WHITEPAPER

Risk-Based Regulation:
How Adopting a Risk-Based Approach Can Lead to Regulatory Transformation

Table of contents

———

At its core, a risk-based approach to regulation is about reducing the likelihood of serious harm to the public.

THENTIA CLOUD™

Risk-based regulation

SUMMARY

There are many benefits of adopting a risk-based approach to regulation, which focuses on proactively identifying potential risks of public harm and prioritizing regulatory efforts accordingly. This approach can help regulators fulfill their public protection mandate while also making the most of their limited resources. Read examples of how regulatory agencies can apply a risk-based approach to streamline their licensing processes, improve efficiency and mitigate potential harm to the public.

At its core, a risk-based approach to regulation is about reducing the likelihood of serious harm to the public. On one hand, this approach centers regulatory activities and interventions around identifying potential risks to the public. On the other, it's about considering how addressing inefficiencies in regulatory processes can allow regulators to focus on real risks and potential harm, without being stuck with work that could be automated.

Many regulatory boards and agencies today rely on outdated technology, custom-built homegrown solutions, spreadsheets, and paper-based approaches to managing their licensing processes. At the same time, many regulators believe they need to have their eyes on everything that crosses their desk, even when doing so is not only impractical, but also often unnecessary. As a result, they spend a huge amount of time dealing with administrative overhead that does little (if anything) to meet their primary objective of protecting the public interest.

Time-consuming, small tasks and administrative overhead can take many different forms. It might be manually reviewing every application and renewal, verifying continuing education requirements, or updating a licensee record any time their personal information needs updating, such as a change in address. The reality is that most activities like these are transactional in nature and pose no risk to the public. As such, resource-restrained regulators would be wise not to devote time to manually overseeing them except where merited.

Unfortunately, the homegrown or legacy solutions regulators often rely on aren't equipped to either automate these tasks, nor to identify where potential risks may lie. Part of the problem is that they usually don't integrate with other systems. This makes it difficult for regulators to see the full picture of what is occurring with individual applicants. That, in turn, means that potential red flags signaling a need to intervene are easily missed.

Further complicating matters is the fact that many regulators can be resistant to change. To truly be effective they need to find ways to be agile, proactive, and transparent. Making that switch calls for finding ways to work more efficiently, which means figuring out how to identify and appropriately manage risk.

Has the time come to eliminate the inefficiencies and busy work that characterizes so many regulatory licensing agencies? Why? Instead, should we embrace a risk-based approach to regulation and move toward regulatory transformation?

What is risk-based regulation?

According to the Canadian Network of Agencies of Regulation, "Risk-based regulation focuses on proactively identifying actual and potential risks of harm to the public in professional practice and implementing regulatory efforts to mitigate and prevent harm from occurring in the first place."

Adopting a risk-based approach helps regulators fulfill their public protection mandate and can have additional operational benefits as well. According to a paper on risk-based regulation in the legal sector, risk-based regulation "allows regulators to focus their attention on issues that pose the greatest danger to their objectives. In turn, this enables regulators to make the most of their limited resources and better allocate their regulatory efforts."

Risk-based regulation requires regulators to first identify what risks they're trying to control. Properly understanding the risks is essential for identifying possible mitigation strategies and intervention points. To do this, they must understand what can cause harm, the impact and severity of the harm should it occur, and the likelihood that it could occur. Regulators conduct risk assessment by using traditional risk management tools and practices, such as risk registers. Some regulators will apply a standardized score to each risk, which helps them prioritize and identify which ones to focus preventive efforts on. The risks they prioritize should be justified according to how they can harm the public, not the profession/industry being regulated. Once solutions are implemented, regulators conduct ongoing evaluation, feedback, and modification of the mitigation strategies to ensure they are having the intended impact.

How regulators can apply a risk-based approach to licensing

Regulatory agencies are responsible for overseeing all of the different facets associated with professional and business licensure. However, not every part of the licensing process is equally important when it comes to safeguarding the public. In fact, many simply result in busy work that could be dramatically curtailed by adopting a risk-based approach.

