

Top Ten Things You Need to Know about MCLE

Presented By:

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Presented at:
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San Antonio, Texas

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Gina Roers-Liemandt is the Director of MCLE and Professional Development for the American Bar Association, where she oversees a team of 20+ staff responsible for the creation of more than 300 programs, and accrediting more than 700 CLE programs in all formats (live in-person, live webcast, and on demand), across all US regulatory agencies and several international accrediting agencies to support a membership of more than 400,000 as well as non-member attorneys across the US and world. As a nationally recognized expert on the rules and regulations regarding MCLE, she has created and delivered numerous informative and entertaining presentations to a wide variety of audiences. Gina is a Director on ACLEA's Board of Directors, as well as co-chair of the Nationals SIG, chair of the Membership Outreach Committee, and has held numerous other leadership roles within the organization.



What's a Credit and Why Should You Care?

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The delivery of CLE credits is probably the most visible and requested responsibility for most CLE providers (and ultimately what everyone expects when they come to any organization's CLE program).

What makes accreditation in the US so difficult?

CLE, like most other aspects of attorney rules and regulations, is locally regulated. Each jurisdiction determines who can be a lawyer, how they become one in that state, and what rules apply to attorneys in order to keep their license. This means that there are 50 states (not to mention the other jurisdictions in the "United States" (like Washington DC, Guam, Virgin Islands, Puerto Rico, just to name a few) for which you need at least a basic understanding of the rules. And by far the biggest challenge is the fact that there is no consistency among US jurisdictions.

There are a variety of rules and regulations that govern continuing legal education: how many credits are required, are specialty credits required, how long is the reporting period, can an attorney carry forward additional credits...the list goes on. Look at the maps (attached as appendix A) to see how varied the rules are across jurisdictions.

So why should you care about credits?

Because your customer do. It's as simple as that. CLE credit is rarely the primary reason that an attorney will select a program. But if he or she is taking the program, they want to get credit, and they want that process to be as easy for them as possible.

Then how do you best support your customer in this area?

First, you have to realize that you can't be everything to everyone. You need to know where you are going, where you are now, and then create a plan to get there. That is, of course, a gross simplification, but without this plan, you can get lost among the requests for every type of credit under the sun, constantly reacting to customer requests instead of following your plan to ensure the success of your organization.

When you are looking at where you are going, look to what your organization can do better than any other. If you take the time to visualize the future, you will know where you are headed, understand the customer focus you should have, the market position you should try to occupy, the activities to be pursued, and the capabilities you plan to develop.

But in order to move into that future and create the strategic plan to get there, you also must understand where you are now. Look at what is happening, both internally and externally, to determine how you need to shift and change.

There are many ways to do this, but a SWOT (Strengths, weaknesses, opportunities, and threats) analysis helps you look critically at your organization.

Be realistic about what you do well and where you have challenges, what are your resources, what is happening in the world that might affect your organization.

Next, we profile your customers. You need to meet your customers' needs and wants better than anyone else can do. Meet with focus groups with several of your key audiences to learn how you can uniquely provide value to your customers.

Knowing **how** you'll reach your vision is the core to any strategic plan, but it is also the most time consuming to develop. There are a number of routes from your current position to your vision – choosing the right one determines how quickly or slowly you will get to your final destination.

Write goals. These are the stair steps to your mission and vision. Goals should be SMART (specific, measurable, attainable, realistic, and time-bound). Effective goals should state how much of what kind of performance by when it is to be accomplished and by whom.

Write a to-do list for each goal. Assign responsibilities and deadlines to ensure implementation. And if you write goals that are measurable, you will be able to put these measurements and targets on a score card and keep track. Actively track your progress on a regular basis.

Finally, strategy must become a habit. The plan needs to be supported with people, money, time, and above all, communication. Communicate the plan to everyone on your team, and hold regular strategy meetings to report on progress toward your goals.

When doing a task or project, each member of your team needs to ask “Does this help our organization meet its goals?”

If your team member can't answer this question in the affirmative, then it isn't a task or project upon which they should be working. Your team must also be willing to question processes that don't lead to achieving your goals.

There are four additional points to consider to best ensure that the credits you do determine you want to offer will be approved by state regulating authorities:

- I. Know the Rules and Keep Up with Changes
- II. Help Set the Agenda and Monitor Content Creation
- III. Be Prepared to Troubleshoot Problems
- IV. Relationship Building with MCLE Boards

I. Know the Rules and Keep Up with Changes

The most challenging aspects of accreditation are the complexity of the rules, and the fact that there is no national standard for MCLE. Each state has created its own requirements, rules and regulations regarding credits. Each jurisdiction has its own special foibles and knowing these can mean the difference between maximum credits and no credits.

For your frequently used MCLE jurisdictions (states where you have law offices or from where you draw the majority of your attendance), know the rules inside and out. Get a copy of the rules, regulations, FAQs, etc... and read them cover to cover.

I suggest doing this once a year even if you are familiar with the rules – just to refresh and to ensure that you are aware of any changes. Use a highlighter to accent unique or critical points and develop a “cheat sheet” for each jurisdiction that can serve as “cliff notes” to what is important if you are ever unavailable. Everyone knows the basic requirements that most MCLE applications require: written materials, evaluation form, sign-in record, distraction free environment, etc. – but for example, in Georgia a program must be at least 60 minutes long to be accredited – a 59 minute program gets Zero credits – that’s important to know.

There are several resources available to providers regarding the rules. CLEReg (the Continuing Legal Education Regulators Association) has created an online resource guide for providers. This guide is a subscription service and may be purchased for \$49.99 per year. The contents of the guide have been compiled directly by the MCLE regulators.

If you have a new jurisdiction for which to account, I suggest going to Required.com (subsidiary of Thomson Reuters) and click on “Resources” – a great compilation of MCLE information by state. This is a free resource available to the public – you don’t have to be a Required subscriber to access. You can Ctrl-F and search for particular questions you may have on a jurisdictions’ MCLE. There are direct links to web sites of the jurisdiction and contact info. Take the extra time to read the rules/regs at least once and use the highlight, cliff note technique. [NOTE: This resource is still publically available, but no longer maintained by Thomson Reuters as they no longer sell this product. Be aware that it may be out of date as it was last updated in 2015.]

Required also provides links to “fillable” application forms for each state. While some states do accept Form 1 applications, most prefer you use their version of the application.

You need to know the rules as well as the regulators do – so you can request credits in the “language” of that jurisdiction. Example – 50-minute v. 60-minute jurisdictions.

