

January 3, 2020

John Haworth, Chair  
Market Regulation Certification (D) Working Group  
NAIC Central Office  
1100 Walnut, Suite 1500  
Kansas City, MO 64106-2197

Attn: Randy Helder, Assistant Director Market Regulation

VIA Electronic Mail: rhelder@naic.org

RE: Pilot Recommendations to Market Regulation Certification Program

Dear Mr. Haworth:

The American Property Casualty Insurance Association (APCIA)<sup>1</sup> appreciates the opportunity to provide feedback on the Pilot Recommendations to Market Regulation Certification Program (Program).

#### General Comments

As a threshold matter, while we note that a stated purpose of the Program is to “promote consistency while respecting individual jurisdictional differences and circumstances by promoting the use of NAIC resources,” the Program and the proposed revisions fall short of achieving consistency in exam and analysis processes. For instance, Requirement 2 seems to permit complete state autonomy on adhering to the *Market Regulation Handbook* by simply requiring jurisdictions to demonstrate it has followed its own established policies and procedures for adopting processes that deviate. While APCIA does not question a state’s need or desire to deviate, we question the elimination of a legal review and concurrence when a decision is made to do so. The Program overall allows for so many jurisdictional differences or interpretations that the likely result is any jurisdiction “passing,” but with no advancement toward uniformity/consistency.

There are no requirements included in the Program to protect insurers such as requiring states to provide budgets, time frames for review and confidential feedback mechanisms when contract examiners are used. These issues were very much a part of initial discussions on the Program, but are not included.

There are several instances in the Program where ratings are characterized as “pass,” “unqualified pass,” and “provisional pass.” Nowhere in the Program is there a rating of “fail.” Is this because the checklists are only intended to be submitted by jurisdictions that satisfy each requirement, and, therefore, there is no need to report a failure of any requirement? Or, in the alternative, is it intended that every jurisdiction will be passed and certified to some extent?

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<sup>1</sup> Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCIA) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCIA represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCIA members represent all sizes, structures, and regions, protecting families, communities, and businesses in the U.S. and across the globe.

### Requirement 3: Sufficient Qualified State and Resources

APCIA is troubled by the inclusion of a “jurisdiction’s premium volume for any and all examinations or actions written in the most recently completed year.” This implies that a jurisdiction is being rated or measured by the premium volume of the companies it examines, which could skew exams to larger insurers in order to increase this number, rather than concentrating on companies based on potential for problems or misconduct.

APCIA questions the deletion of the requirement to provide a separate attachment discussing “the state’s statutory requirement regarding the trigger for market conduct examinations and/or other continuum type activities.” We would be interested in the reasoning behind this deletion.

Also, “goals” in what is now 3j has been changed to “policies and procedures.” There is some confusion over how one measures the “achievement of such policies and procedures.” Perhaps a wording change is necessary and “achievement” should be “adherence?”

APCIA suggests Requirement 3 and the associated checklists include reference to system and cyber security standards for both staff and contract examiners. In addition, there should be standards for engaging contractors, including RFP and hiring processes to ensure bidding and cost protections are built in.

### Requirement 6: Collaboration with Other Jurisdictions

The checklist for Requirement 6 asks if the department policies and procedures are consistent with the Market Actions (D) Working Group Policies and Procedures. APCIA is troubled by a Program that references completely opaque policies and procedures. As industry has no access to the MAWG policies and procedures, it is impossible to support this Requirement.

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Thank you for the opportunity to comment. If you have any questions or would like to discuss any of these recommendations further, please let us know.

Respectfully submitted,

Lisa Brown