EXAMPLE 1

Validating continuing competency

Consider the work regulators do verifying licensee continuing education credentials each year as part of the renewal process. They might easily spend 30 minutes or more reviewing each applicant's continuing education records. Among other things, that includes checking if they completed the required number of hours before the deadline, the relevancy of the coursework to their profession, and if they had the right balance of in-person and online instruction. If everything looks good, the job is done. But in the rare cases where something is amiss, further investigation is required, taking even more time. An investigation can require several hours of back-and-forth communication between a course provider, a registrant, or an employer to confirm the required information and determine an outcome.

While maintaining that level of diligence may be the standard convention, regulators should ask whether it is an effective use of time and resources. More specifically, is it an effective way of evaluating the competence of the professionals they oversee? What danger does it pose if one applicant has not completed all her coursework by a specific deadline or another does not have the right mix of in-person and online instruction? The reality is that the risk that small infractions like these pose to the public is exceedingly low.

As such, instead of automatically investing the time to manually verify that every registrant has met continuing education requirements each year, regulators should instead consider taking a risk-based approach. In this example, that might include conducting spot audits of a portion of the licensee base each year. Another example is conducting a practice review once every five years to ensure that there has not been a loss of competency. The key is for regulators to focus their finite resources as efficiently as possible to make the biggest impact. That, in turn, will afford them greater agility and flexibility to adapt to the dynamic, ever-changing risk landscape in which they operate.

> **Risk-based regulation focuses on proactively identifying actual and potential risks of harm to the public in professional practice and implementing regulatory efforts to mitigate and prevent harm from occurring in the first place.**
>
> Canadian Network of Agencies of Regulation

EXAMPLE 2

Applicant renewals

To help bring the concept of risk-based licensing into sharper focus, let's consider another example. Imagine that 95% of the renewal applications coming into a regulatory board each year are virtually identical. Not only are the applicants experienced, having gone through this exact process many times before, but their applications are also virtually identical from one year to the next. Meanwhile, the other 5% of applications stem from recent graduates or new applicants who are renewing for the first time. They don't know how it all works and, as a result, have historically been prone to making mistakes.

In a case like this, regulators should be asking themselves if it's realistic to manually review every application. With a robust licensing platform, regulators don't need to manually review each detail for each renewal. The right technology can ensure a licensee is qualified to continue practicing, and flag issues that need attention. The risk-based approach would be to instead focus on the cohort of recent graduates and new applicants who pose the greatest risk of doing something wrong, while only conducting a spot audit of everyone else.

EXAMPLE 3

License mobility

A third example of where regulators can adopt a risk-based approach to licensing is mobility. If a licensed professional moves from one jurisdiction to another, a rigid, reactive regulator would require that person to meet all licensing requirements of the new jurisdiction. Additionally, in certain jurisdictions it's possible to enter and begin practicing with limited oversight or by only requiring the professional to meet certain jurisdiction-specific requirements to be able to practice. Here again, the risk of taking this approach is minimal. It also allows the regulator to focus on real risks to the public while at the same time creating a better experience for the professional.

In April of 2023, the [College of Registered Nurses of Alberta](#) (CRNA) committed to reducing barriers for applicants who were educated internationally but want to become registered nurses in Alberta. In this case, the CRNA recognized that they needed to create a fairer balance between mitigating risk and implementing regulation. The organization realized there were many unnecessary boundaries in place for qualified nurses from other countries who wanted to enter Alberta's workforce. Ultimately, they decided to revise their process using "proactive, risk-based decisions, [sic] informed by evidence".

For example, applicants will now have a few options to recognize their competency prior to taking the required, internationally recognized entrance exam. One option details that if an applicant has already taken and passed the entrance exam in one of nine jurisdictions (examples: The Philippines, India, the United States, the United Kingdom, Australia, etc.), they meet the required competence requirement. This removes a great barrier because, according to the CRNA, 94% of applicants have come from these jurisdictions in the last five years. Now, they will no longer endure a long or costly process to assess their credentials before taking the exam – a pass in any of the nine outlined jurisdictions will suffice.

EXAMPLE 4

Complaint processes

In certain jurisdictions, all complaints go forward to an investigative/disciplinary process. In others, complaints are vetted for merit before any resources are used. In the latter, time and expense to the regulatory authority is reduced. Stress and expense to the registrant is also reduced when a complaint is vetted for merit, before resources are engaged.