Resources:

1. State Bar Websites
2. State Regulatory Authority Websites
3. CLEReg Website (<https://www.clereg.org/>)
4. Required Rules Summaries
(<http://www.requiredlegal.com/required/resources/>) [NO LONGER MAINTAINED]
5. West LegalEdcenter Rules Summaries
(<http://westlegaledcenter.com/requirements/requirements.jsf>)
6. ABA Rules Summaries
(www.americanbar.org/cle/mandatory_cle/mcle_states.html)
7. Gina’s CLE Blog (<http://www.ginascleblog.typepad.com>) [NO LONGER MAINTAINED]
8. ACLEA Website (<http://www.aclea.org>)
9. Twitter – tracking services, like Tweet Beep (www.tweetbeep.com)
10. Google Alerts (www.googlealerts.com)

II. Help Set the Agenda and Monitor Content Creation

The naming of a program or session is oftentimes the first thing a reviewer looks at when judging content for credits. Which do you think will be given credits? – “Milking Your Clients for Extra Billables” or “The Ethics of Professional Client Communication on Fees”?

Certain jurisdictions don’t award credit when food is served, for introductions, or for questions and answers periods (or limiting of same) – know these particulars and set the agenda to fit the credits. Example: Shorten the lunch to 30 minutes and have it box style – so folks can grab, eat, and toss before the substantive sessions restart. Or if a program is only planned for 50-minutes, restyle it to have a Q&A extending it for 60-minutes so states that work on 60-minute credit hour will give full credit.

Getting a written description, timed agenda, and even learning objectives from your speakers will go a long way to assisting you in the application process. The more detailed the information provided, the better for you and the more likely the state will approve credit. Oftentimes this is the only information the state is using to determine eligibility, so be aware that detail here can make or break your program accreditation. Speaker biographical information (resumes, CVs, and the like) are required by some accrediting authorities, so know which states do.

Program materials are the most difficult area from a credit perspective. How much is enough? What will qualify? What will regulators determine is insufficient? The rules give some guidelines, but many times this is where you get the most resistance from your speakers, who often do not want to prepare ANY materials. How do you persuade them to do so? If the speakers understand that credit will not be offered without sufficient materials and that this will affect attendance, they are usually willing to provide you the necessary documentation.

Virginia, which has very strict rules, particularly regarding written materials, has provided an Opinion (MCLE Opinion 14, attached). New York has also prepared a helpful document that references materials. The document (New York CLE Faculty Information, attached) was created by the New York State MCLE Board for providers to give to faculty to assist them in their course preparation. If you can meet the Virginia and New York requirements, your materials should be sufficient to meet the rules in any MCLE jurisdiction.

III: Be Prepared to Troubleshoot Problems

One area for which you should be prepared to troubleshoot is for **credit denials**. Depending on the jurisdiction, programming could be denied for all or a portion of requested credits if they fail to meet certain criteria (written materials, taught by attorney, time length, etc.).

- *Preventative* – To reduce the potential of credit denial, develop a standardized program checklist which covers the necessary components for MCLE for all your jurisdictions (example – all jurisdictions may not require written materials, but enough do – that you should require all programs to submit them.)
- *Preventative* – When you think something may not get full credits or may be denied specialty credits – in your application, quote the applicable rule in the jurisdictional requirements that apply to the section of the training you believe meets that requirement.
- *Preventative* – Be descriptive and on point in your titling of the program when you believe the content reflects CLE worthiness or specialty credit attention. (example – use “The Ethical Consideration of Attorney Client Privilege” instead of just “Attorney Client Privilege”; “Improving Client Communications and the Professional Image of Attorneys” instead of “Marketing to Clients”.)
- *Preventative* – Until you have those precious CLE credits in your hand, make sure in all communications to attorneys you post a disclaimer –

“CLE credits are being applied for.” Do not promise the availability of specialty credits or number of credits until you have approval.

- *Damage Control* – Discover why they ruled against credit in the first place. Make sure you fix whatever it was that prevented credits so it does not happen again with future similar programs.
- *Damage Control* – Let your attendees know that CLE credit was not granted as soon as possible. Best Practice is to simply alert the attorneys with a courtesy email. “Dear Attorney, the recent program Attorney Pitfalls was not awarded CLE credit by The State Bar. Please let us know if you need additional credits to meet your compliance requirements and deadline. A variety of CLE programs and credit options are available through...”

Another area of which to be aware for troubleshooting: **content issues**. You may be precluded from even sending in an application because of any number of factors which would normally have a program denied credits (as previous – no written materials, not taught by attorney, time length too short... or deadline for application passed, in-house program, non-CLE topic, etc...)

Depending on the situation you have three options: (1) augment program to cure problematic issue (example – postpone so application deadline can be met); (2) bite-the-bullet and recognize CLE can not be awarded; (3) apply anyway and hope that the MCLE Board will be lenient.

- *Damage Control (augmentation)* – For example: If obtaining credits is critical to the program and you are sufficiently sure rescheduling will not adversely effect speaker, attendance or content – get everyone on board quickly and set a new date that will allow for proper CLE application. Likewise many other deficiencies can be cured (non-attorney speaker replaced) but often require delay in program.
- *Damage Control (bullet biting)* – When a program cannot be awarded CLE – immediately alert the attendees. This alert can go in program announcement – “this program unavailable for CLE credits” – but always put such on sign-in sheets – **boldy**. If attendees want to know why credit cannot be awarded, it’s typically better to stay generic and blameless – under “X” jurisdictions MCLE rules and regulations this program doesn’t meet all the criteria for credits. If pushed – stay generic – example – marketing programs cannot get credit in Georgia.
- *Damage Control (apply anyway)* – Many MCLE Boards leave themselves wiggle-room on the compliance checklist. Example – some jurisdictions may award credits without written materials. Oftentimes you can still apply

and be awarded CLE credits without meeting all the requirements. Depending on your MCLE Board, you can either submit minus the information or submit with explanation of why “x” is missing. Caveat – never deceive or mislead in the application process. Whatever approach you take, make sure your presenter knows you are trying and that credits likely may not be awarded and why.

IV: Relationship Building with MCLE Boards

Every business today is a relationship business. The quality and impact of your work, and the efficiency of your business, depend upon relationships – including, of course, your relationship with the MCLE Regulators. People with strong relationships get things done more effectively, and they learn from others with different knowledge and experience. While we’d like to think that our work speaks for itself, building these professional relationships is essential to creating and maintaining a solid CLE program.

