

Attachment --
Market Regulation and Consumer Affairs (D) Committee
12/15/22

Draft: 12/1/22

Market Regulation Certification (D) Working Group
Virtual Meeting (*in lieu of meeting at the 2022 Fall National Meeting*)
November 28, 2022

The Market Regulation Certification (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met Nov. 28, 2022. The following Working Group members participated: Russell Toal, Chair (NM); John Haworth, Vice Chair (WA); Lori K. Wing-Heier represented by Sarah Bailey (AK); Alan McClain represented by Crystal Phelps (AR); Erica Weyhenmeyer (IL); Kathleen A. Birrane represented by Mary Kwei (MD); Chlora Lindley-Myers and Jo LeDuc (MO); Mike Causey represented by Tracy Biehn (NC); Martin Swanson (NE); Marlene Caride represented by Erin Porter (NJ); Judith L. French represented by Rodney Beetch (OH); Glen Mulready represented by Landon Hubbart and Shelly Scott (OK); Andrew R. Stolfi represented by Colette Hittner (OR); Michael Humphreys represented by David Buono and Gary Jones (PA); Tanji J. Northrup (UT); Don Beatty, Katie Johnson, and Julie Fairbanks (VA); Kevin Gaffney represented by Karla Nuissl (VT); and Bill Cole (WY).

1. Adopted its Oct. 27 Minutes

Superintendent Toal said the Working Group met Oct. 27 and took the following action: 1) heard an update on the revisions to the Market Regulation Certification Program requirements; and 2) discussed revisions to the implementation plan.

Haworth made a motion, seconded by Northrup, to adopt the Working Group's Oct. 27 minutes (Attachment **A**). The motion passed unanimously.

2. Reviewed the Pilot Program Suggested Revisions to the Market Regulation Certification Program

Haworth said the drafting group met three times since the last Working Group meeting. He said the drafting group has completed going through the requirements. During its last meeting on Nov. 21, it completed the review of the scoring matrix to ensure it aligns with the requirements' guidelines, measurements, and checklists. Haworth said the drafting group will meet one more time on Dec. 5 to finish its work.

Haworth said the revisions were primarily in line with recommendations received by the jurisdictions that piloted the Market Regulation Certification Program. However, the drafting group also came up with some revisions it felt were important.

Haworth said among the revisions and suggestions are:

- 1) The drafting group added an "Objective" and a "Measurement" section to each requirement. Much of the redline is simply cutting paragraphs from the "Guidelines" section to the new sections.
- 2) On requirements 3 and 4, the drafting group clarified that requirement 3 measures staffing resources, and requirement 4 measures staffing qualifications.
- 3) Recognizing that employees often have multiple responsibilities, the drafting group changed "full-time employee" to "full-time equivalent employee."

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- 4) The drafting group believes the requirement 4 measurements of “unqualified pass” and “provisional pass” create confusion. The drafting group will be asking the Working Group to decide whether those measurements should be replaced with a simple description of what is required to pass.
- 5) The drafting group will also be proposing to the Working Group that requirements 6 and 11 should be merged. Requirement 6 concerns collaboration, and requirement 11 concerns the Market Actions (D) Working Group’s national analysis process. Because national analysis is a collaborative process, the drafting group believes it should be included with requirement 6. Also, because the national analysis process itself changes frequently, as the Working Group tries to make it more effective, it should not be its own requirement within the Market Regulation Certification Program.
- 6) For requirement 7 regarding the Market Conduct Annual Statement (MCAS), the drafting group removed question 7c about requiring companies to file using a format acceptable to the NAIC. There are really no alternatives.
- 7) Requirement 8 concerns electronic data entry with the NAIC. The drafting group will be asking the Market Regulation Certification (D) Working Group to consider simplifying the requirement to only the actual submission of Complaints Database System (CDS), Regulatory Information Retrieval System (RIRS), and Market Actions Tracking System (MATS) data to the NAIC. The drafting group will be suggesting that the timeliness of the submissions be moved from the requirement itself to the checklist and measurement sections of the requirement.
- 8) For requirement 8, the drafting group will be asking the Working Group to consider building in tolerances (e.g., a jurisdiction could fulfill the requirement if it submits data in a timely manner 75% of the time).
- 9) In requirement 10 regarding Collaborative Action Designees (CADs), the drafting group will be asking that the Working Group alter the language of the requirement slightly to make it clear that the CAD needs to attend only 50% of the Market Actions (D) Working Group meetings they are eligible to attend, because there are Working Group meetings that are only open to the Working Group members.
- 10) On the scoring matrix, the drafting group inserted the revised checklist questions and changed some of the red, yellow, and green scoring to match the language in the requirements.

Haworth said the drafting group plans to have the finalized redline version of the Market Regulation Certification Program requirements completed and exposed prior to the next Market Regulation Certification (D) Working Group meeting. He said the scoring matrix will have to be re-considered for adoption since the drafting group is recommending several changes to it based on the review of the requirements.

Superintendent Toal thanked Haworth and the members of the drafting group for all their hard work.

3. Reviewed the Market Regulation Certification Program Implementation Plan

Superintendent Toal said the current redline version of the implementation plan includes the changes to the three-year self-certification period that the Working Group adopted in September. He thanked Haworth for leading the discussion in October on the implementation of the full Market Regulation Certification Program.

