



*Massachusetts Workers Compensation
Assigned Risk Pool*

January 3, 2025

**MASSACHUSETTS WORKERS' COMPENSATION
ASSIGNED RISK POOL**

SPECIAL BULLETIN NO. 01-25

**MASSACHUSETTS WORKERS' COMPENSATION ASSIGNED RISK POOL
PLAN OF OPERATION**

To update and modernize the Assigned Risk Pool Plan of Operation (Pool Plan), WCRIBMA staff and the Assigned Risk Pool Plan of Operation Review Working Group completed a comprehensive review of the Pool Plan during 2023. Attached as Exhibit A is a copy of the Pool Plan that was approved by the Division of Insurance, **to be effective June 1, 2025**. Additions to the Pool Plan are shown in blue underline, moved text in green and deletions are shown in red strikethrough. A clean copy of the revised Pool Plan can be found at www.wcribma.org in the Residual Market section under the General Residual Market Resources tab.

Attached as Exhibit B is a list of all the significant changes with background and rationale for the changes.

If you have any questions, please feel free to contact me at 617-646-7594 or dcrowley@wcribma.org or Christine Cronin at 617-646-7544 or ccronin@wcribma.org.

Daniel M. Crowley, CPCU
Vice President – Customer Services & Residual Market

Attachment

Exhibit A

Pool Plan of Operation (Redlined)

**MASSACHUSETTS WORKERS' COMPENSATION
ASSIGNED RISK POOL**

AMENDED AND RESTATED PLAN OF OPERATION

EFFECTIVE: < DATE >

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**MASSACHUSETTS WORKERS' COMPENSATION
ASSIGNED RISK POOL**

AMENDED AND RESTATED PLAN OF OPERATION

ARTICLE I

NAME

Name. The reinsurance pool contemplated by ~~G.L.~~M.G.L. c. 152, §-65C, as amended, shall be known as the Massachusetts Workers' Compensation Assigned Risk Pool (~~the~~ "Pool").

ARTICLE II

DEFINITIONS

1. "Appeals Committee" means the WCRIBMA committee that administers appeals in accordance with the Constitution.
2. "Annual Meeting" has the meaning set forth in ~~Section 1 of~~ Article VI, Section 1.
3. "Commissioner" means the Commissioner of the Massachusetts Division of Insurance or any successor entity.
14. ~~"Company Group" The term "group" or "company group" wherever used in this Plan of Operation shall refer to~~ means companies controlling, controlled by, or under common control with other companies and shall be identified by the ~~its~~ NAIC group number.
5. "Constitution" means the Constitution of the WCRIBMA.
6. "Days" shall refer to calendar days unless otherwise specified.
7. "DIA" means the Massachusetts Department of Industrial Accidents or any successor entity.
8. "Effective Date" has the meaning set forth in Article XV.
9. "Good faith" means an observance of reasonable commercial standards of fair dealing.
10. "Governing Committee" means the committee that administers the WCRIBMA in accordance with the Constitution.
11. "Insolvency Fund" means the Massachusetts Insurers Insolvency Fund or any successor entity.
12. "Insolvent" means being the subject of receivership, conservatorship, rehabilitation, liquidation, or similar

proceedings, whether voluntary or involuntary, in any jurisdiction.

13. "Insurer" has the meaning set forth in M.G.L.c. 152, §1(7).
14. "MA Manual" means the Massachusetts Workers' Compensation and Employers' Liability Insurance Manual.
15. "Member" has the meaning set forth in Article V, Section 1.
16. "NAIC" means the National Association of Insurance Commissioners.
17. "NCCI" means the National Council on Compensation Insurance.
18. ~~The term "Net Workers' Compensation Insurance Premiums Written," wherever used in this Plan of Operation, shall mean the gross direct premiums charged, less all premiums (except dividends and savings refunded under participating policies) returned to policyholders for all Workers' Compensation and Occupational Disease Insurance calendar year Direct Premiums Written reported on the Workers Compensation line of the Annual Statement, exclusive of premiums for risks subject to this Plan of Operation, and for risks written under Special National Defense Comprehensive Rating or Special National Defense Premium Discount Plans National Defense Projects Rating Plan and under excess policies; provided, however, that in the case of risks written or renewed on large deductible policies on or after January 1, 1994, or in effect on or after January 1, 1995, the Net Workers' Compensation Insurance Premiums Written net workers' compensation insurance premiums written shall be deemed to be an amount equal to sStandard pPremium plus any applicable All Risk Adjustments Program amounts associated with such policies. The term "Net Workers' Compensation Insurance Premiums Written net workers' compensation insurance premiums written" shall also include all premium received by non-admitted carriers on policies issued by such carriers for coverage in the state if such policies are deemed to meet employer obligations under the workers' compensation statute of the state.~~
19. "New business" as used in Appendix A, Performance Standards, means the first year that an employer is assigned to the carrier by the WCRI/BMA. Block transferred policies are considered 'new business' to the receiving carrier, while policies that have been reassigned to the same carrier with a gap of no more than six months are not considered 'new business.'
20. "Plan of Operation" means the Amended and Restated Plan of Operation of the Massachusetts Workers' Compensation Assigned Risk Pool, including the Appendices.
21. "Participation Ratio" means the percentage of the Net Workers' Compensation Insurance Premiums Written during such calendar year by a Member, as adjusted by any applicable take-out credit, of the Total Net Workers' Compensation Insurance Premium Written by all Members excluding Voluntary Direct Assignment Carriers during such calendar year, as adjusted by any applicable take-out credit. Voluntary Direct Assignment Carriers are assigned Participation Ratios at the time of the VDAC Reapportionment.
22. (a) "Performance Standards", as applicable to Servicing Carriers designated pursuant to Article VIII, Section 2, and to Voluntary Direct Assignment Carriers designated pursuant to Article IX, Section 2, refer to the minimum performance standards set forth in Appendix A.

