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CALIFORNIA INSURANCE COMMISSIONER

June 27, 2022

Superintendent Russell Toal, Chair
Market Regulation Certification (D) Working Group
c/o Randy Helder, Assistant Director of Market Regulation
NAIC
1100 Walnut Street, Suite 1500
Kansas City, Missouri

Re: Market Regulation Certification Program (“the Program”)

Dear Superintendent Toal and Members of the Working Group:

As the working group continues its work on development of the voluntary Market Regulation Certification program, I appreciate having the opportunity to provide comments and suggestions for potential revisions for your consideration. I made a number of comments similar to what I will be presenting here at earlier points in the process, when it was still uncertain as to how a jurisdiction would be “graded”, so to speak. Some of those may require repeating here, but within the context of the Red/Yellow/Green matrix on scoring (“scoring matrix”) that has now been made available.

The scoring matrix does place more specific definition around what items on the checklist are mandatory for a jurisdiction to have to “pass”, and makes better distinction of those items that will be more impactful on a jurisdiction’s score versus items that are less crucial. California appreciates the additional specificity. However, there are some areas in which the scoring matrix conflicts with items that are described in the narrative Guidelines in terms of evaluating whether a jurisdiction passes individual Requirements, and there is no indication of what constitutes a passing score overall. My comments will focus most closely on those areas, and will point out other more minor discrepancies that require correction. I will go in Requirement order.

Requirement 1

The scoring matrix identifies Question 1.a. on the Checklist as being mandatory (i.e., it is coded red), and Question 1.b. as yellow. The narrative Guidelines do not align with these criteria. The first paragraph on page 4 under the Guidelines heading reads as follows:

“To evaluate whether your jurisdiction “passes” Requirement 1, the jurisdiction must have authority to coordinate with other jurisdictions. If the jurisdiction does not have the authority to coordinate with other jurisdictions, it will not pass this requirement. Additionally, a jurisdiction should have the authority to conduct analysis, examinations and enforcement. Requirements to have reasonable cause to conduct an examination does not negatively impact the evaluation. Ability to perform these items without the ability to perform continuum actions should be considered “marginally passing but with strong recommendation for additional authority.”

The passage I have highlighted yellow conflicts with what the scoring matrix says is mandatory (a “yes” answer to 1.a. on the Checklist – whether the jurisdiction has the general authority to collect and analyze information whenever it is deemed necessary). We recommend redrafting the Guidelines to replace these two sentences with the following, “To evaluate whether your jurisdiction “passes” Requirement 1, the jurisdiction must have general authority to collect analyze information whenever it is deemed necessary.”

Also, Question 1.b. on the Checklist asks, “Is the department’s authority broad enough to cover **these activities**? [emphasis added]”. In this question, it is not clear what activities are being asked about. Is it the collection and analysis of information (as referenced in 1.a.) or is it the activities listed in the portion of the Guidelines that I have highlighted in aqua (market analysis, exams, enforcement)? Or is it some other activities that need to be identified? Since a “yes” answer to Question 1.b. could help a state achieve a passing score overall based on its yellow coding on the scoring matrix, it would be helpful to know what activities we need to have broad enough authority to undertake. We recommend revising question 1.b. on the Checklist to specify the activities of interest to the working group.

Requirement 2

The scoring matrix identifies a “yes” answer to question 2.a. on the Checklist as being mandatory (Does the department have authority by statute, rule or other authority to utilize the *Market Regulation Handbook* or its predecessor/successor?). However, this conflicts with the narrative Guidelines, which state the following:

“To evaluate whether your jurisdiction “passes” Requirement 2, the jurisdiction must at a minimum be able to demonstrate when conducting examinations or continuum activities their use of Market Regulation Handbook review standards and related materials to the extent they are consistent with jurisdictional law...”

