

The Governing Committee shall establish and monitor procedures for the review of claim practices of Servicing Carriers to ensure compliance with the Performance Standards for the Handling and Payment of Commercial Claims by Servicing Carriers (Performance Standards). 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 ceded through CAR and voluntarily written as specified in G.L. c. 175, § 113H.

A. Claim Practices

Each Servicing Carrier shall comply with the requirements of G.L. c. 175, § 113H relating to claim practices and 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 Servicing Carrier's underwriting department and the premium recalculated and billed if appropriate and in accordance with Division of Insurance requirements;
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 its 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; and
10. Have direct telephone reporting available for first and third-party claims.

B. 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. Special Investigative Unit

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 commercial motor vehicle

on ceded policies as provided in the Manual of Administrative Procedures. Special Investigative Units so established shall be organized and operated to investigate claims on any ceded policies and on policies issued on a voluntary basis by Servicing Carriers.

The SIU shall:

1. 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 ceded policy; and
2. Conduct an audit on a representative sample of policies to verify garaging and policy facts.

D. Compliance with Commercial Performance Standards

A benchmark of 80 percent will be used to measure compliance with the Performance Standards. Failure to meet the standards or requirements described in this Rule may prevent reimbursement of loss or expense or may result in penalties as directed by the Performance Standards or as may be otherwise imposed by the Governing Committee.

E. Special Reimbursements

These procedures apply to claims arising out of ceded commercial Motor Vehicle Insurance policies and claims arising out of ceded Private Passenger Motor Vehicle Insurance policies (as defined in Rule 22) and written prior to April 1, 2009.

1. Excess Judgments

A Servicing Carrier shall notify CAR in writing, of any tort liability judgment against an Eligible Risk, for which the Servicing Carrier may be liable, if the amount of the judgment exceeds the limit of coverage. This notification must be received within six months of the entry of judgment. A Servicing Carrier shall also notify CAR in writing, 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. This notification must be received within six months 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 to CAR

for reimbursement of amounts in excess of the limit of coverage. If no final judgment has been entered and the Servicing Carrier has so notified CAR in writing, the request for reimbursement may be filed within six months after the subsequent entry of final judgment or execution of settlement or within one year of the initial notification, whichever occurs later. Adequate supporting explanation and documentation, including the complete claim file and complete underwriting file, if requested, must be provided. CAR shall review the request for reimbursement with the Compliance Audit Committee, with its recommendations presented 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.

Failure to comply with any of the requirements set forth in Section E.1. 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 pursuant to G.L. c. 90, § 34O and G.L. c. 175, § 113O, and for the payment of legal expenses for the successful defense of actions pursuant to G.L. c. 93A.

A request for reimbursement of penalties, accompanied by adequate supporting explanation and documentation, shall be sent promptly to CAR. The request shall be reviewed with the Compliance Audit Committee and its recommendations shall be presented to the Governing Committee for consideration.

In cases that do not involve any negligence in the handling of the claim by the Servicing Carrier, where alleged 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 30 days' written notice to the Commissioner of its intent to consider any request for reimbursement pursuant to Section E. of this Rule.

F. Dishonesty

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

G. Claim Contingency Procedures

1. Terminations

A Member whose designation as a Servicing Carrier is terminated pursuant to 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 non-voluntary termination of a Member's designation as a Servicing Carrier, CAR 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. Findings from that examination shall be reviewed with the Compliance Audit Committee and its recommendations relative to the further servicing of said Servicing Carrier claims shall be presented to the Governing Committee for consideration.