There are several key rules to consider when establishing strong business relationships:

- Consider What’s in it for Them
- Be a Real Person
- Be Sensitive to Context
- Get to the Point
- Look to the Long Term
- Maintain Through Contact

A. What’s in it for THEM?:

Don’t worry about what’s in it for you, think about what’s in it for them. Establishing a strong business relationship with the MCLE director and staff is about learning how to best work together so that the Board gets what they need from you, and you get what you need from the Board. This relationship is built upon shared purpose and mutual goals.

B. Be a Real Person:

Not just a company or organization. Relationships are formed between individuals, not institutions. Get to know the people with whom you are interacting, and let them get to know you. A good relationship is easier to maintain if both parties share some mutual interests.

C. Be Sensitive to Context:

Always be aware of and responsive to the person or people you’re talking to *right now*, and the conditions in which you’re relating to them. Are you nearing a

compliance period or the end of a grace period? Have deficiency reports just been mailed to a thousand non-compliant attorneys? Is the staff at the Board trying to get out the door for the long holiday weekend, just as you are?

D. Get to the Point:

Be sure to take no more time than you have to and don't beat around the bush. Staffing at the regulatory boards is typically minimal, particularly with regard to the number of attorneys and providers with whom they have to deal. Add to this the number of applications a state may see at any given time. Treat any time you have to interact with the regulatory staff as valuable – because it is.

E. Look to the Long Term:

Building strong relationships is an ongoing process, not a one-time event. One principle with which we are all familiar is that you must sow in order to reap. It makes no sense to go out into your garden to pick tomatoes if you never planted any. Again, it is not about what you can get from the relationship, but about having positive contacts from whom you can get answers to questions, learn best practices, and receive accurate feedback about your courses, applications, processes, etc.

F. Maintain Through Contact:

Re-connect with people periodically. Let them know what you're up to, and show a genuine interest in what they're up to. Don't drop a connection because you don't have an immediate need – you never know when you will have a question or an issue, or the state will have a rule or process change. Regular contact with the accrediting boards will ensure that you are kept aware of any changes, and will give you a contact to whom questions may be directed, often for more quick resolution than with a general inquiry.

New York CLE Faculty Information

Please take five minutes to read the information below regarding your upcoming CLE presentation. We want to be sure that we will be able to issue CLE credit for your presentation.

WHAT CLE SPEAKERS NEED TO KNOW

A. Objective

The program shall have **significant intellectual or practical content** and its primary objective shall be to **increase the professional legal competency of attorneys** in ethics and professionalism, skills, law practice management and/or areas of professional practice. New York State CLE Board Regulations & Guidelines § 8(A)(4)(b) (emphasis added).

B. Written materials

- i. Materials shall be **prepared or compiled** specifically for the accredited course or program, and shall **specifically address each topic** presented in the course or program;
- ii. Materials shall be **prepared or adopted and approved by the speaker** and shall be distributed to the attendees at or before the time the course or program is to be held, unless the absence of materials, or the provision of such material shortly after the program, is approved in advance by the CLE Board;
- iii. Materials shall reflect that they are **timely** or that they have been updated with specific reference to the course or program;
- iv. Materials shall cover those matters that one would expect for a **comprehensive and professional treatment of the subject matter** of the course or program; and
- v. **Brief outlines without citations or explanatory notations shall not constitute compliance** with Program accreditation criteria. New York State CLE Board Regulations & Guidelines § 8(A)(4)(f) (emphasis added).

C. Important Reminders

- PowerPoint presentations are best used as visual aids and to supplement substantive written materials.
- Programs that are promotional in nature or that focus on business development or networking are not eligible for CLE credit.
- Please be sure to repeat all questions from the audience. Remember that the presentation must include at least 50 minutes of instruction time in order to issue one CLE credit. Experienced New York attorneys (admitted more than two years) may earn three credits for presenting a 50-minute program.

WHAT WE NEED FROM YOU

1. Jurisdictions and dates of all Bar admissions
2. Short (one-paragraph) bio
3. Short (one- to three-sentence) description of course
4. Timed agenda for your presentation (time allotted for each topic)
5. Whether the target audience for your presentation is newly admitted attorneys only, experienced attorneys only, or both newly admitted and experienced attorneys
6. Written materials (submitted for approval at least one week before the program)

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT:

Name (CLE coordinator/administrator):

Address:

E-mail address:

Telephone number:

Fax number:

MCLE OPINION 14 - REQUIREMENT FOR WRITTEN MATERIALS

The Supreme Court of Virginia has required by Rule of Court that courses or programs qualifying for MCLE credit must provide attendees with written educational materials which reflect a thorough preparation by the provider of the course and which assist course participants in improving their legal competence. Paragraph 17(H)(3) of Section IV, Part Six, Rules of the Supreme Court of Virginia. In compliance with this mandate, the MCLE Board has promulgated Regulation 103(f). That provision provides:

Thorough, high quality instructional materials which appropriately cover the subject matter must be distributed to all attendees at or before the time the course is presented. A mere agenda or topical outline will not be sufficient.

Although courses of shorter duration may require less lengthy materials, this requirement must be satisfied by courses of any length in order for MCLE credit to be granted.

The purpose of the requirement of written materials is threefold. First, it insures thorough course preparation by the provider. Generally, the provider must furnish materials prepared specifically for the course and the subject matter addressed. The distribution of copies of cases or statutes without customized materials is not acceptable. A second purpose of this requirement is to insure that the attendees will be provided with materials which are useful after the course is completed. Materials provided should be sufficient to assist the attendee when questions regarding the particular subject matter covered are raised at a later date and to serve as a general resource after course completion. The third reason for this requirement is to allow the MCLE Board to evaluate the quality and nature of the course and the actual subject matter being covered. Occasionally neither the title of the course submitted on an application nor the agenda for the presentation provides sufficient information about course content to allow evaluation. The review of the written materials provided to course attendees allows the Board to assess the quality and subject matter of the course and to insure that the topics addressed are appropriate for accreditation purposes.

In determining whether written materials are adequate, the Board will also consider the teaching method employed. For example, materials appropriate to

participatory skills development courses, such as a trial advocacy course, will differ from a course where a straight lecture method is employed. Moreover, courses in which role-playing or other interactive teaching methods are employed will have varied materials.