(b) "Performance Standards", as applicable to Servicing Carriers selected pursuant to Article VIII, Section 3, refer to the Performance Standards set forth in Appendix A of this Plan, including any enhancements contained in the Servicing Carrier contract.

23. "Residual Market Committee" means the committee described in Article VII.

~~3.24. The term "run-off" wherever used in this Plan of Operation shall "Run-off" refers to means~~ a state of affairs in which ~~a mMember company~~ is not writing any new or renewal business but: ~~1) continues to pay its outstanding claims or ; 2) has transferred its Pool obligations/losses to a related or unrelated entity; or 3) has transferred its Pool obligations/losses to an unrelated entity.~~

~~4.25. The term "sServicing eCarrier" wherever used in this Plan of Operation shall includes~~ any mMember company servicing for a fee coverage written by such mMember and subject to this Plan of Operation.

~~5.26. "Standard pPremium" is defined and described in Section VI of the Massachusetts Workers' Compensation Unit Statistical Plan (see "Total Standard Premium"), Appendix F of the MA Manual, the Residual Market Premium Algorithm. For the purpose of determining the servicing carrier fees as provided in the Appendix, percentages are of standard premium, i.e., not including ARAP surcharges or MARRP adjustments.~~

~~6.27. "The term "vVoluntary eDirect aAssignment eCarrier" or "VDAC", shall means~~ an insurer that has elected to receive direct assignments, in lieu of participating in the Pool, and that has obtained prior approval from the Commissioner ~~of Insurance~~ authorizing such form of participation. ~~Subject to the approval of the Commissioner, an insurer can be both a servicing carrier and a voluntary direct assignment carrier. Voluntary Direct Assignment Carriers retain the premiums collected on their direct assignment policies and are responsible to pay all losses and expenses associated with their direct assignment policies.~~

28. "WCRIBMA" means The Workers' Compensation Rating and Inspection Bureau of Massachusetts.

ARTICLE III

DESIGNATION OF ADMINISTRATOR

The Commissioner has designated the WCRIBMA as administrator of the Pool which shall be administered in accordance with M.G.L. c. 152, §65A et seq., as amended.

~~Designation of Administrator. The Pool shall be administered, in accordance with G.L. c. 152, § 65A et seq., as amended, by The Workers' Compensation Rating and Inspection Bureau of Massachusetts (the "Bureau").~~

ARTICLE IIIIV

PURPOSE AND LIMITATIONS

1. **Purpose.** ~~It is the~~ The purpose of the Pool is to provide a mechanism for the equitable distribution among

insurers of risks entitled to coverage under G.L.M.G.L. c. 152, §-65A, as amended, and to provide, in accordance with G.L.M.G.L. c. 152, §-65C, as amended, for the equitable allocation among all insurers authorized to write workers' compensation insurance in the Commonwealth of the losses incurred on policies issued to employers under §-65A.

Under delegation from the Commissioner ~~of Insurance (the "Commissioner")~~, the WCRIBMA Bureau shall make equitable assignments of risks entitled to coverage under G.L.M.G.L. c. 152, §-65A, as amended, including assignments to sServicing eCarriers or vVoluntary dDirect aAssignment eCarriers. The WCRIBMA Bureau shall each year submit to the Commissioner a report of the assigned risks for the preceding year.

The WCRIBMA Bureau is authorized to enter into agreements on behalf of the mMembers ~~of the Pool~~ to carry out the purposes of this Plan of Operation, including but not limited to servicing carrier agreements. The WCRIBMA Bureau is authorized to select sServicing eCarriers under the terms set forth in Article VIII of this Plan. The WCRIBMA Bureau is empowered to act as attorney-in-fact for each mMember ~~of the Pool~~; to enforce any rights of the mMembers ~~of the Pool~~, including without limitation, any rights against any other mMember ~~of the Pool~~ upon insolvency; to enforce the obligations of membership on behalf of all mMembers ~~of the Pool~~; to prosecute, to defend, to submit to arbitration, to settle and to propose or to accept a compromise with respect to any claim existing in favor of, or against, such mMember based on ~~or~~ involving any matter relating to this Plan of Operation; or to intervene in any action or proceeding related thereto.

2. Limitations.

(a) This Plan of Operation shall apply only to workers' compensation policies including any one or more of the following coverages provided under such policies:

(i) Statutory workers' compensation and occupational disease as provided in G.L.M.G.L. c. 152.

(ii) Employers' Liability when written in combination with coverage as specified in (a) above.

(iii) Such other coverages as the Bureau WCRIBMA may file for approval by the Commissioner for inclusion in the standard Workers' Compensation and Employers' Liability Insurance Policy.

(b) Policies issued pursuant to the Plan of Operation shall not include Federal Employers' Liability Act coverage.

(c) Nothing in this Plan of Operation shall affect the enforceability of any applicable bankruptcy, receivership, or other similar laws affecting the enforcement of creditors' rights in general.

~~If any article, section, paragraph, sentence, or clause of this Plan of Operation is held invalid by any court of competent jurisdiction, such decision shall not affect any of the remaining provisions of this Plan of Operation.~~

(d) This Plan of Operation shall apply to policies issued to employers policyholders whose risks have been assigned to and accepted by mmembers ~~of the Pool~~ in accordance herewith, ~~and to become effective on or after 12:01 a.m. of the effective date.~~

(e) If any article, section, paragraph, sentence, or clause of this Plan of Operation is held invalid by any court of competent jurisdiction, such decision shall not affect any of the remaining provisions of this Plan of Operation.

