



**RICARDO LARA**  
CALIFORNIA INSURANCE COMMISSIONER

December 4, 2019

Mr. John Haworth, 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: Voluntary Market Regulation Certification Program Self-Assessment  
Guidelines, Checklist Tool and Implementation Plan ("the Program") – Revisions  
Recommended by Pilot Jurisdictions

Dear Mr. Haworth and Members of the Working Group:

Thank you for the opportunity to comment on the Program and the proposed revisions to it following completion of the pilot project. Additionally, California would like to thank those volunteer pilot jurisdictions for the time they put towards evaluating the Program and making suggestions stemming from their experience.

California continues to consider whether it would participate in a voluntary market regulation certification program. In our view, the 10-14-19 version is an improvement over earlier iterations of the program, particularly the reorganization to position the Checklist items within each Requirement section to which they apply. However, we find there continues to be areas where the standards a jurisdiction must meet in order to "pass" are unclear. Having additional clarification of those items would assist with our decision making with regard to the program.

California offers the following comments and suggested additional amendments for the working group's consideration:

Requirement 1 – Department's Authority

The guidelines are not clear as to what standards a jurisdiction must meet in order to pass this Requirement.

In the fourth paragraph under the Guidelines heading for this Requirement, the only item described as something a jurisdiction "must" have in order to pass is the authority to coordinate with other jurisdictions. The paragraph goes on to say a jurisdiction "should" have the authority to conduct analysis, exams and enforcement but does not say it must. It then describes a jurisdiction with the "ability" to conduct analysis, exams and enforcement but not the "ability" to perform continuum actions as marginally

passing. It is not clear whether the word “ability” in this sentence is really intended to mean “authority”. If it is not intended to mean “authority”, how does the working group propose to measure a jurisdiction’s ability to do continuums? Additionally, it is not clear how a jurisdiction’s authority and/or ability to conduct analysis, exams, enforcement and continuum actions relates to whether the jurisdiction has the authority to collaborate with other states – the single sated “must have” according to the Guidelines. The Guidelines should be precise with respect to what is required for a jurisdiction to pass this aspect of the Requirement.

Finally, while the Requirement itself says that part of the evaluation pertains to whether the jurisdiction has adopted or is in the process of adopting key consumer protection laws and the Guidelines list a series of key laws a jurisdiction should have, the Checklist collects no information regarding the reporting jurisdiction’s consumer protection laws. It is therefore unclear how it will be determined whether a jurisdiction meets this portion of the Requirement.

#### Requirement 2 – Department’s Authority Regarding the *Market Regulation Handbook*

If the items in the second paragraph under the Guidelines heading are required in order for a jurisdiction to pass this Requirement, they should be incorporated into the third paragraph that begins with the Phrase, “To evaluate whether your jurisdiction “passes” Requirement 2 ...” Otherwise, it is not clear what the impact would be for a jurisdiction that cannot demonstrate that it followed its own established procedures for deviating from the *Handbook* when such a decision to do so is made.

#### Requirement 3 – Department Staffing

The description of what passes Requirement 3 is contained in the two bullet points near the bottom of page 7. Because the Checklist has now been modified to create one question about staff examiners (3.d.) and a separate question about use of contract examiners (3.e.), the second bullet point needs to be revised to account for the new structure, and for the new lettering of all of the other questions that follow the current 3.e. It appears the original intent of these bullet points (when 3.d. addressed both staff and contract examiners) was to say if a jurisdiction uses contracted examiners for exams and continuums, then additional criteria surrounding contractor hiring practices and oversight must be met in order to pass. The second bullet point no longer tracks in this manner due to the changes to lettering.

With regard to the Checklist for Requirement 3, we have a number of comments and questions:

Item 3.c. – What is the reasoning behind separating the numbers of companies upon which market analysis is performed during the year between single-state/multistate and L&H and P&C? There doesn’t appear to be any pass/fail metric tied to the mix of companies analyzed during the review period. We therefore recommend removing the additional layer of detail in order to make the self-reporting for this item less time intensive.

Items now labeled 3.i. and 3.j. – It is not clear what these are intended to measure, and what is meant by use of quantitative and subjective measurements to ascertain whether the department is “achieving its staffing policies and procedures” as stated in 3.j.. Although these items do not currently appear to impact whether a jurisdiction passes Requirement 3, it appears they could in the future, as the sentence introducing the pass criteria bullet points says the jurisdiction will initially need to have one of the two bulleted combinations. Therefore the working group should define additional items more specifically now so that jurisdictions will be clear on the standards to which they may be held in the future.

Item 3.g. – The narrative seems to say that the written premium to be entered into the table should be the combined written premium of all entities examined or subject to an action (a continuum?) during the calendar year. It is not clear how this will demonstrate that the jurisdiction has enough staff to properly oversee its market. If State XX has total premium writings of \$10 Billion in its market overall but only did one exam on an insurer with premium writings of \$5 million, comparing the \$5 million figure with the number of examiners State XX has on staff or under contract would provide no perspective on whether that examiner count is reasonable compared to the overall size of State XX’s \$10 Billion market.