Several recurring problems regarding the provision of instructional materials, however, have come to the Board's attention.

a) Written materials which contain only hypotheticals will not satisfy this requirement. While the discussion of hypotheticals can be an appropriate teaching method, written materials including only hypotheticals to be discussed will not suffice as thorough, high quality instructional material. On the other hand written materials in which the hypotheticals are accompanied by (1) course materials which assist the understanding of the subject matter and have reference value to the participants or (2) course materials which provide a thorough written discussion and/or responses to such hypotheticals may satisfy this requirement. Such written discussion or responses to hypotheticals may be provided to the participants separately at any time up to the time of the conclusion of the course.

b) Bibliographies or a list of other reference materials, such as internet sites, standing alone, will generally not suffice as thorough, high quality instructional material. Similarly, sample pleadings, without instructional materials are inadequate to satisfy this requirement.

The requirement to provide written materials can be satisfied by providing printed copies or copies stored on electronic media. It may also be satisfied by allowing attendees access to a web site or other area where electronic copies are available for downloading. In the event that a provider does not provide printed copies to all course participants, such copies must be made available to any attendee who requests them.

[Paragraph 17(H)(3) of Section IV, Part Six, Rules of the Supreme Court of "Virginia; MCLE Regulation 103(f)].

Revised 02/11/02, Updated: December 7, 2007

From: <http://www.vsb.org/site/members/mcle-opinion-14>

Guidelines for Instructional Materials

Kansas Supreme Court Rule 804(g)(4) requires that “thorough, high quality, readable, useful, and carefully prepared instructional materials must be made available to all participants at or before the time the program is presented, unless the absence of such materials is recognized as reasonable and approved by the Commission. A brief outline without citations or explanatory notations will not be sufficient.”

This requirement must be satisfied by all courses, regardless of duration, in order for CLE credit to be granted. Exceptions to the requirement must be determined well in advance of the activity.

The purpose of the requirement of written materials is threefold. First, it insures thorough course preparation by the provider and presenter. Generally, the provider must furnish materials prepared specifically for the course and the subject matter addressed. The distribution of copies of cases or statutes without customized materials is not acceptable. Second, it insures that the attendees will receive materials that are useful after the course is completed. Materials provided should be sufficient to assist the attendee when questions regarding the covered subject matter are raised at a later date and to serve as a general resource after course completion. Third, it allows the Kansas CLE Commission to evaluate the quality and nature of the course and the actual subject matter being covered. Occasionally, neither the title of the course submitted on an application nor the agenda for the presentation provides sufficient information about course content to allow evaluation. Review of the written materials provided to course attendees allows the Commission to assess the quality and subject matter of the course and to insure that the topics addressed are appropriate for accreditation purposes.

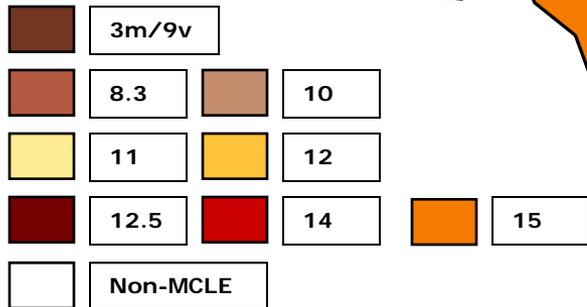
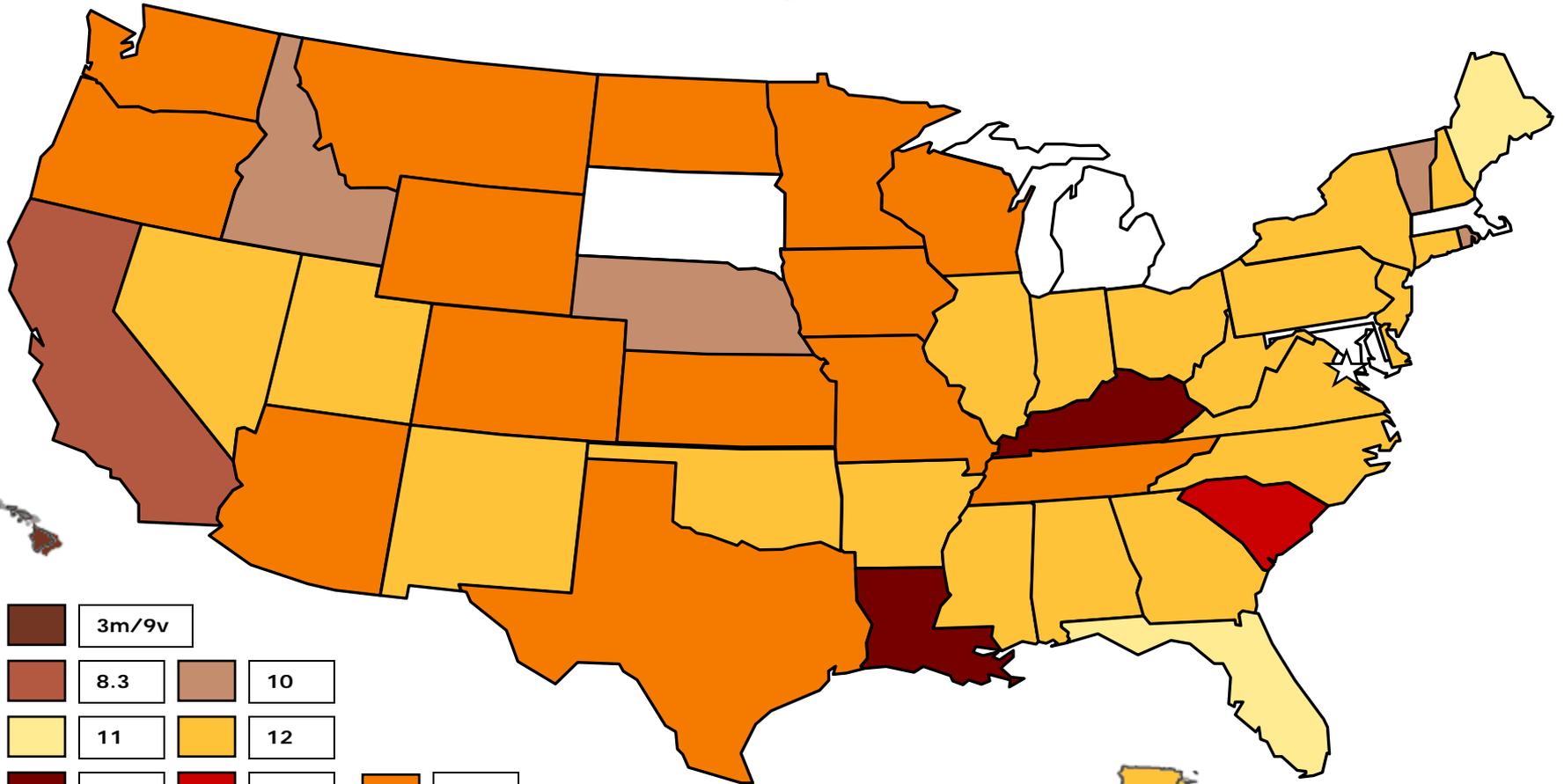
The requirement to provide written materials can be satisfied by providing printed copies or copies stored on electronic media. It may also be satisfied by allowing attendees access to electronic copies available for downloading. The materials must be delivered to the attendee before or at the program. In the event that a provider does not provide printed copies to all attendees, such copies must be made available to any attendee who requests them.