ARTICLE IV

MEMBERSHIP

1. **Membership.** Every insurer, as defined in G.L.c. 152, § 1(7), and any insurance company, reciprocal or interinsurance exchange which has contracted with an employer to pay the compensation provided for by G.L.M.G.L. c. 152; that is authorized to write or to continue to write workers' compensation insurance in the Commonwealth shall be a member of the Pool, ("Member").
2. **Member Obligations.** Any or all Members shall, at the discretion of the WCRIBMA, be required to periodically provide, at intervals to be determined by the WCRIBMA, information on the ability to pay return premiums, losses and expenses which may be assessed pursuant to Article XII, Sections 4 and 5 for all risks which are subject to this Plan of Operation. Members shall provide all further information necessary for the WCRIBMA to ascertain a company's ability to pay its obligations to the Members, and for the WCRIBMA to determine if there is any significant likelihood that the company's future reserves will be inadequate to meet future obligations. Members shall cooperate fully in assisting the WCRIBMA in making these determinations, and shall cooperate fully in the conduct of any auditing procedure necessary to these determinations.

Should the WCRIBMA determine that a company's reserves are not adequate to meet its obligations to the Members, or that there is a significant likelihood that future reserves will be inadequate to meet future obligations, or should the WCRIBMA determine that the Member has not cooperated to the extent necessary to make these determinations, the WCRIBMA shall have the authority to ensure that the Member shall meet its obligations to the other Members by taking actions which may include, any or all of the following as set forth in (a) through (d) below.

When a Member fails to make timely payment of its assessment or otherwise fails to honor its financial obligations to the Members, or if a Member is under the supervision of the insurance department or other regulatory authority of any jurisdiction, or when the insurance department or other regulatory authority of any jurisdiction represents, in writing, that a Member is unable to meet its financial obligations, or when a Member is in run-off, the WCRIBMA shall have the authority to protect the other Members by ensuring that the Member can meet its obligations to the Pool on a timely basis by taking actions which include but not be limited to any or all of the following:

- (a) Ordering that all or a portion of assessment distributions or refunds due the Member be paid into escrow or trust with the WCRIBMA to secure or pay any of the Member's current or future obligations and liabilities.
- (b) Ordering that all or a portion of assessment distributions or refunds due the Member be paid in trust with a third party to secure or pay any of the Member's current or future obligations and liabilities.
- (c) Upon approval by the Commissioner, ordering that the Member obtain a letter of credit approved by the WCRIBMA to secure or pay any of the Member's current or future obligations and liabilities.

- (d) Upon approval by the Commissioner, ordering that all or a portion of assessment distributions or refunds which have been distributed to the Member be placed into escrow or trust for the benefit of the Pool with the WCRIBMA or with a third party designated by the WCRIBMA, to secure or pay any of the Member's current or future obligations and liabilities.

Compliance with any such order within the time specified therein shall be an obligation of membership.

3. Insolvency.

- (a) In the event any ~~mMember company shall become~~ is declared Insolvent ~~insolvent, as hereinafter defined, by a court of competent jurisdiction, its~~ membership ~~of such company~~ in the Pool shall ~~be deemed~~ terminated at the time such company becomes insolvent subject to the further provisions of subparagraph ~~23~~ 3(g) hereunder. Under all circumstances, the WCRIBMA shall be entitled to offset any liabilities of the Insolvent Member to the Pool against any liabilities of the Pool to the Insolvent Member. As used herein, "insolvent" means being the subject of receivership, conservatorship, rehabilitation, liquidation, or similar proceedings, whether voluntary or involuntary, in any jurisdiction.
- (b) Upon notice to the WCRIBMA Bureau of the insolvency of a ~~mMember company~~ which is acting as a ~~sServicing eCarrier~~ and/or as a ~~vVoluntary dDirect aAssignment eCarrier~~, the ~~Bureau~~ WCRIBMA shall reassign all ~~risks-policyholders with active policies that were~~ previously assigned to the ~~insolvent~~ Insolvent company to one or more ~~sServicing eCarriers~~ and/or ~~vVoluntary dDirect aAssignment eCarriers~~ in accordance with the procedures set forth in this Plan of Operation.
- (c) In the event a ~~sServicing eCarrier~~ becomes ~~insolvent~~ Insolvent, the ~~WCRIBMA Bureau~~, acting on behalf of each of the ~~mMembers~~, shall have the option to:
- (i) pay to ~~The Massachusetts Insurers~~ the Insolvency Fund, or to the receiver, conservator, rehabilitator, liquidator or other appropriate representative who has assumed the liabilities, all losses and expenses for which ~~the such insolvent~~ Insolvent Servicing Carrier company shall have become liable upon risks to which this Plan of Operation applies. Under all circumstances, the WCRIBMA shall be entitled to offset any liabilities of the Insolvent Member to the Pool against any liabilities of the Pool to the Insolvent Servicing Carrier; or
- (ii) subject to the approval of the receiver, conservator, rehabilitator, liquidator or other representative, and subject to the approval of any court having jurisdiction over the proceedings, terminate the obligation of the ~~mMembers~~ of the Pool to such insolvent company to reinsure such ~~insolvent~~ Insolvent ~~company~~ Servicing Carrier for losses and expenses for which the ~~insolvent~~ Insolvent ~~company~~ Servicing Carrier shall have become liable upon risks to which this Plan of Operation applies. If this option is exercised, the WCRIBMA Bureau shall arrange ~~make arrangements~~ to reassign all ~~risks-policyholders~~ being serviced by such ~~insolvent~~ Insolvent ~~member~~ Servicing Carrier to a successor ~~sServicing eCarrier~~. Such successor sServicing eCarrier shall assume all the duties and obligations of the insolvent Insolvent Servicing Carrier and shall accede to the reinsurance provided by the ~~Mmembers of the Pool~~. Payment made on account of such risks, including expenses for the servicing thereof, shall be apportioned ~~pro rata~~ ratably among the remaining ~~mMembers of the Pool~~ in accordance with the method provided for the apportioning of

assessments.