The concept of incorporating Market Regulation Handbook review standards and materials into exam and continuum work is reflected in Question 2.b., which the scoring matrix does not have coded as mandatory (red). If the working group thinks both having specific authority to use the Handbook and incorporating review standards found in the

Handbook in the state's market regulation work are crucial, we recommend revising the sentence in the Guidelines to say, "To evaluate whether your jurisdiction "passes" Requirement 2, the jurisdiction must have authority by state, rule, or other authority to utilize the Market Regulation Handbook, and be able to demonstrate when conducting exams or continuum activities their use of..."", and revising the scoring matrix so that Question 2.b. is coded as mandatory (red).

Requirement 3

The narrative Guidelines conflict with the scoring matrix. The scoring matrix identifies having examiners on staff or the authority and ability to contract examiners (Questions 3.d and 3.e.) as the single mandatory item, with a number of additional items identified as primary goals (3.a. – analysts on staff or contracted, 3.d.- established staffing procedures, 3.k. and 3.m. – whether the state has done any targeted exams and if not, whether the state has sufficient resources to be able to do so if necessary, 3.o. – established process for hiring contractors, 3.p. and 3.q. – appropriate oversight of contractors). However, the Guidelines state the following about what is required to pass Requirement 3:

"To evaluate whether your jurisdiction "passes" Requirement 3, the department initially should be able to respond to one of the following combinations:

- "Yes" to checklist item 3.a., item 3.d. and item 3.i.
- If the answer to Checklist item 3.a. is "Yes", and the department uses contractors to fulfill requirements of checklist item 3.d., then a "Yes" response is required for item 3.o., item 3.p., item 3.q, and 3.r"

We recommend modifying the narrative Guidelines so that they align with the scoring matrix, or vice versa. We also recommend that the working group revisit all references to checklist question numbers within other checklist questions to make sure they are referring back to the questions the working group intends, due to previous restructuring and renumbering of many of the items in this section.

Finally, I would also ask that you reconsider the comments I made in December 2019 about questions 3.c., 3.g. and 3.h in the Checklist. Those comments are displayed on the most recent Program document. Questions 3.c. and 3.h. ask for detail that is not relevant to any of the metrics for Requirement 3. 3.c. requires a breakdown of analyses performed by company type based on P&C vs. L&H and single-state vs. multi-state companies. This detail does not speak to or support whether a state has sufficient resources to carry out its market regulation duties, which is the subject of Requirement 3. 3.h. requires a list of all examiner staff and details about their educational background and work experience. This similarly does not speak to having sufficient resources on staff. If the working group thinks this information is important, it would appear to fit better under Requirement 4, which covers qualifications of staff. 3.g. asks

for information that could be relevant (number of staff compared to size of market) but doesn't quite ask for enough information to make that comparison.

Requirement 4

The questions contained in the scoring matrix do not match the questions in the Checklist for Requirement 4. The scoring matrix identifies 4.c as the only mandatory item in this section. However, the scoring matrix quotes an old version of 4.c. ("Does the department determine the composition of members of the examination team?"). Current item 4.c. in the Checklist is "does the department have a staff development program that encourages and supports educational and training pursuits..." As of the 10/14/19 revisions to the program, there is no longer a question in the Checklist about whether the department determines the composition of members of the exam team. The working group should revisit the scoring matrix and ensure it matches the questions that are currently part of the Checklist, and ensure the right item(s) are designated as mandatory or primary goals in the matrix, based on the current structure of the Requirement 4 Checklist.

Additionally, once the working group decides on which Checklist question items are mandatory vs Primary vs. supportive, I would ask that the working group also revisit the entire set of narrative Guidelines so that they align with the scoring matrix. The current Guidelines make use of an unnecessarily complex provisional vs. unqualified pass structure, and references characteristics and information needed to meet these thresholds that are not captured in the Checklist.

Requirement 5

The narrative Guidelines state, "To evaluate whether your jurisdiction "passes" Requirement 5, the jurisdiction must answer "yes" to checklist item 5.a., item 5.b., item 5.c., and item 5.d". The scoring matrix codes only items 5.a., 5.b., and 5.c. as mandatory. The working group should align the Guidelines with the scoring matrix by either coding 5.d. as red on the scoring matrix, or by editing the Guidelines so that they only require a "yes" for a., b., and c.