Item 3.h. - This item demands a list of all examiners either on staff or contracted by name, along with specifics about their educational and work history backgrounds. This information is not relevant to whether the department has a properly sized staff or the ability to hire contractors to meet market regulation needs as stated in Requirement 3. 3.g. already asks for counts of examiners. Anything the working group determined to be relevant with regard to examiner and analyst qualifications is already addressed under Requirement 4 - Qualifications. 3.h. should therefore be deleted.

#### Requirement 4 - Qualifications

Under the structure proposed for Unqualified Pass versus Provisional Pass for the various subparts of the Requirement 4 Guidelines, a jurisdiction whose rules for hiring and establishing conditions of employment are subject to collective bargaining and specific civil service rules could only ever attain a Provisional Pass for this Requirement. In the Note to Evaluators, it says that for Provisional Pass items, progress is recommended and expected during successive reviews. It is not clear what progress the working group would expect to see a jurisdiction bound by collective bargaining to be able to make from year to year, when these items are outside the control of the department, or what the consequence would be to such a jurisdiction that is NOT able to demonstrate the desired progress.

It should also be noted that the Core Competencies section of the Market Regulation Handbook (with which a jurisdiction’s methods of ensuring qualifications of staff should be consistent, according to the wording of Requirement 4) does list and describe a number of designations and credentials that would be indicative of a high degree of proficiency in market regulation. But it also very specifically says the designations listed are not intended to be exhaustive nor is it intended for designations to be required for

qualification. California is not in favor of the current structure of the Guidelines because they set a higher standard for passing than is called for by the language of the Requirement and the Handbook.

We recommend simplifying this entire set of guidelines to eliminate the Unqualified Pass vs. Provisional Pass separation, and instead establishing clear criteria to measure whether jurisdictions have hiring processes that allow them to select applicants with appropriate education, work experience, skills and abilities to perform market regulation work (regardless of specific designations), and whether they have programs and procedures to encourage and promote professional development of staff.

#### Requirement 6 – Collaboration with Other Jurisdictions

The first line of the second paragraph under the Guidelines heading incorrectly refers to MAWG as the Market Analysis (D) WG instead of the Market Actions (D) WG.

#### Requirements 6, 7, 8

At the bottom of the Checklist for each of these Requirements, there is an un-numbered item that says it is applicable to an Interim Annual review. It says, "Have there been any changes to your requirements since last year's review. If "yes" provide an explanation." It is unclear what the phrase "your requirements" is in reference to. For each, the question should be made more specific to clarify what the jurisdiction should be reporting in the way of changes during the interim period.

#### Requirement 9 – Participation in all NAIC Market Conduct and Market Analysis Working Groups

The Guidelines are not entirely clear with respect to expectations for participation in working groups and task forces beyond Market Analysis Procedures WG and Market Conduct Exam Standards WG. In the fourth paragraph under the Guidelines heading which begins with, "To evaluate whether your jurisdiction passes Requirement 9", the sentence lists three things the jurisdiction must be able to do at a minimum to pass – 1) answer "yes" to 9.a. and 9.b., 2) document who in the department monitors or participates in the Market Analysis Procedures and MC Exam Standards WGs, and 3) "accurately document" a list of any other market analysis or market conduct related working groups or task forces the jurisdiction participates in or monitors. This third element conflicts with the last paragraph under the Guidelines heading that says it is at the jurisdiction's discretion to participate in or monitor MIS (D) Task Force or any other working group or task force that reports to D Committee. The Working Group should modify the guidelines to eliminate this conflict. Either make participation in or monitoring of these other group's mandatory, or discuss them in the guidelines as something the jurisdiction should consider being involved in as a best practice.

#### Requirement 11 – Collaboration – National Analysis

We recommend modifying the Guidelines and the criteria for what passes this Requirement to mirror the current National Analysis Program process (with the recognition that this process could change in the future, in which case the Guidelines for this Requirement will be re-evaluated and modified as needed). My understanding is

that the current structure of the National Analysis Program calls for a Lead for each line of business (currently 6 lines) that is responsible for the selection process, individual jurisdictions to perform analysis on selected companies, and a summarizing jurisdiction that is responsible for compiling the results of all individual state analysis for a single company. A state currently gets no credit under the certification program for acting as a summarizing jurisdiction.

The number of Lead spots is very limited (6 per year) compared the total number of jurisdictions that may wish to pursue certification (56). This limited number of Lead spots will not allow all 56 jurisdictions to have the opportunity to take one every other year as needed to pass this Requirement.

To address this problem, I recommend restructuring this Requirement and its corresponding Guidelines and Checklist items to allow a state to pass this requirement if it reviews national analysis data on an annual basis (i.e., performs analysis on at least one company) AND on an every-other year basis either acts as a Lead responsible for the selection process or acts as a summarizing jurisdiction.

#### Proposal for Implementation

For this section the years identified throughout the document need to be updated to reflect a current timeline. Instead of listing specific years, the Working Group may want to consider more generic description (i.e., "two weeks before the Fall National Meeting of the first year following adoption by the membership", etc.) since it is not known when the D Committee and the Plenary membership may ultimately adopt the program.

Thank you again for the opportunity to provide comments on the proposed certification program, and for considering our input.

Sincerely,



Pam O'Connell, Chief  
Market Conduct Division  
California Department of Insurance