If there are no written materials for the program, no CLE credit will be granted.

For questions or comments regarding these guidelines, please contact the Kansas CLE Commission, 400 S Kansas Ave, Ste. 202, Topeka, KS 66603. 785-357-6510 www.kscle.org

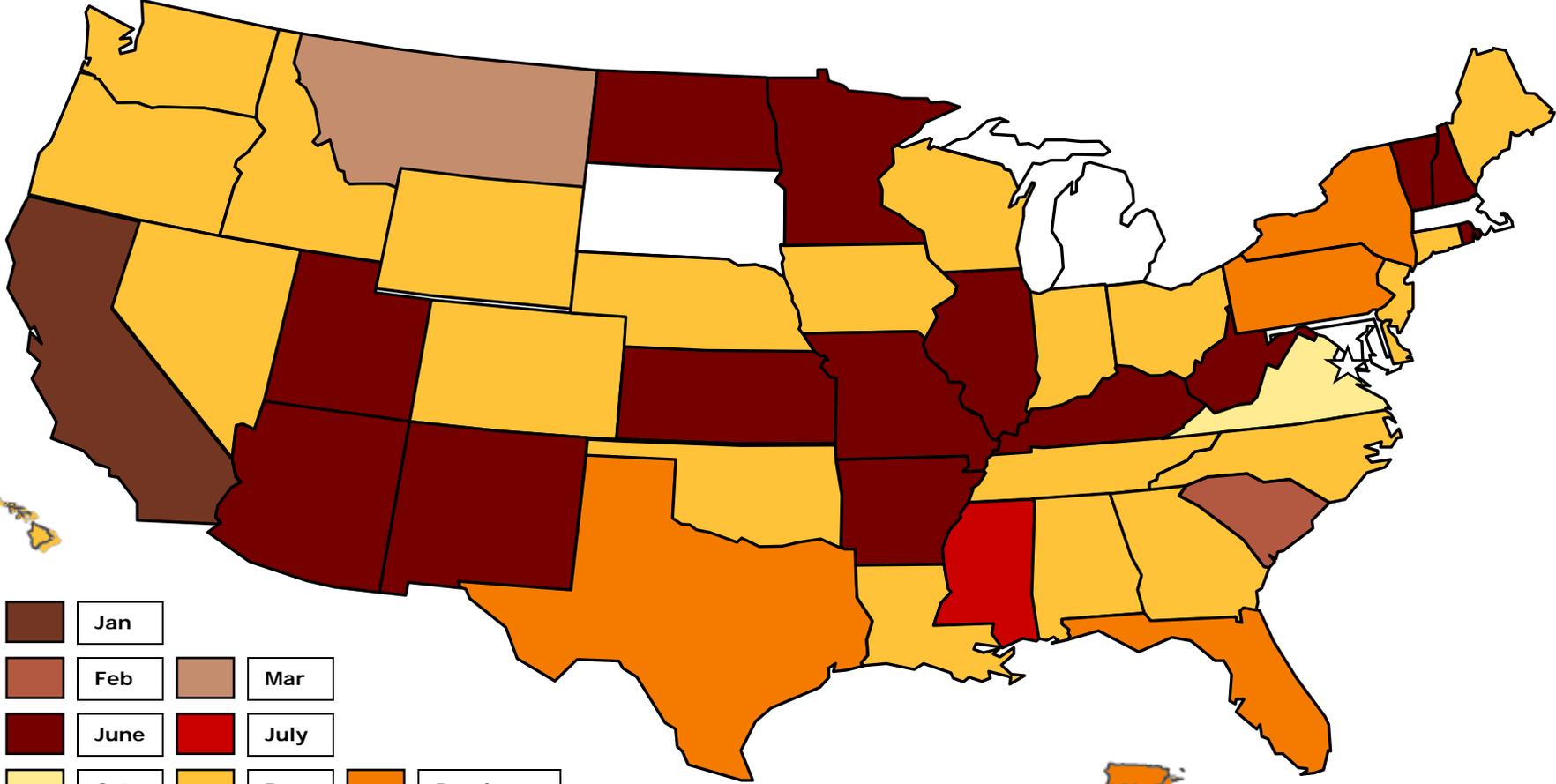
MCLE JURISDICTIONS

Number of Credits Required Per Year



MCLE JURISDICTIONS

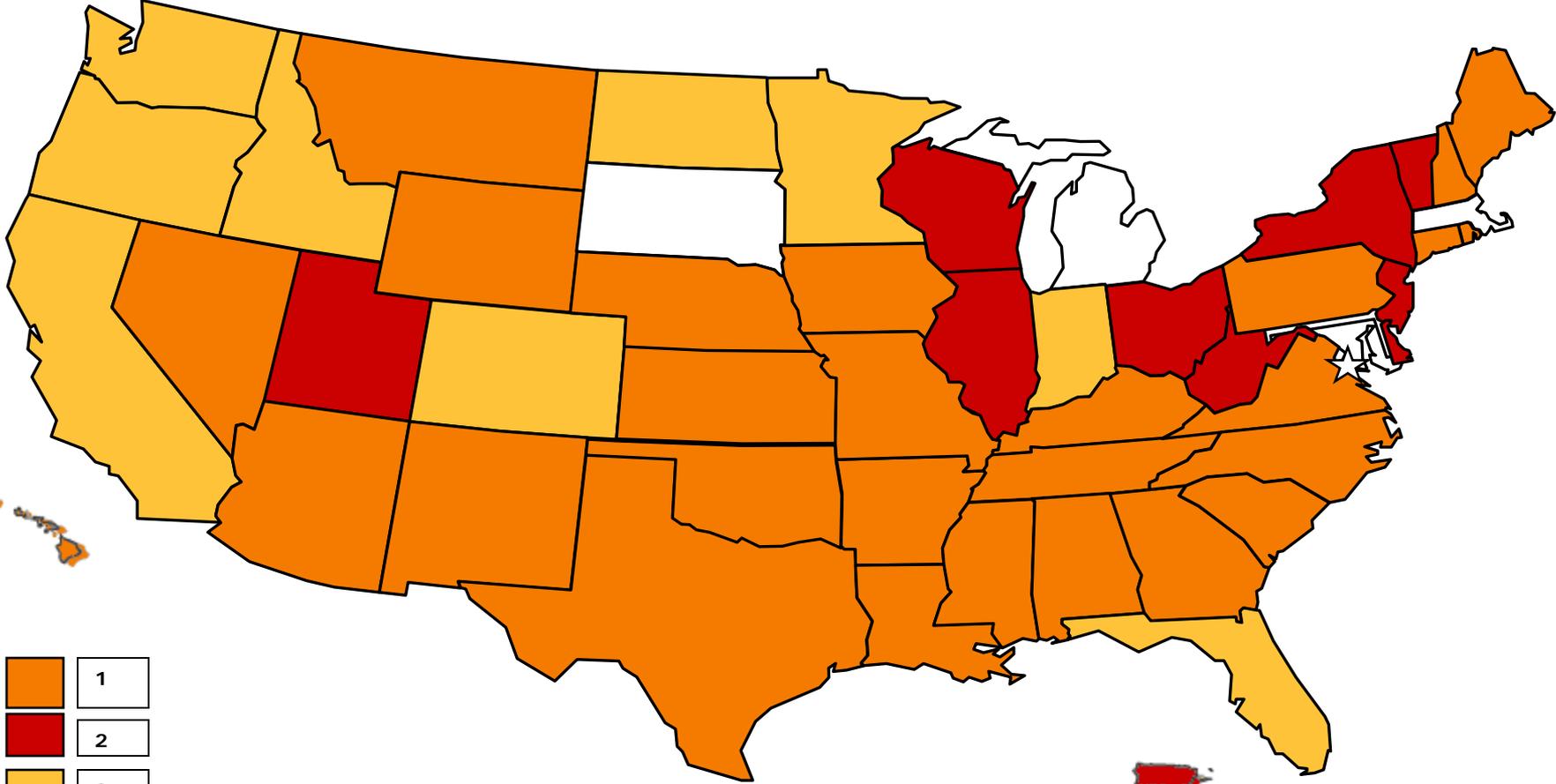
Compliance Period End Dates



Dark Brown	Jan				
Light Brown	Feb	Tan	Mar		
Dark Red	June	Red	July		
Light Yellow	Oct	Yellow	Dec	Orange	Random
White	Non-MCLE				