- (d) The outstanding liability ~~to the members of the Pool~~ of any ~~Insolvent insolvent m~~Member, whether in its capacity as a ~~s~~Servicing ~~e~~Carrier, or as a ~~m~~Member, ~~or both, and~~ except for the unexpended portion of any premium retained by ~~such Insolvent Member (if a s~~Servicing ~~e~~Carrier) for servicing an assigned risk, shall, ~~in the event of insolvency,~~ be assumed by and apportioned among the remaining ~~m~~Members ~~of the Pool~~ in the same manner as liability for assessments is apportioned under this Plan ~~of Operation~~. The right of such ~~Insolvent insolvent m~~Member to participate in the Pool or the funds thereof, except as to any refund if the right to such refund shall have accrued before the date of insolvency, shall thereupon terminate. No refund shall be made to such ~~insolvent insolvent company Member~~ until all its liabilities to the ~~m~~Members ~~of the Pool~~ and all liabilities assumed by ~~m~~Members ~~of the Pool~~ by virtue of the provisions of this Plan shall have been fully settled and satisfied.

In the event a ~~Voluntary d~~Direct ~~a~~Assignment ~~e~~Carrier becomes ~~insolvent insolvent~~, the Pool shall have no obligation to pay any losses and expenses for which such ~~insolvent insolvent~~ company shall have become liable ~~upon risks to which the Plan of Operation applies in accordance with Article IX~~ except to the extent, if any, that the ~~Massachusetts Insurers~~ Insolvency Fund ~~or any successor entity~~ is not obligated to pay such losses and expenses under the provisions of ~~G.L.M.G.L~~ c. 175D.

The ~~Pool m~~Members shall have all the rights allowed by law against the estate or funds of ~~insolvent insolvent carriers~~Members for recovery of funds disbursed (including the payment of losses and servicing expenses) on risks carried by ~~insolvent insolvent m~~Members as herein provided. The ~~Bureau WCRIBMA~~ may assert and enforce such rights on behalf of the ~~m~~members ~~of the Pool~~.

Upon the insolvency of a Member who is also acting in the capacity of a Servicing Carrier, all amounts due to such Insolvent Servicing Carrier from the Members as a result of the reinsurance provided to such Servicing Carrier and all amounts due from the Insolvent Servicing Carrier shall be merged into one account and deemed mutual debts and credits which the WCRIBMA may offset.

The provisions of this section are subject to any other or further provisions with respect thereto which may be from time to time embodied in the rules and procedures adopted hereunder.

- (e) Any ~~Insolvent insolvent m~~Member ~~company~~ which fails or has failed to make timely payment of any assessment made under this Plan of Operation shall become liable to the ~~other m~~Members ~~of the Pool~~, as of the earliest date on which such failure to pay occurs, for an additional amount equal to the commuted value on such date of all future assessments to be made against such ~~m~~Member ~~company~~. For the purposes hereof, such commuted value shall be the total amount of unearned premium reserves and loss reserves then allocated to such ~~m~~Member ~~company~~ hereunder, as determined by the ~~WCRIBMA Bureau~~. The liability of the ~~insolvent insolvent m~~Member ~~company~~ for such commuted value under this provision shall be deemed fixed, liquidated, and non-contingent as of the date of such failure to pay. The ~~Bureau WCRIBMA~~ may assert and enforce such liability on behalf of the ~~m~~Members ~~of the Pool~~ by taking actions which may include those set forth ~~below in s~~Section ~~32, below, above.~~ ~~Member Obligations, including parts (a) – (d) of that section.~~
- (f) The ~~WCRIBMA Bureau~~ shall have the discretion to terminate the membership of any or all affiliated

companies of the ~~insolvent~~Insolvent ~~Member~~ company. ~~No~~The termination of an ~~Insolvent~~ insolvent ~~Member~~ company or any or all companies described in this Section shall not be deemed ~~an~~ abrogation of the membership requirement in ~~Article IV~~, Section 1. of this Article V ~~above~~.

- (g) Anything in this Section to the contrary notwithstanding, the WCRIBMA Bureau may, in the event such action is in its judgment feasible and desirable, and in a manner equitable to all ~~m~~MMembers, elect not to terminate the membership of such ~~insolvent~~Insolvent company, and permit such company to continue to be a ~~m~~MMember ~~of the Pool~~ upon such conditions as it may prescribe and subject in all respects to this Plan of Operation and the rules and procedures hereunder as then constituted.
- (h) No member of any WCRIBMA Committee ~~of the Bureau~~ representing an ~~insolvent~~Insolvent ~~Member~~ company or affiliate thereof may vote in any proceeding under this Section.
- (i) Nothing in this Section relating to the insolvency of a ~~m~~MMember company shall, without the express approval of the WCRIBMA Bureau, increase the total liability of all ~~m~~MMembers of the Pool (excluding the obligations of the ~~insolvent~~Insolvent ~~m~~MMember) to an amount greater than what the liability would have been if the insolvency had not occurred.

~~**3. Member Obligations.** Any or all Mmembers companies shall, at the discretion of the WCRIBMA Bureau, be required to periodically provide, at intervals to be determined by the WCRIBMA Bureau, information on the ability to pay return premiums, losses and expenses which may be assessed pursuant to Article XIII, Sections 7 4 and 5 for all risks which are subject to this Plan of Operation. Members companies shall provide all further information necessary for the WCRIBMA Bureau to ascertain a company's ability to pay its obligations to the Pool mMMembers, and for the WCRIBMA Bureau to determine if there is any significant likelihood that the company's future reserves will be inadequate to meet future obligations. Members companies shall cooperate fully in assisting the WCRIBMA Bureau in making these determinations, and shall cooperate fully in the conduct of any auditing procedure necessary to these determinations. Should the WCRIBMA Bureau determine that a company's reserves are not adequate to meet its obligations to the Pool mMMembers, or that there is a significant likelihood that future reserves will be inadequate to meet future obligations, or should the WCRIBMA Bureau determine that the mMMember company has not cooperated to the extent necessary to make these determinations, the WCRIBMA Bureau shall have the authority to ensure that the mMMember company shall meet its obligations to the other mMMembers of the Pool by taking actions which may include, any or all of the following as set forth in (a) through (d) below. When a mMMember company fails to make timely payment of its assessment or otherwise fails to honor its financial obligations to the Pool mMMembers, or if a mMMember company is under the supervision of the insurance department or other regulatory authority of any jurisdiction, or when the insurance department or other regulatory authority of any jurisdiction represents, in writing, that a mMMember company is unable to meet its financial obligations, or when a mMMember company is in run-off, the WCRIBMA Bureau shall have the authority to protect the other mMMembers of the Pool by ensuring that the mMMember company can meet its obligations to the Pool on a timely basis by taking actions which may include but not be limited to any or all of the following:~~