For example, the Law Society of Ontario (LSO) reviews all complaints before proceeding through an investigation process to determine if: the complaint is in their jurisdiction, the lawyer complained about is a risk to the public, the complaint is within the three-year timeframe, etc. There are many factors involved and if a complaint is not accepted, they provide an explanation and sometimes suggest organizations that may be better equipped to help. In this way, the LSO ensures that their resources are used to manage complaints they are fit to process.

Similarly, the Texas Real Estate Commission (TREC) has a process in place to review complaints and determine whether they first fall under the correct jurisdiction. In fact, they also have a list on their website that extensively lists the types of complaints they do not handle. This helps the TREC to quickly identify which complaints are eligible for processing and which require significant time from staff. One way they do this is by determining if a complaint is solely about advertising violations. If so, the complaint is processed at TREC headquarters and does not need to be assigned to a field investigator.

In some cases, the triaging of complaints includes reactive regulation — a process in which the regulator determines the seriousness of a complaint before taking the next steps. At times, this includes identifying the possibility of mental illness of the person filing the complaint. In these cases, it is important for the regulator to know the key signs to look for when assessing complaints and be aware of what to do next. By having this knowledge, regulators can still look at the facts of the case, whilst informing the complainant that they are not being dismissed. This helps the regulator to know which cases need thorough investigation for protection of the public and, ensures that all complaints are treated with respect which "can be seen as part of the mandate to protect the public interest and build public confidence".

These examples illustrate that the fundamental idea behind risk-based regulation in general (and risk-based licensing more specifically) is to identify, analyze, and prioritize risks, and focus your efforts on mitigating the most serious ones. It's about rigorously examining everything the regulator does to ensure that it reduces risk of harm to the public, while not inadvertently creating new risks in the process. And it's also part of a bigger concept known as regulatory transformation.
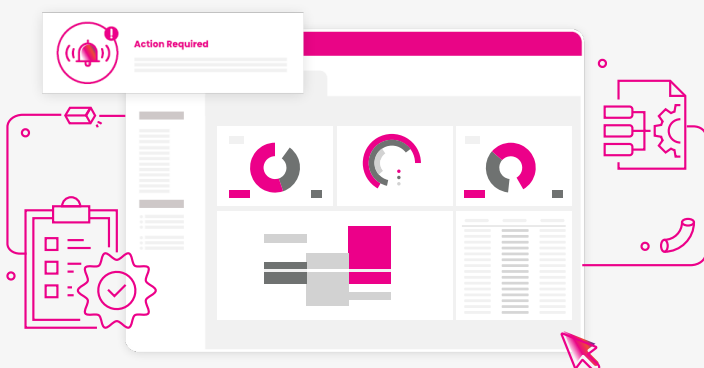
Risk-based regulation:

Identify, analyze & prioritize risks, and focus your efforts on **mitigating the most serious ones.**

> " "

Regulatory transformation gives regulatory authorities the opportunity to examine everything they're doing. At the highest level, it's about not only assessing whether they're doing the right things and that they have the right processes and policies in place to support that, but that they're also not spending time doing the wrong things.

Dr. Sheila Marchant-Short
Vice President, Regulatory

THENTIA
CLOUD™

What is regulatory transformation?

Assessing whether or not you're taking a risk-based approach to licensure is about challenging the status quo and looking for more efficient, streamlined ways to do things. As such, it can be thought of as part of broader regulatory transformation, i.e., the process of examining all a regulator's activities, policies, processes, and legislation to ensure that they are not only doing the right things, but also not spending time doing the wrong things.

As part of regulatory transformation, regulators might ask themselves questions like: Are we transparent enough? And fully accessible to the public? Should we have an online presence that people can access around the clock and from any device? They might also ask themselves if they're actually meeting the needs of their stakeholders or simply getting caught up doing things the way they have always been done.

Importantly, regulatory transformation can happen at any time. One of the most common catalysts, however, is when new leaders come to an agency and begin asking why things are done a certain way. Another is when agencies commit to adopting new technology, triggering a critical review of existing processes and approaches.