MCLE JURISDICTIONS

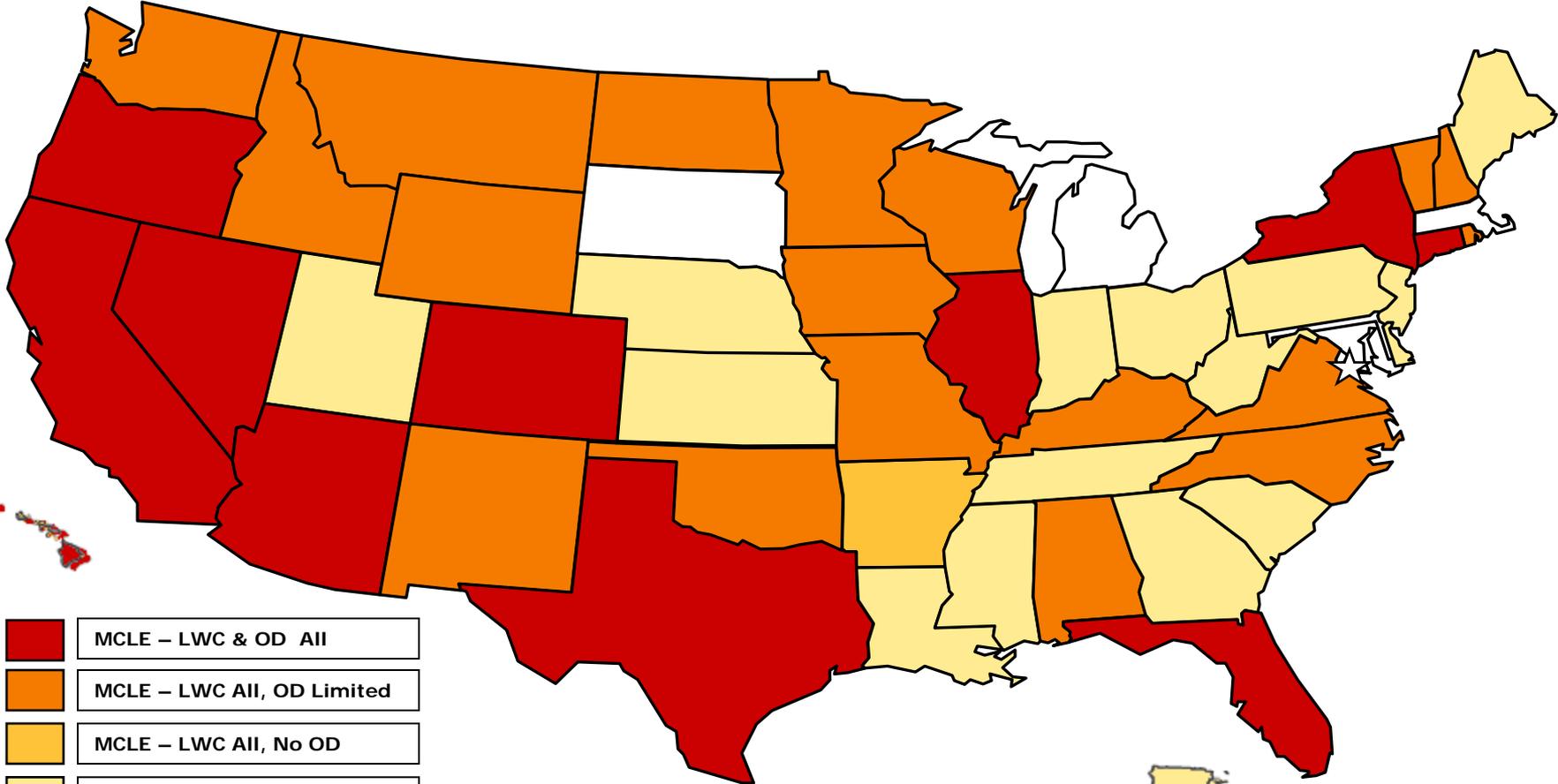
Compliance Period in Years



	1
	2
	3
	Non-MCLE

MCLE JURISDICTIONS

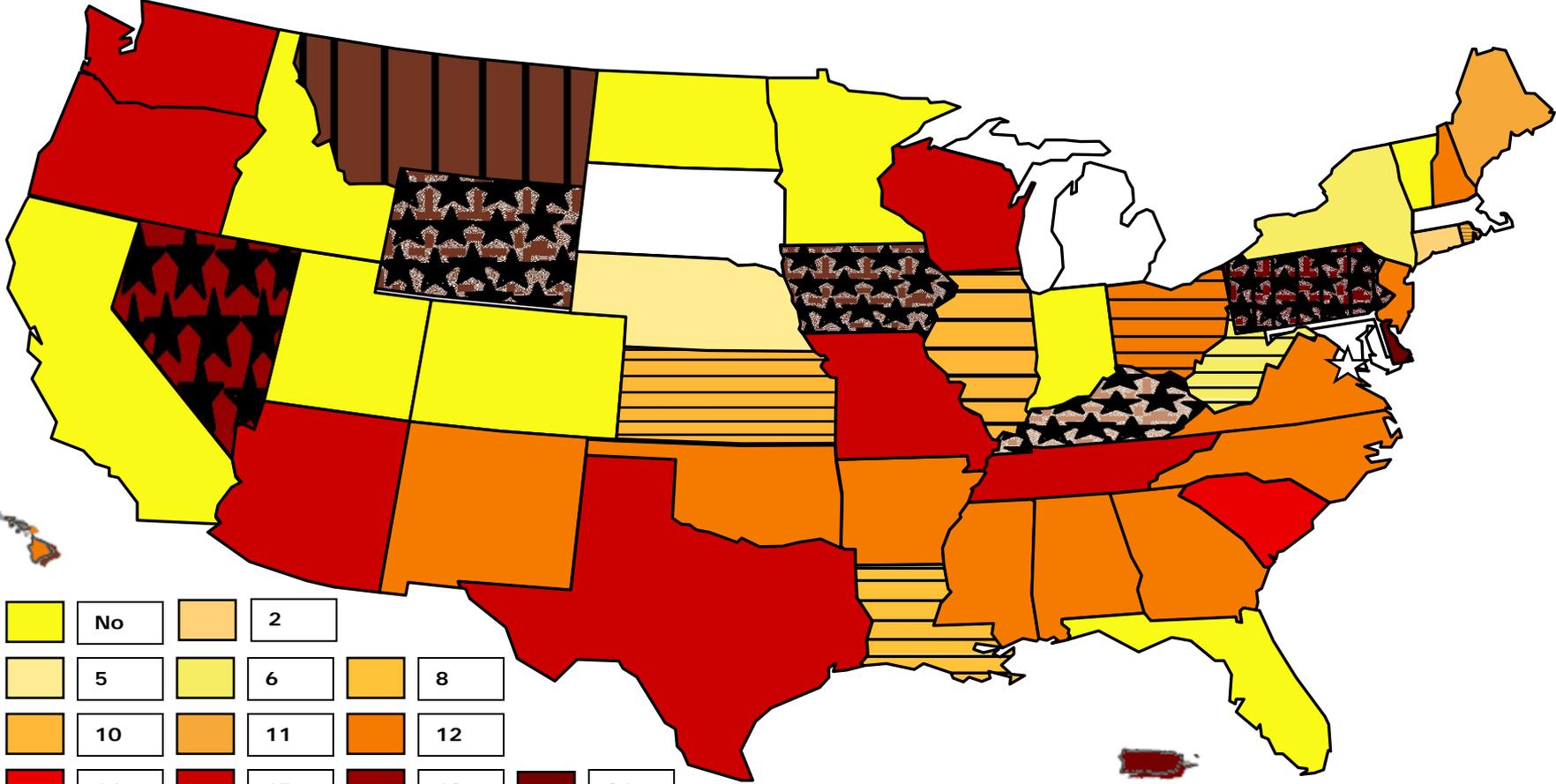
Online Limits



	MCLE – LWC & OD All
	MCLE – LWC All, OD Limited
	MCLE – LWC All, No OD
	MCLE – LWC & OD Limited
	Non-MCLE