- ~~(a) Ordering that all or a portion of premium assessment distributions or refunds due the mMMember company be paid into escrow or trust with the WCRIBMA Bureau to secure or pay any of the mMMember's current or future obligations and liabilities.~~

- ~~(b) Ordering that all or a portion of premium assessment distributions or refunds due the mMember company be paid in trust with a third party to secure or pay any of the mMember's current or future obligations and liabilities.~~
- ~~(c) Upon approval by the Commissioner, ordering that the mMember company obtain a letter of credit approved by the WCRIBMA Bureau to secure or pay any of the Member's company's current or future obligations and liabilities.~~
- ~~(d) Upon approval by the Commissioner, ordering that all, or a portion of, premium assessment distributions or refunds which have been distributed to the mMember company be placed into escrow or trust for the benefit of the Pool, with the WCRIBMA Bureau, or with a third party designated by the WCRIBMA Bureau, to secure or pay any of the Member's company's current or future obligations and liabilities.~~

~~Compliance with any such order within the time specified therein shall be an obligation of membership.~~

ARTICLE VI

MEMBER MEETINGS AND VOTING RIGHTS

1. **Annual Regular Meetings.** ~~An Annual Meeting annual meeting~~ of the ~~Members Pool membership~~ shall be held in ~~the City of~~ Boston, Massachusetts, on such date and at such time and place as may be specified in the notice of meeting.

In ~~the event case~~ the ~~Annual Meeting annual meeting~~ for any year shall not be duly called or held, the Residual Market Committee shall cause a special meeting to be held as soon as may be practicable thereafter, in lieu of and for the purpose of such ~~Annual Meeting annual meeting~~, and all proceedings at such special meeting shall have the same force and effect as if taken at the ~~Annual Meeting regular annual meeting~~.

2. **Special Meetings.** Special ~~Meetings meetings~~ of the ~~Members Pool membership~~ may be called at any time by the President of the ~~WCRIBMA Bureau~~, and shall be held in ~~the City of~~ Boston, Massachusetts, at such time and place as may be specified in the notice of meeting. Special ~~Meetings meetings~~ shall also be called by the President of the ~~WCRIBMA Bureau~~ upon the written request of a majority of the Residual Market Committee, or of five ~~(5) Mmembers of the Pool~~.
3. **Notice of Meetings.** At least ten ~~(10)~~ days' written notice of all meetings of the ~~Members Pool membership~~ shall be given. ~~and in each case a~~ An agenda of matters to be considered shall accompany the notice of meeting. Only those matters which are noted in the agenda shall be considered at such meetings, provided, however, that other matters may be considered upon unanimous consent of the ~~M~~members present.
4. **Quorum.** ~~At any annual or special meeting of the Members' meeting Pool membership, a quorum shall be reached when there are Members or Company Groups present collectively representing members writing~~ not less than 51% of the total ~~nNet wWorkers' eCompensation iInsurance pPremiums wWritten~~ by all ~~mMembers of the Pool~~ during the latest calendar year for which information is available, ~~shall constitute a quorum.~~

5. Voting Rights.

5. (a) ~~_____~~ In any meeting of the ~~Members Pool membership~~, each ~~mMember or Company Group of the Pool~~ shall be entitled to one vote.
- (b) ~~At any meeting of the Pool membership, p~~Proposed actions shall be deemed adopted when an affirmative vote has been cast by ~~mMembers or Company Groups~~ writing not less than 51% of the total ~~N~~et ~~w~~Workers' ~~e~~Compensation ~~i~~nsurance ~~p~~remiums ~~w~~Written by all ~~mMembers of the Pool~~ during the latest calendar year for which information is available.
- (c) ~~Action may also be taken, without a meeting, by mail, or telephone, electronically, or by any other method that is reasonably calculated to ensure the accuracy and security of the transmission, receipt, and recording of such action. Proposed actions by any of these methods shall be deemed adopted upon the~~ affirmative vote of ~~mMembers or Company Groups~~ writing not less than 51% of the total ~~n~~et ~~w~~Workers' ~~e~~Compensation ~~i~~nsurance ~~p~~remiums ~~w~~Written by all ~~mMembers~~ during the latest calendar year for which information is available, provided all ~~mMembers or Company Groups of the Pool~~ are polled. In the event of a tie vote, the motion fails adoption.
6. **Proxies.** ~~Members may be represented at any meeting by proxy. Members may record their votes by mail (including electronic mail) on written propositions, and such votes shall have the same standing as if cast by such mMembers in person or by proxy.~~
7. **Records of Meetings.** ~~Records of all meetings of the Members Pool shall be provided to mMembers of the Pool and to the Commissioner.~~

