

The Governing Committee shall establish and monitor procedures for the review of claim practices of Servicing Carriers to insure compliance with the “Performance Standards for the Handling and Payment of Claims by Servicing Carriers”. National Association of Insurance Commissioners (NAIC) guidelines are incorporated where applicable into the Performance Standards. CAR will conduct periodic audits of Servicing Carriers’ claims including policies reinsured in the Plan and voluntarily written as specified in G.L. c. 175, § 113H. An error tolerance rate of 10% for procedures and 7% for claims resolution will be implemented and enforced.

A. Claim practices of each Servicing Carrier shall comply with the requirements of G.L. c. 175, § 113H. Servicing Carriers shall, in accordance with the Performance Standards:

1. Comply with the standards for prompt investigation of claims. Upon receipt of a new claim, investigate policy information for garaging, listed operator, prior accidents, or any other issues. Information developed may be used to affirm or deny claim payments. Discrepancies shall be communicated to the Underwriting Department and the premium recalculated and billed if appropriate;
2. Affirm or deny coverage of claims within a reasonable period of time;
3. Effectuate prompt, fair and equitable settlements of claims in which liability is reasonably clear;
4. Maintain claim reserving procedures for all applicable claims;
5. Conduct internal claim quality audit of a reasonably representative number of claim files on residual market business, commensurate with their procedures for audit of claims on voluntary business, in order to verify compliance with the Performance Standards. With sufficient frequency to reflect reasonable continuity of their quality controls, Servicing Carriers shall prepare internal reports summarizing the efforts and conclusions of their claim department quality audit. Reports shall consolidate comments relative to both residual market and voluntary claim adjustment.

Report format shall be at the discretion of each Servicing Carrier, or as may be requested from time to time on an individual basis by the Governing Committee, or their designee;

6. Establish complaint handling procedures, and maintain complete records of all complaints received on claims related to both residual market and voluntary business. Servicing Carriers shall maintain records reflecting the number of complaints received annually. For purposes of this Rule, the term "complaint" shall mean any written communication initiated by the complainant primarily expressing a grievance;
 7. Acknowledge and act promptly upon communications regarding claims;
 8. Promptly provide a reasonable explanation for denial of a claim or for the offer of a compromise settlement;
 9. Resolve inter-company subrogation disputes involving Physical Damage and Personal Injury Protection claims through arbitration;
 10. Have Direct Telephone Reporting available for first and third-party claims; and
 11. Servicing Carriers shall offer training on claim reporting and fraud recognition to producers and their customer service representatives. Such training shall be completed for current producers and customer service representatives within six months of approval of this Rule, and for new producers and customer service representatives within six months of licensing or employment.
- B. In the handling of residual market claims, Servicing Carriers shall not:
1. Misrepresent pertinent facts or policy provisions relating to the coverage at issue;
 2. Refuse to pay claims without having conducted a reasonable investigation based upon all available information; or

3. Fail to promptly settle claims, where liability is reasonably clear, under one portion of the policy coverage in order to influence settlements under other portions of the policy coverage.

C. Every Servicing Carrier shall maintain a Special Investigative Unit (SIU) to investigate suspicious claims for the express purpose of eliminating fraud and shall specifically report to CAR evidence of fraud pertaining to theft or misappropriation of a motor vehicle on policies issued through CAR as provided in the Manual of Administrative Procedures. Special Investigative Units so established shall be organized and operated to investigate claims on any policies which are issued through CAR and on policies issued on a voluntary basis by Servicing Carriers. The SIU shall investigate suspicious circumstances surrounding underwriting, rating, and premium issues. A claim shall not be investigated by such a unit solely on the basis that such claim arises from a policy issued through CAR.

D. Failure to meet the standards or requirements described in this Rule may prevent reimbursement of loss or expense or may result in such other penalties as may be imposed by the Governing Committee or as directed by the Performance Standards.