Regulatory transformation is about taking a hard look in the mirror and ensuring that your agency is focused on the right things and has the processes and policies in place to support them. It's a systematic approach to regulating activity that generally consists of five broad steps:

01 Analyzing the regulatory requirements you are responsible for, the outcomes you are trying to achieve, and the risks associated with achieving those outcomes.

02 Designing the regulatory programs and processes necessary to achieve those outcomes while mitigating the most serious risks.

03 Developing the tools and resources necessary to address any specific need or identify deficiencies.

04 Delivering all of that and evaluating the extent to which that activity is meeting the need you identified up front.

05 Validating all of the activity to ensure its proper and in accordance with the organization's mandate.

Ultimately, the outcome of regulatory transformation is greater agility. It allows the regulator to pivot and allocate resources and expertise more effectively to better deliver services to the public. The result is greater efficiency, higher-quality service, potentially lower fees for membership, better stewardship of limited resources, and instilling public confidence and trust.

When regulators go through regulatory transformation, they often marry it with digital transformation. This leads to better experiences for applicants because it sets them up to self-serve in a way that's on demand, faster, and less onerous. By integrating regulatory and digital transformation, a regulator's focus is shifting to provide the best service and citizen experience as efficiently as possible.

SECTION THREE

Supporting regulatory transformation by adopting a risk-based approach

When regulators embrace a risk-based approach to regulation, they are taking a major step on their journey to regulatory transformation. That's because regulators need to constantly transform to address constantly evolving risks. By adopting a risk-based approach to licensing, they are challenging the status quo and looking for new ways to work smarter, more efficiently, and ultimately with greater agility.

This, in turn, goes a long way toward putting regulators on the path to self-reflection and critical self-evaluation that is necessary to identify new and better ways of working. Those regulators looking to support that work might consider using a regulatory effectiveness measurement tool, such as the Thentia Regulatory Effectiveness Index.

The Thentia Regulatory Effectiveness Index

The Thentia Regulatory Effectiveness Index (The TRE Index) is offered to regulatory bodies to examine their regulatory and organizational management functions in a self-managed process. The functions are broken down into their component parts and then examined based on an assessment criterion and the delivery of that function and then scored on a scale usually from "needs replacing" to "fit for purpose". In the regulatory functions examination, for example, statutory framework, licensing and registration, and setting professional standards are some of the areas considered.

For the regulator, this provides an objective mechanism to examine all their regulatory processes and to determine whether there are areas which, if enhanced, would increase their effectiveness. The TRE Index score allows a regulatory body to examine their functions through a detailed matrix and measure themselves against a standard and also against regulatory bodies in the same jurisdiction or across disciplines.

Once a regulatory body has completed the self-managed TRE Index, and has identified areas to focus on, they will be poised to begin to become a more effective regulator through a regulatory transformation process.

A regulatory body with interest in using a measurement tool such as the TRE Index can do so by contacting the Regulatory team at Thentia.

CONCLUSION

Many of today's regulatory licensing agencies are drowning in busy work and regulatory scope creep. As we have seen, much of that busy work is the result of legacy processes, and does not actually play an effective role in the broader mission of a regulator to safeguard the public Recognizing this, regulatory bodies may want to consider embracing a risk-based approach to their licensing activities. Doing so would allow them to dramatically reduce the burden of administrative tasks that provide little value, while giving them the agility to focus their limited resources on reassessing their constantly evolving risk landscape and taking the steps necessary to mitigate risk.

Adopting a risk-based approach also helps set regulatory bodies up for the kind of regulatory transformation necessary to ensure that they are doing the right things rather than just the things they've always done. Bringing in the right technology can help by not only helping regulators reconsider how they do things, but also enables the kind of automation necessary to free up current workflows and allow them to take a risk-based approach.

When regulators embrace a risk-based approach to regulation, they are taking a major step on their journey to regulatory transformation.

Try a risk-based approach, the simple way

Thentia Cloud can help you mitigate risk, reduce inefficiencies and focus on what's important – centering regulatory activities and interventions around protecting and serving the public. Talk to one of our experts today to learn about how regulatory transformation can bring your agency into the modern age.

Schedule a call