

EXAM 6 – UNITED STATES, FALL 2014

1. (2.5 points)

a. (0.5 point)

Briefly describe two consequences of the McCarran-Ferguson Act.

b. (0.5 point)

Briefly describe two key questions related to insurance regulation that were not addressed by Congress in the McCarran-Ferguson Act.

c. (0.5 point)

Briefly describe two NAIC responses to the McCarran-Ferguson Act.

d. (1 point)

For each of the following scenarios, explain whether the action would be legal in the insurance regulatory environment in 2014.

- A large number of independent insurance companies pool data on loss experience and use it to determine the loss costs underlying the rates for all of these companies.
- The same group of companies threatens to cancel contracts with agents who do business with any insurance company that does not use these loss costs.

## SAMPLE ANSWERS AND EXAMINER'S REPORT

<b>QUESTION 1</b>	
<b>TOTAL POINT VALUE: 2.5</b>	<b>LEARNING OBJECTIVE: A1, A4</b>
<b>SAMPLE ANSWERS</b>	
<b>Part a: 0.5 point</b>	
<ul style="list-style-type: none"> <li>• Affirmed state regulation for the business of insurance</li> <li>• Affirmed state taxation for the business of insurance</li> <li>• Staying of application of the various anti-trust acts (except Sherman) for a few years. Subsequent to that point they would apply to the extent that the state doesn't regulate such activity</li> <li>• Affirmed that boycott, coercion or intimidation that violates the Sherman Act is illegal</li> <li>• Affirmed the application to insurance of various federal laws, including the National Labor Relations, Fair Labor Standards and the Merchant Marine Act. This prevented states from controlling labor relations</li> <li>• Federal laws that apply exclusively to insurance supersede state regulation in that area</li> <li>• Allowed Bureau Rating to encourage rate adequacy and healthy competition</li> </ul>	
<b>Part b: 0.5 point</b>	
<ul style="list-style-type: none"> <li>• What did "regulated" mean?</li> <li>• What constitutes the business of insurance?</li> </ul>	
<b>Part c: 0.5 point</b>	
<ul style="list-style-type: none"> <li>• Development of model laws to prevent/limit the regulation of insurance by the federal government</li> <li>• Development of model laws to allow rate regulation by the states</li> <li>• Development of model laws to prohibit certain anti-competitive activities / behavior</li> <li>• Development of model laws to promote equitable ratemaking and ensure rates were not excessive, not unfairly discriminatory, and were adequate</li> <li>• Development of model laws and encouraged states to adopt them via accreditation program</li> </ul>	
<b>Part d: 1.0 point</b>	
<ul style="list-style-type: none"> <li>• Legal - The state laws passed following McCarran Ferguson typically allowed companies to work together to pool data to determine loss costs (generally through rating bureaus or other similar organizations). Thus, this action would be legal as long as it wasn't accompanied by further anti-competitive behavior.</li> <li>• Illegal – This type of action is specifically banned under the Sherman Act, which McCarran Ferguson indicated applied to insurance.</li> </ul>	
<b>EXAMINER'S REPORT</b>	
<b>Part a</b>	
Candidates generally performed well. Those that did not often confused McCarran-Ferguson with the Southeast Underwriters decision.	
<b>Part b</b>	
This part was challenging as it required synthesis across syllabus materials (Business of Insurance is well discussed in Porter, open questions around state regulation is more fully discussed in Wagner). Candidates often failed to address one of the two key areas.	
<b>Part c</b>	

## SAMPLE ANSWERS AND EXAMINER'S REPORT

Candidates were expected to know that the NAIC responded to McCarran-Ferguson by developing and encouraging the use of model laws at the state level to create a framework where state regulation was sufficient to limit / prevent federal regulation of insurance. Candidates could have discussed various aspects of the model laws, including their development, contents, purpose with respect to equitable ratemaking or prohibiting anti-competitive behavior, purpose with respect to preventing / limiting regulation of insurance by the federal government, or NAIC encouragement of states to adopt them.

Candidates who struggled generally either failed to identify the model laws as the NAIC response, misidentified the role of the NAIC, or provided other subsequent actions of the NAIC that were not direct responses to McCarran-Ferguson. Some candidates combined two related responses into a full response, but provided additional, redundant detail. This did not hurt the candidates' scores, but likely cost them extra time on this question.

### **Part d**

Most candidates scored well. Candidates were expected to know that pooling of data is generally allowed following McCarran-Ferguson, but that boycott remains banned under the Sherman Act. They needed to provide an argument as to why each is the case and each argument needed to include reference to the regulatory framework underlying it. However, many candidates omitted the regulatory framework from one or the other scenario.