E. Special Reimbursements (for claims arising out of policies written prior to July 1, 2007)

1. Excess Judgments

A Servicing Carrier shall notify, in writing, the Vice President-Claims of CAR of any tort liability judgment, for which the Servicing Carrier may be liable, against an insured of a Servicing Carrier policy if the amount of the judgment exceeds the limit of coverage, within 180 days of the entry of judgment. A Servicing Carrier shall also notify, in writing, the Vice President-Claims of CAR of any settlement of a claim against a Servicing Carrier policy if the amount of the settlement, for which the Servicing Carrier may be liable, exceeds the limit of coverage, within 180 days of the execution of any settlement.

Within one year of the entry of judgment or the execution of settlement prior to any entry of judgment, the Servicing Carrier may apply, with adequate supporting explanation and documentation, including the complete claim file and complete underwriting file if requested, to the Vice President-Claims for reimbursement of such amounts; provided however, that if no final judgment has been entered and the Servicing Carrier has so notified, in writing, the Vice President-Claims and has provided notification, the request for reimbursement may be filed within 180 days after the subsequent entry of final judgment or execution of settlement or within one year of the initial notification, whichever occurs later. The Vice President-Claims shall review the request with the Claims Advisory Committee and shall refer its recommendation to the Governing Committee for consideration. The Governing Committee may authorize reimbursement of all or any part of the amount requested unless it determines that the Servicing Carrier was negligent in the handling of the claim and its negligence was the proximate cause of the excess judgment or settlement, in which event the request shall be denied.

The requirements of this Rule shall apply to all excess judgments entered or excess settlements executed which occur on or after the effective date of the approval of these amendments. For excess judgments entered or excess settlements executed within 179 days prior to the effective date of the approval of these amendments, Servicing Carriers must provide notice and/or a request for reimbursement during the same time periods set forth above, but measured from the effective date of the approval of the amendments.

For all other requests for reimbursement on judgments or settlements pre-dating this amendment, the excess judgment or settlement must be reported promptly. In no event will a request for reimbursement be considered if a delay in reporting, by or within the control of the Servicing Carrier, is prejudicial to CAR or its ability to properly evaluate the request.

Failure to comply with any of the requirements set forth above shall preclude any request for reimbursement in connection with such judgment and/or settlement.

Approved reimbursements shall be submitted as separate loss records.

2. Penalties

The Governing Committee may authorize reimbursements to Servicing Carriers for payments of penalties imposed by Massachusetts Courts in accordance with G.L. c. 90, § 34O and G.L. c. 175, § 113O, and for the payment of legal expenses for the successful defense of actions based on Chapter 93A.

A request for reimbursement, accompanied by adequate supporting explanation and documentation, shall be sent promptly to the Vice President-Claims, who shall review the request with the Claims Advisory Committee and thereafter present its recommendations to the Governing Committee for consideration.

In cases that do not involve any negligence in the handling of the claim by the Servicing Carrier, which negligence is the proximate cause of the imposition of the penalty, the Governing Committee may authorize reimbursement of all or part of the amount of penalty.

Approved reimbursements shall be submitted as separate loss records.

3. Notice of Reimbursement

The Governing Committee shall give thirty days' written notice to the Commissioner of its intent to consider any request for reimbursement pursuant to this section.

F. Dishonesty

Loss or expense resulting from the dishonesty of those employed to handle claims shall be the sole responsibility of the Servicing Carrier.

G. Claim Contingency Procedures

1. Terminations

A Member which terminates its designation as a Servicing Carrier as provided in Rule 16 shall, subject to the provisions of Rule 10, service to a conclusion all claims against all policies issued by it in its capacity as a Servicing Carrier and in effect prior to the date of termination. "Service to a conclusion" shall mean until the claim is properly closed, or until an agreed date.

2. Other Terminations

Upon notice from the Governing Committee of the termination, other than voluntary, of a Member's designation as a Servicing Carrier, the Vice President-Claims shall examine a representative sample of open claim files to determine the amount of work completed, to estimate the future cost of servicing the claims to a conclusion, and to verify compliance with Rule 10. He shall review his findings with the Claims Advisory Committee and shall present to the Governing Committee for its consideration the recommendations of the Claims Advisory Committee for the further servicing of said Servicing Carrier claims.