MCLE JURISDICTIONS

Carryover Credit Allowed

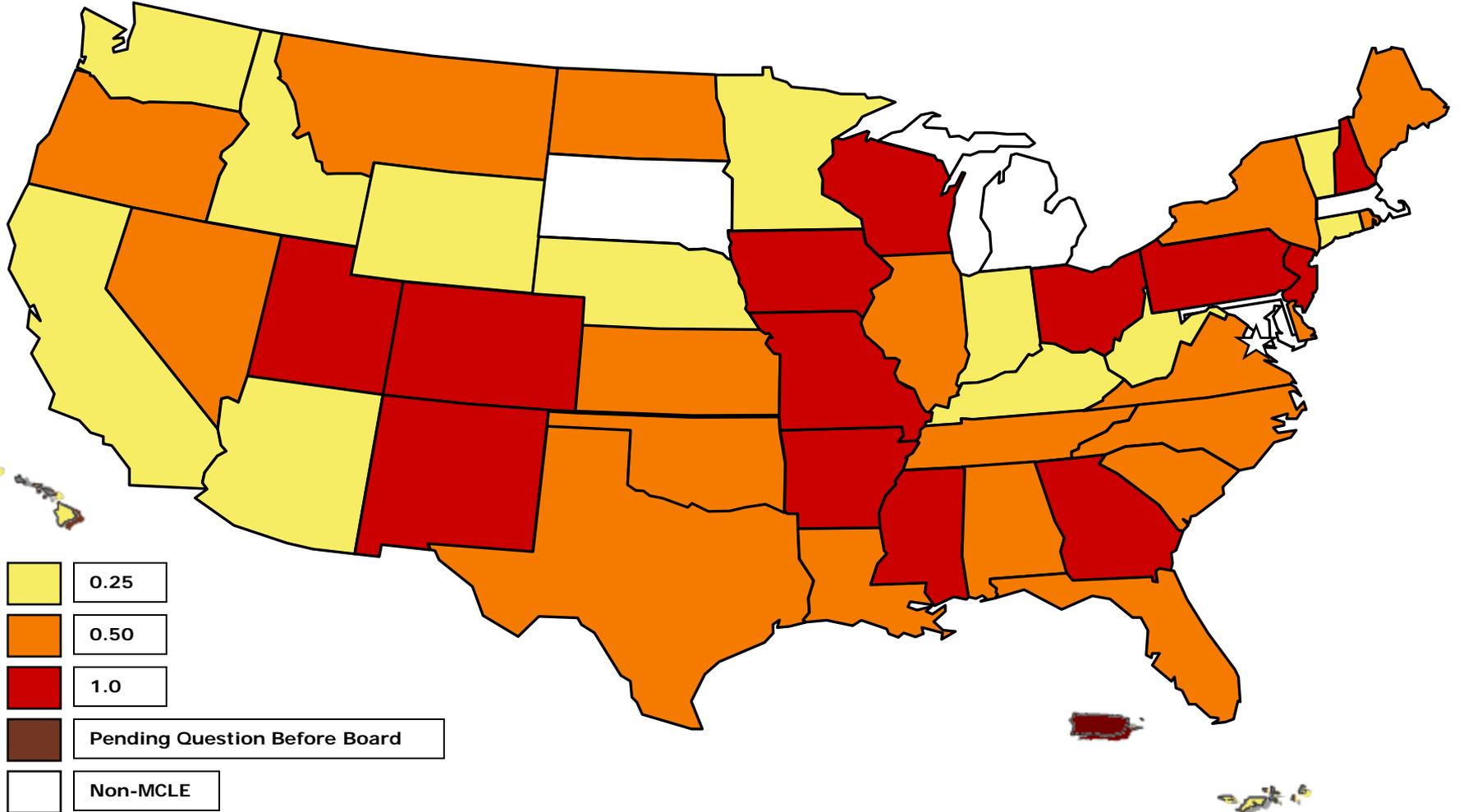


	No		2				
	5		6		8		
	10		11		12		
	14		15		19		24
	25		30		Non-MCLE		

	No Specialty Credits		No Alternative Credits		2 Subsequent Periods
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MCLE JURISDICTIONS

Minimum Credit Hours Per Program