Superintendent Toal said the Working Group received two sets of comments from LeDuc and Andrea Baytop (VA).

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LeDuc said she was not involved in the original drafting of the Market Regulation Certification Program in 2016, and it is not her intention to rehash anything for which a conscious decision was made when originally drafted. She said some of her comments are made to make the implementation plan more enduring and not outdated after the first few years of the Market Regulation Certification Program.

LeDuc recommended that references to “three-year” periods be removed since the intention is for the Market Regulation Certification Program to last longer than three years, and self-certification is an option available even after the Market Regulation Certification Program is fully implemented. She said some states may decide to only be provisionally certified even when full certification becomes available. She said specific years should not be referenced in the document, and they should perhaps be replaced with more generic language such as, “in the year following adoption”

LeDuc noted that in the second bullet point of the self-certification period, the responsibility to assess the self-certifications is placed on the Market Regulation and Consumer Affairs (D) Committee, but in other places, the Committee is allowed to delegate. She said the ability to delegate should be noted wherever the Committee’s responsibilities are referenced.

LeDuc said in the implementation plan, seasoned state insurance regulators are required to have market conduct examination experience. She recommended that market analysis experience also be included. She also said the document says either NAIC staff or a review team will do the verification of full certifications. She said it should be clarified who will do the verification of full certification applications.

LeDuc said the implementation plan only allows for full certifications to begin after the first three years. She said states should be able to apply for full certification as soon as the certification committee and review team is set up. Superintendent Toal agreed that full certifications should begin as soon as possible after adoption.

Fairbanks said she would speak for Baytop on Virginia’s comments. She said most of the comments are questions for clarification. She said her first suggestion supports LeDuc’s suggestion to make the dates in the document more generic.

Fairbanks said the implementation plan should define what provisional certification means and its importance on a jurisdiction’s certification status. Randy Helder (NAIC) said provisional was the descriptor used in the plan to indicate that the certification is not the same as full certification because jurisdiction can self-certify at any time, and because self-certification is not audited by a review team, full certification would carry more weight.

Fairbanks asked if a jurisdiction would have to submit self-certification every year during the initial three-year period, even if it would already qualify for full certification. Helder said it would per bullet point 2. He said full certification would not be available until a certification committee and review team are set up. Fairbanks said a jurisdiction should be able to apply for full certification prior to the third year since there is no clear benefit of doing self-certification three times if the jurisdiction already appears to be fully certified.

Fairbanks noted that the implementation plan does not provide a timeline for the Committee to finish assessing self-certifications. Helder said the Committee would accept the jurisdiction’s word if the jurisdiction says it meets the certification requirements and decides to self-certify. Fairbanks said there should be more clarity on how the Committee will treat full certifications and provisional certifications.

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Fairbanks said the implementation plan does not state if and how results of the reviews would be communicated to the jurisdictions. She recommended that jurisdictions receive feedback from the Committee review before the full certification is due two weeks before Spring National Meeting. She said this allows jurisdictions to determine if they should apply for full certification or continue with self-certification. She asked if there would be a list of provisionally and fully certified jurisdictions. Helder said there would likely be a list, and it would probably be public.

Fairbanks said in year one, the implementation plan says the self-certifications are submitted to NAIC staff; however, in years two and three, the self-certification is submitted to the Committee. Helder said this was inadvertent; it is likely that all self-certifications would come through NAIC staff on behalf of the Committee.

Fairbanks recommended that changes to the implementation plan should be included in the feedback that jurisdictions can provide to the Working Group.

Fairbanks noted that jurisdictions would submit full certification applications prior to the Spring National Meeting, while self-certifications are submitted two weeks prior to the Fall National Meeting. She asked if this is to allow jurisdictions that fail full certification to still apply for self-certification. Helder said it was written this way because it is expected that full-certification reviews will take considerably longer than self-certifications, but the ability to self-certify is also a benefit of the timing.

Fairbanks asked if it is the intent that full certification uses the same self-certification criteria as the three-year self-certification program. Helder said they both rely on the same set of requirements and measurements.

Fairbanks asked if the application for full certification and the self-assessment audit have been drafted. Helder said the full-certification application has not been drafted, but the annual self-assessment audit would be the checklist and scoring matrix.

Fairbanks recommended that the self-assessment be completed every two years after full certification is achieved, instead of every year, or the submission of a self-assessment halfway through the five-year period, similar to financial accreditation.

Fairbanks noted that it may take more than five years for all initial full-certification applications to be reviewed, depending on when the jurisdictions start to apply, and it is not clear what part of the process from the three-year self-certification would apply to full-certification. She recommended that because no more than 12 reviews are conducted each year, all jurisdictions that apply for full certification should be provisionally certified by the Committee until their application for full certification is reviewed and a decision on the application is made by the Committee.

Superintendent Toal asked LeDuc, Fairbanks, Baytop, and Haworth to work together to coordinate their suggested revisions and prepare a redlined implementation plan by Dec. 5. He said the revised implementation plan will be circulated to the Working Group to conduct an e-vote prior to the Fall National Meeting on whether to adopt it.

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

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