

RESPONSE TO NASAA MODEL RULE

December 7, 2007

Melanie Lubin
OAG, Securities Division
200 Saint Paul Place
Baltimore, Maryland 21202-2020

Rex Staples
NASAA
750 First Street, NE Suite 1140
Washington, DC 20002

Re: Proposed Adoption of a NASAA Model Rule on the Use of Senior-Specific
Certifications and Professional Designations

Dear Ms Lubin and Mr. Staples:

The National Organization for Competency Assurance (NOCA) appreciates the opportunity to comment on the NASAA Model Rule on the Use of Senior-Specific Certifications and Professional Designations. This important issue was brought to NOCA's attention last year when the Securities Division of the Massachusetts Secretary of the Commonwealth requested public comment on its proposal to bring further regulatory oversight to broker-dealer agents and investment advisor representatives working with seniors. See Attachment 1 for our comments on the legislation.

NOCA supports this additional oversight as a means to provide an added layer of consumer protection to seniors. In general, NOCA is supportive of proposals that would prohibit the use of credentials or professional designations purporting to indicate special expertise or training in advising or servicing senior investors, except where such credentials or designations have been developed and are administered in a manner that is consistent with nationally accepted standards such as those developed by the National Commission for Certifying Agencies (NCCA), the standards and accrediting division of NOCA. In addition, NOCA supports third-party verification through accreditation indicating that the credentialing program is occupationally relevant and provides a credible measure of competence resulting in increased health, welfare, and safety of the public. In this way, reputable credentialing organizations help further serve the public interest— most directly, employers, consumers, government regulators, and business partners of the credential holder. NOCA again supported this concept in its written testimony to the United States Senate Special Committee on Aging hearing, *Advising Seniors About Their Money: Who Is Qualified - and Who Is Not?* (Attachment 2).

Comments on Draft Model Rule

1. Terminology

It is critical to ensure that model language is clear, concise and uses generally accepted definitions for the terms used in the model language, particularly when attempting to distinguish a certification from a certificate program. Consideration should be given to referencing *NOCA's Basic Guide to Credentialing Terminology (2006)*¹. Certification terms relevant to the model language that may prove instructive to NASAA include:

Certification-

1. *A process, often voluntary, by which individuals who have demonstrated the level of knowledge and skill required in the profession, occupation, role, or skill are identified to the public and other stakeholders.*
2. *The voluntary process by which a non-governmental entity grants a time-limited recognition and use of a credential to an individual after verifying that he or she has met predetermined and standardized criteria. It is the vehicle that a profession or occupation uses to differentiate among its members, using standards, sometimes developed through a consensus-driven process, based on existing legal and psychometric requirements.*

Certificate program-

*A training program on a topic for which participants receive a certificate after attendance and/or completion of the coursework. Some programs also require successful demonstration of attainment of the course objectives. One who completes a professional certificate program is known as a **certificate holder** [emphasis in original]. A credential is usually NOT granted at the completion of a certificate program. There are three types of certificate programs: **knowledge-based certificate, curriculum based certificate, and certificate of attendance or participation** [emphasis in original].*

Certificate of attendance or participation-

*Issued after an individual attends or participates in a particular meeting or course. Usually, there is no knowledge assessed prior to issuing this type of certificate. A certificate of attendance or participation is **not a credential** [emphasis in original], because the recipients are not required to demonstrate competence according to professional or trade standards.*

Credentialing-

The umbrella term that includes the concepts of accreditation, licensure, registration, and professional certification. Credentialing can establish criteria for fairness, quality, competence, and/or safety for professional services provided by authorized individuals, for products, or for educational endeavors. Credentialing is the process by which an entity, authorized and qualified to do so, grants formal recognition to, or records the recognition status of individuals, organizations, institutions, programs, processes, services, or products that meet predetermined and standardized criteria.

¹ Available at <http://noqa.org/Resources/Publications/tabid/77/Default.aspx>

If there is not a clear understanding of the terms being used, misunderstanding may occur in interpreting the model policy after its adoption. NOCA recognized the potential for confusion concerning the use of these conformity assessment terms and brought together a group in January of 2007 to develop a document that outlines the features of a certification program and a certificate program (Attachment 3). In relation to the NASAA model rule, it is important to understand the following:

- Certification programs:
 - are developed based on the knowledge and skill requirements for a specific occupation.
 - are time-limited and require some form of ongoing re-certification process.
 - utilize assessment tools developed with a high level of psychometric rigor.
 - have in place disciplinary policies in place.
- *Certificate* programs
 - typically based on defined learning objectives for a given course.
 - not typically time-limited.
 - should not grant the right for an individual to use a credential with their name.