ARTICLE VI

RESIDUAL MARKET COMMITTEE

1. Appointment and Composition.

- (a) ~~At its first meeting following the each a~~Annual ~~m~~Meeting of the ~~WCRIBMA Bureau~~, the members of the Governing Committee shall appoint the members of the Residual Market Committee who shall serve until the next ~~a~~Annual ~~m~~Meeting ~~of the WCRIBMA.~~
- (b) ~~The Residual Market Committee shall be composed of no fewer than five (5) members and not more than ten (10) members, unless otherwise directed by the WCRIBMA's Governing Committee.~~
- (c) ~~The President of the WCRIBMA Bureau shall be a member ex officio of the Committee, but shall not have the right to vote.~~
- 1 (d) ~~The Residual Market Committee shall have a mixture of at least five (5) but not more than eight (8) Members Pool and two (2) non-Pool members. One non-Pool member shall represent policyholders' interests and the other shall represent producers' interests. No more than 80% of the six (6) of the eight (8) Members Pool members shall be s~~Servicing ~~e~~Carriers or Voluntary Direct Assignment ~~e~~Carriers. ~~Committee Pool~~ memberships shall be in the name of the ~~m~~Member company, which shall designate ~~a~~ knowledgeable

representatives of suitable senior standing. ~~Each company member of the Committee shall select two (2) alternates of similar standing.~~

2. **Powers.** The Residual Market Committee shall monitor and administer the Pool on behalf of the WCRIBMA, unless the Governing Committee ~~of the Bureau~~ otherwise directs.

3. Organization and Procedure.

(a) The Residual Market Committee shall be presided over by a Chairperson, who shall have the right to vote. ~~The Chairperson shall be~~ chosen ~~by it~~ from among its members by an election at ~~the its~~ first meeting following the ~~a~~ Annual ~~m~~ Meeting of the WCRIBMA Bureau.

3. (b) A Vice Chairperson shall be elected in the same manner and shall preside in the absence of the Chairperson. Only Members are eligible to serve as Chairperson and Vice Chairperson. A Chairperson pro tem, elected by committee members present, shall act as Chairperson at any meeting in the absence of the Chairperson and Vice Chairperson.

4. Meetings; Time, Place and Notice.

(a) Meetings shall be held at such times and places as the Residual Market Committee may from time to time determine, and may be called at any time by the President of the WCRIBMA Bureau, and shall also be ~~so~~ called by the President upon the written request of any two (2) members of the Residual Market Committee.

(b) The Commissioner shall be notified in advance of all Residual Market Committee meetings and will be invited to attend all such meetings.

(c) At least ten (10) days' written notice of all meetings of the Residual Market Committee shall be given, and in each case an agenda of matters to be considered shall accompany the notice of meeting.

4. (d) Only those matters which are noted in the agenda shall be considered at such meetings, provided, however, that other matters may be considered upon unanimous consent of the members present.

5. Quorum and Voting Rights.

(a) A majority of the members of the Residual Market Committee shall constitute a quorum.

(b) At all meetings of the Residual Market eCommittee, an ~~An~~ affirmative vote of a majority of the committee members present and voting shall be necessary for the adoption of any proposed action, ~~subject to the requirement that there be at least one affirmative vote of a stock carrier and one affirmative vote of a non-stock carrier. A mail vote or a telephone vote may be taken and such vote shall be binding unless the dissenting voter(s) requests a meeting at the time of such vote.~~

(c) Votes on any matter by committee members may be cast by telephone, mail, electronically, or by any other method approved by the Governing Committee that is reasonably calculated to ensure the accuracy and security of the transmission, receipt and recording of such vote. Proposed actions by any of these methods

shall be deemed adopted upon the vote of a majority of the committee members. Such votes shall be binding unless the dissenting voter(s) requests a meeting at the time of such vote.

~~5(d)~~ Voting by proxy shall be permitted.

6. **Conditions.** The Residual Market Committee may fix the conditions upon which assigned risks are afforded coverage and upon which claims shall be handled by ~~S~~servicing ~~C~~carriers and Voluntary Direct Assignment Carriers. All risks serviced by ~~servicing-such~~ carriers shall be insured and all claims shall be handled by such carriers in accordance with such conditions.

7. **Disputes and Appeals.** ~~In addition to the powers elsewhere conferred upon it by this Plan of Operation, the Residual Market Committee may sit as an "Appeals Committee" or may designate a subcommittee of at least three but not more than five members, to act as an Appeals Committee to pass upon all disputes arising with respect to this Plan of Operation, or rules promulgated thereunder, including without limitation, any questions as to the application, scope and effect of this Plan of Operation. Any subcommittee designated to act as an Appeals Committee shall include the appointment of a public member and, at the least, one stock and one non-stock carrier member of the Residual Market Committee. A ruling of a majority of the Appeals Committee shall be final, unless within thirty (30) calendar days after the mailing of notice of the Committee's ruling, the aggrieved party shall have appealed the ruling in writing to the Commissioner. The aggrieved party shall send a copy of such appeal to the Committee. The action of the Commissioner upon such ruling shall be final.~~ The Appeals Committee shall pass upon all disputes arising with respect to this Plan of Operation, or rules promulgated thereunder, including without limitation, any questions as to the application, scope and effect of this Plan of Operation. A ruling of a majority of the Appeals Committee shall be final, unless within thirty (30) days after the mailing of notice of the Committee's ruling, the aggrieved party shall have appealed the ruling in writing to the Commissioner. The aggrieved party shall send a copy of such appeal to the Committee. The action of the Commissioner upon such ruling shall be final.

- ~~8. **Servicing Carriers.** The Committee shall establish qualifications and other conditions for designating servicing carriers.~~

- ~~9. **Audit and Inspections.** The Bureau shall have the right, through its representatives, at all reasonable times during the business day, to audit and inspect the books and records of any voluntary direct assignment carrier or servicing carrier with respect to any policy or policies and claims thereunder coming within the purview of this Plan of Operation.~~

- ~~810.~~ **Rules of Operation.** The Residual Market Committee shall have the power, subject to the approval of the Commissioner, to promulgate and adopt Rules of Operation for the purpose of implementing this Plan. Such Rules may be made at the direction of the Commissioner, upon reasonable notice to the WCRI~~BMA~~ Bureau and after a hearing.