Requirement 6

Question 6.d. on the Checklist currently says, "If the response to item 6.a., Item 6.b., item 6.c., or item 6.d. is No, please provide a brief explanation". The reference to 6.d. within 6.d. should be deleted.

Requirement 7

The Guidelines paragraphs for Requirement 7, with the most recent 10-14-19 revision, now focus on use of MCAS data (which can be demonstrated through a variety of

analysis tasks) instead of centralized collecting of the MCAS data. Should the language of the Requirement 7 be revised to reflect this? The Requirement currently reads, “The department participates in the centralized collection of the Market Conduct Annual Statement (MCAS).”

Requirement 8

The scoring matrix does not align with the what the narrative Guidelines say “passes” Requirement 8. The Guidelines state, “To evaluate whether your jurisdiction “passes” Requirement 8, the jurisdiction must answer “Yes” to checklist item 8.a and item 8.b, unless there is an applicable explanation provided in 8.f....” However, the scoring matrix only shows 8.a. as being mandatory.

Also, the scoring matrix continues to use language in item 8.e. regarding entry into MATS at least 45 days before the start of the examination. This language no longer appears in Checklist item 8.e.

Requirement 9

The scoring matrix does not identify any of the Checklist items for Requirement 9 as being mandatory. However, the narrative Guidelines say, “To evaluate whether your jurisdiction “passes” Requirement 9, the jurisdiction must, at a minimum, be able to answer “Yes” to questions 9.a. and 9.b.” The working group should align the scoring matrix and the Guidelines.

I would also ask that the working group reconsider previous comments I made about the Guidelines stating that the jurisdiction must also be able to accurately document a listing of other market conduct and market analysis working groups and/or task forces it participates in or monitors. If a jurisdiction is to be judged in part upon participation in other groups, those should be specified. If participation on other market regulation groups isn’t mandatory but is instead “nice to have”, the Guidelines should be rewritten so that it does not state this is mandatory.

Requirement 10

The scoring matrix does not align with the Guidelines for Requirement 10. The Guidelines say, “To evaluate whether your jurisdiction passes Requirement 10, the jurisdiction must answer “yes” to checklist item 10.a., item 10.b., item 10.c., and item 10.d.” The scoring matrix identifies only 10.a. and 10.b. as mandatory. The working group should revise either the scoring matrix or the Guidelines so that they align. Additionally, California agrees with Maryland’s comment that “or their designee” be added to item 10.d.

Requirement 12

The scoring matrix and the Guidelines do not align. The Guidelines say that a jurisdiction must answer “Yes” to all four Checklist items, but the scoring matrix does not make any of the items mandatory. The working group should revise either the Guidelines or the scoring matrix so that the two align. I also note that the scoring matrix is missing the question about whether the MAC monitors and communicates with other departments on the NAIC bulletin boards (item 12.d on the Checklist).

Points to Pass Overall Not Specified

Neither the program Guidelines nor the scoring matrix specify how many points total will be required overall to qualify for certification. California recommends that the working group work on this issue and expose its plans on this issue so that other interested regulators and interested parties can comment on it before the program and its various materials are adopted by the working group and sent on for letter committee consideration.

Proposal for Implementation

The Voluntary Certification Program has undergone significant revision to content and structure since the Proposal for Implementation was first drafted perhaps as early as 2015, and the make up of the working group has also substantially changed since that time. California recommends that the current working group discuss its vision for how this program should be implemented and administered, and draft an implementation proposal that fits that vision. If the working group members decide the current proposal is consistent with their vision, at a minimum some amendments are needed to bring dates and timelines stated within the proposal to current time.

Thank you for allowing us the continued opportunity to make comments and provide input on this Program as it develops. If you have any questions on any of these suggestions, please feel free to contact me.

Sincerely,



Pamela J. O'Connell, CPCU
Chief, Market Conduct Division
California Department of Insurance