In developing the proposed model language, NASAA should determine which form(s) of conformity assessment best fit the intent of the proposed model rule. Both certification and certificate programs provide value; however, that value is based on the purpose. As an example, item 5 of the proposed language states that the rule does not apply to an “academic program at an institution of higher education that has been accredited by an organization that is on the United States Department of Education list...” As noted in the item, these types of programs lead to a degree or certificate, not a certification. This could cause confusion since accreditation of a certification program and accreditation of an educational program that leads to a certificate are different. The focus of a certificate program is typically on the educational component while the emphasis of certification is on verification of knowledge and skills required to perform a given occupation through the use of a valid and reliable assessment tool.

In addition, the NASAA needs to consider if the intent of the model rule is to provide assurance that a certificant continues to verify his/her knowledge and skills through some form of re-certification. The diploma/certificate programs referenced in item 5 would not typically require any form of recertification.

As a point of information, NOCA has recently initiated a project to develop national standards defining minimum quality systems for assessment-based certificate programs. Once completed, the standard will be available for use by accrediting bodies to determine a certificate organizations’ compliance. The foundation of the standard will be the attached features document (Attachment 3).

2. Item Clarification

- a. Item 1(d)(i)-(iv)
Consider clarifying the "appears to" language to read "would appear to the reasonable person". The "reasonable person" standard is the typical

legal standard that would likely be applied in evaluating whether a designation would be considered deceptive.

- b. Item 2:
Rewrite as follows:

For the purpose of this rule, a designating ~~certifying~~ certification organization is presumed to ~~be an educational organization and to possess~~ ... when such designating or ~~certifying~~ certification organizations have been accredited by:

Rationale: Certification organizations may offer educational programs however, it is not required. In addition, NCCA Standards prohibit a certification organization from requiring candidates to complete the organization's educational programs for certification eligibility.

- c. Item 3(b):
Add "that would lead a reasonable person to infer that a person has special expertise in advising seniors in financial matters" at the end.

3. Implementation Considerations

Item 2 references a requirement for accreditation of certification organizations. The National Commission for Certifying Agencies (NCCA) is the accreditation division of NOCA. The NCCA has been involved with the implementation of the Massachusetts regulations and has gained valuable experience that might be of assistance in developing and implementing the proposed NASAA model rule. A key issue is that the anticipated length of time to prepare for, apply and ultimately become accredited can vary depending on the status of the specific programs.

Organizations that are running programs based on the rigor specified in the NCCA *Standards* should anticipate the process, after submittal of their application, taking at least 6 months to achieve accreditation. In addition, the accreditation process is a highly credible and thorough process that requires a significant amount of time in preparing material and documentation to be submitted with the application.

Experience to date has shown that some organizations have been operating what are closer to certificate programs rather than certification programs, thereby requiring a significant amount of time to develop a certification program prior to even considering submitting an application to NCCA for review. If psychometric rigor has not been utilized during the development of a job analysis, item writing, and validation/reliability analysis, an organization could require a year or more before being prepared to apply for accreditation.

About the National Organization for Competency Assurance (NOCA)

NOCA, the oldest and largest organization representing certification agencies, testing companies, consulting firms and individuals involved in professional certification, was created in 1977 as the National Commission for Health Certifying Agencies (NCHCA) with federal funding from the Department of Health and Human Services. Its mission was to develop standards for quality certification in the allied health fields and to accredit

organizations that met those standards. With the growing use of certification in other fields, NCHCA's leaders recognized that what is essential for credible certification of individuals in the healthcare sector is equally essential for other sectors. With this vision, NCHCA evolved into the National Organization for Competency Assurance.

NOCA is a non-profit, 501(c) (3) organization, committed to serving the public interest by ensuring adherence to standards that ensure the highest competence of certification programs. NOCA's membership is composed of more than 600 organizations responsible for certifying specific skill sets and knowledge bases of professions and occupations at the national and international level. Through certification, NOCA members represent more than 15 million individuals around the world and include certification programs of some 150 professions and occupations, including 60 healthcare professions. NOCA members certify individual skills in fields as diverse as construction, healthcare, automotive, and finance. A current roster of NOCA members is included in the appendix.

NOCA's mission is to promote excellence in competency assurance for individuals in all occupations and professions. No other organization has the presence in or commits the resources to the field of certification. NOCA is proud of its position as the international leader in competency assurance for certification programs, as well as its role in promoting excellence in competency assurance for practitioners in all occupations and professions.

Please feel free to contact me directly if you have any questions.

Sincerely,

Jim Kendzel, MPH, SPHR
Executive Director, NOCA