- ~~911.~~ **Records of Meetings.** Records of all meetings of the Residual Market Committee shall be provided to its members and to the Commissioner.

ARTICLE VIII

SERVICING CARRIERS

1. **Servicing Carriers.** ~~One or more An~~ insurers may become a ~~s~~Servicing ~~e~~Carriers through designation by the ~~WCRIBMA Bureau, subject to approval of the Commissioner~~ or through selection by the ~~WCRIBMA Bureau~~ pursuant to a competitive bid process. ~~both The designation and selection of Servicing Carriers are subject to approval by the Commissioner.~~ Nothing in this Plan of Operation or any contract between the ~~WCRIBMA Bureau~~ and a ~~s~~Servicing ~~e~~Carrier shall affect the Commissioner's authority under ~~G.L.M.G.L~~ c. 152, §-65A to require one or more insurers to be ~~s~~Servicing ~~e~~Carriers issuing policies of insurance to employers qualified under section 65A.

Subject to the approval of the Commissioner, an insurer can be both a Servicing Carrier and a Voluntary Direct Assignment Carrier.

- ~~12.~~ **Designation.** The ~~WCRIBMA Bureau~~ may recommend the designation of ~~one or more~~ at least two (2) but not more than five (5) insurers as ~~s~~Servicing ~~e~~Carriers to issue policies of insurance to employers qualified for coverage under ~~G.L.M.G.L~~ c. 152, §-65A, as amended, subject to the approval of the Commissioner. The ~~s~~Servicing ~~e~~Carrier shall continue as a ~~s~~Servicing ~~e~~Carrier for subsequent years, unless it gives the Commissioner ninety (90) days advance written notice of its intention to resign as a ~~s~~Servicing ~~e~~Carrier, or unless such designation is rescinded by the Commissioner. The designation may also be rescinded for cause by the ~~WCRIBMA Bureau~~, subject to the approval of the Commissioner. The ~~WCRIBMA Bureau~~ may rescind a designated ~~s~~Servicing ~~e~~Carrier's authority to issue new or renewal policies if the ~~WCRIBMA Bureau~~ gives at least sixty (60) days advance written notice to each designated carrier following its selection of any ~~s~~Servicing ~~e~~Carrier pursuant to a competitive bid process.

3. Selection Pursuant to a eCompetitive bBid pProcess.

- ~~3.~~ (a) ~~The WCRIBMA Bureau~~ may select, pursuant to a competitive bid process and in accordance with the criteria in this Plan, one or more at least two (2) but not more than five (5) insurers as ~~s~~Servicing ~~e~~Carriers to issue policies of insurance to employers qualified for coverage under ~~G.L.M.G.L~~ c. 152 §-65A, as amended. Each ~~s~~Servicing ~~e~~Carrier so selected shall continue as a ~~s~~Servicing ~~e~~Carrier for subsequent years in accordance with the terms of its written ~~s~~Servicing ~~e~~Carrier contract with the ~~Bureau WCRIBMA~~, unless such selection is rescinded by the ~~Bureau WCRIBMA~~ or the Commissioner for cause.

Servicing Carrier Competitive Bid Selection Process.

4. (b) ~~No Request for Proposal ("RFP") shall be issued by the WCRIBMA Bureau without the Commissioner's prior approval of its contents. Any RFP submitted by the WCRIBMA Bureau for the Commissioner's approval shall not be subject to a public hearing. Any RFP that is submitted to the Commissioner by the Bureau for her approval and~~ may be withdrawn by the ~~WCRIBMA Bureau~~ at any time. Any RFP that is approved by the Commissioner or is issued by the ~~WCRIBMA Bureau~~ may be withdrawn by the ~~WCRIBMA Bureau~~ at any time. The issuance of any RFP shall not commit or require the ~~WCRIBMA Bureau~~ to award any ~~s~~Servicing ~~e~~Carrier contracts.

- ~~54.~~ **Eligibility Criteria for Selection Servicing Carriers.** No ~~m~~Member ~~of the Pool~~ may be a ~~s~~Servicing ~~e~~Carrier, unless such ~~Member member~~:

- (a) has been writing workers' compensation insurance in the Commonwealth of Massachusetts during at least the five (5) years immediately preceding the request to be designated a ~~s~~ervicing ~~e~~Carrier;
- (b) currently maintains, and, during the five (5) years immediately preceding the request to be designated or selected as a Servicing Carrier ~~has and has~~ maintained, ~~s for the past five years, at a minimum,~~ a workers' compensation voluntary market share of at least two percent (21%) in the Commonwealth of Massachusetts; ~~and~~
- (c) currently maintains, and, during at least the five (5) years immediately preceding the request to be designated or selected as a Servicing Carrier ~~has and has~~ maintained, ~~s or the past five years~~ a record of financial stability and strength, including, but not limited to, ~~Specifically, the carrier must have had an AM Best Financial Strength Rating (FSR) of "A-" or better; and~~
- (d) demonstrates to the satisfaction of the Commissioner, taking into account whatever technical advice may have been requested from the WCRIBMA, that it has the capacity to provide appropriate coverage to any risk that may be assigned to it pursuant to this program regardless of the size, industry type, and geographical location of such risk; and
- ~~(e)~~(e) has and maintains the capacity to conform to the Performance Standards ~~such standards of performance ("Standards") as are from time to time promulgated in this Plan of Operation.~~

A ~~s~~ervicing ~~e~~Carrier's failure to maintain the eligibility criteria described above shall be considered cause for rescinding its designation or selection as a ~~s~~ervicing ~~e~~Carrier. The WCRIBMA shall inform the Commissioner if it believes a Servicing Carrier may not be maintaining such eligibility.