0.25

0.50

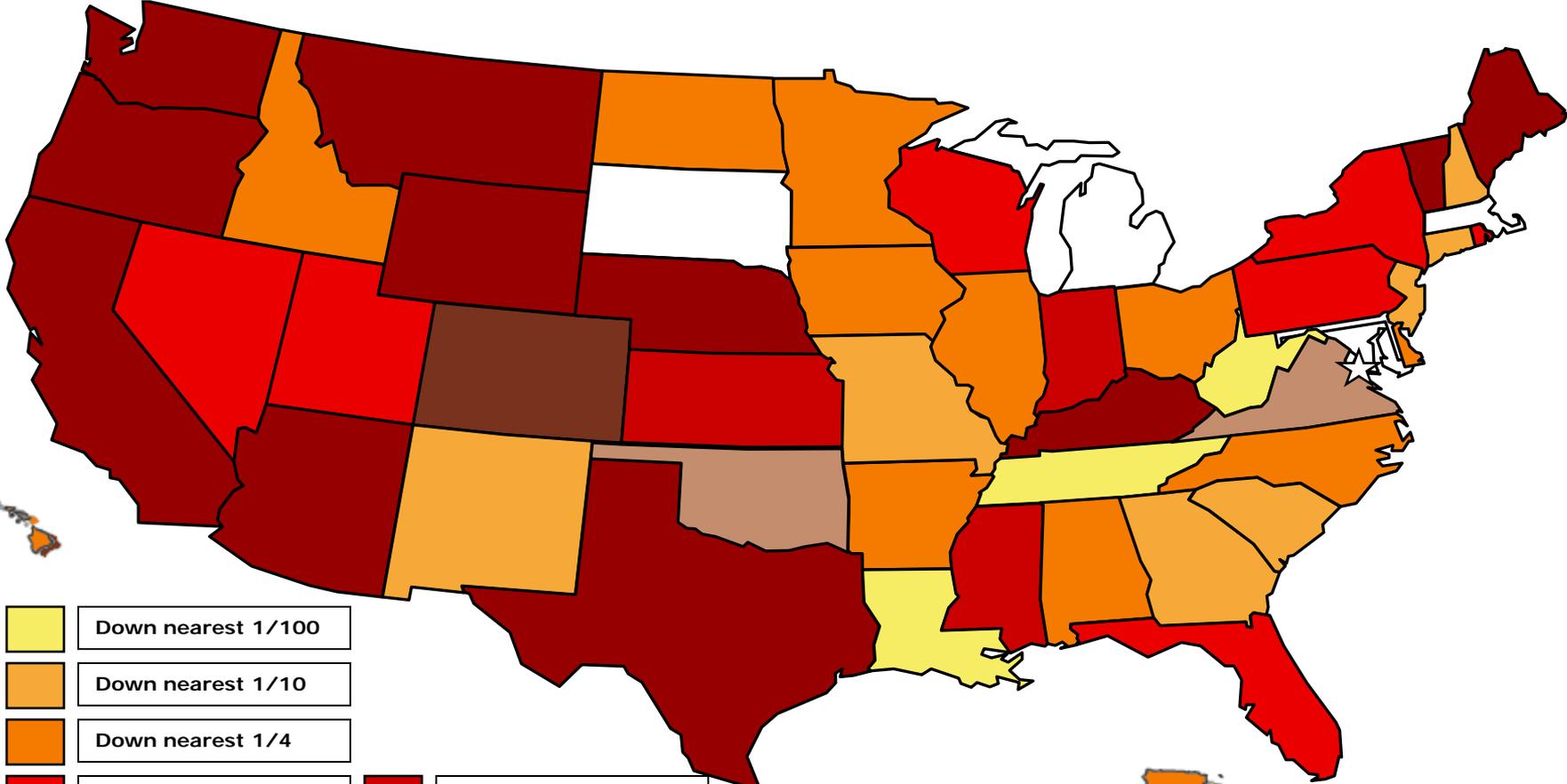
1.0

Pending Question Before Board

Non-MCLE

MCLE JURISDICTIONS

Rounding Rules



	Down nearest 1/100		To nearest 1/10
	Down nearest 1/10		To nearest 1/2
	Down nearest 1/4		Non-MCLE
	Down nearest 1/2		
	To nearest 1/4		
	To nearest 1 (gen), to nearest 1/10 (eth)		