5. New Servicing Carrier Review. A review shall be performed by the WCRIBMA or its designee on new Servicing Carriers within six (6) months of designation or selection as a Servicing Carrier. The following criteria shall be reviewed:

- (a) Timely and accurate policy issuance
- (b) Timely and accurate processing of premium bearing endorsements
- (c) Timely and accurate issuance of indemnity checks
- (d) Timely and accurate reporting of policy and financial data to WCRIBMA and NCCI.

6. Performance-Based Programs.

(a) The Pperformance-Bbased Pprograms that shall apply to any ~~designated s~~ervicing ~~e~~Carrier designated pursuant to Article VIII, Section 2 are set forth in ~~the~~ Appendices A, B, C and D of ~~to~~ this Plan.

(b) The Pperformance-Bbased Pprograms that shall apply to any ~~s~~ervicing ~~e~~Carrier selected pursuant to Article VIII, Section 3 shall be set forth in ~~the modified Appendix attached to any RFP~~ its Servicing Carrier Econtract, and shall be at least as demanding as the performance based programs set forth in ~~the~~ Appendices A, B, C and D of ~~to~~ this Plan of Operation.

~~6. (c) The Servicing Carrier contract between the Bureau and the selected servicing carrier shall contain any~~

~~enhancements to the Performance-Based Programs in the modified Appendix.~~

7. Compensation.

(a) ~~_____~~-Servicing ~~e~~Carriers designated pursuant to Article VII, Section 2 shall be compensated in the manner approved by the Commissioner and described in ~~the~~ Appendix D, Determining the Servicing Carrier Fee.

(b) ~~_____~~-Servicing ~~e~~Carriers selected pursuant to Article VIII, Section 3 shall be compensated as set forth in the ~~s~~Servicing ~~e~~Carrier contract between the ~~WCRIBMA Bureau~~ and the selected ~~s~~Servicing ~~e~~Carrier.

7. 8. Assignments. The WCRIBMA will equitably assign applicants to each Servicing Carrier in accordance with Article XII.2.

9. Audit and Inspections. The WCRIBMA shall have the right, through its representatives, at all reasonable times during the business day, to audit and inspect the books and records of any Servicing Carrier with respect to any policy or policies and claims thereunder coming within the purview of this Plan of Operation.

ARTICLE ~~IX~~VIII

VOLUNTARY DIRECT ASSIGNMENT CARRIERS

1. ~~1.~~ Voluntary Direct Assignment Carriers. Any qualifying insurer may satisfy its assessment obligations as a Member by accepting voluntary direct assignments of risks from the WCRIBMA, in the manner specified in Article XII, Section 2(a) of the Plan of Operation. Voluntary Direct Assignment Carriers retain the premiums collected on their direct assignment policies and are responsible to pay all losses and expenses associated with their direct assignment policies. A participating insurer must satisfy the assessment obligation of its entire Company Group for a particular policy year in this manner, subject to the provisions of this Article.

Subject to the approval of the Commissioner, an insurer can be both a Servicing Carrier and a Voluntary Direct Assignment Carrier.

2. Designation. Any ~~Pool m~~Member who wishes to become a Voluntary Direct Assignment Carrier shall make application ~~may apply~~ to the Commissioner ~~of Insurance~~ for such designation with a copy to the WCRIBMA prior to October-September 1. ~~as a voluntary direct assignment carrier based upon selection criteria approved by the Commissioner.~~ The Commissioner shall review the application and approve or disapprove it in writing within ninety ~~sixty~~ (690) days of receipt. If the Commissioner fails to act within the ninety ~~sixty~~ (690) day period, the application is deemed disapproved. If the application is approved, the Member will be designated a Voluntary Direct Assignment Carrier effective January 1 of the following year. It shall continue as a Voluntary Direct Assignment Carrier for subsequent years, unless it gives the Commissioner advance written notice of its intention to resign as a Voluntary Direct Assignment Carrier prior to ~~October-September 1~~ of a given year, or unless such designation is rescinded by ~~T~~the Commissioner ~~may rescind this designation~~ for cause.

23.- Scope of Coverage and Performance Standards. The ~~p~~Performance ~~s~~Standards applicable to ~~s~~Servicing ~~e~~Carriers as set forth in Appendix A ~~Article VII, Section 3,~~ shall also apply to ~~v~~Voluntary ~~d~~Direct

~~a~~Assignment ~~e~~Carriers. The manuals of rules, rates, rating plans and classifications filed by the WCRIBMA, and approved by the Commissioner, to apply to residual market policies, shall also apply to policies issued by an insurer in its capacity as a Voluntary Direct Assignment Carrier.

4. **Eligibility Criteria for Voluntary Direct Assignment Carriers.** Any Member may apply to the Commissioner for Voluntary Direct Assignment Carrier designation, and shall be eligible for designation as a Voluntary Direct Assignment Carrier, provided the Member demonstrates to the satisfaction of the Commissioner, taking into account whatever technical advice may have been requested from the WCRIBMA, that it:

- (a) has ~~or has had for any year during~~ and has maintained for the five (5) year period immediately preceding the request to be designated a Voluntary Direct Assignment Carrier, a workers' compensation voluntary market share of at least one percent (1%) in the Commonwealth of Massachusetts; and
- (b) has and maintains, at a minimum, a record of financial stability and strength by having an AM Best Financial Strength Rating (FSR) of "A-" or better; and
- (c) has and maintains the capacity to provide appropriate coverage to any risk that may be assigned to it pursuant to this Plan of Operation regardless of the size, industry type, and geographical location of such risk; and
- (d) has and maintains the capacity to conform to the Performance Standards as set forth in Appendix A.

A Voluntary Direct Assignment Carrier's failure to maintain the eligibility criteria described above shall be considered by the Commissioner as cause for rescinding its designation as Voluntary Direct Assignment Carrier. The WCRIBMA shall inform the Commissioner if it believes a Voluntary Direct Assignment Carrier may not be maintaining such eligibility.

5. **New Voluntary Direct Assignment Carrier Review.** A review shall be performed by the WCRIBMA or its designee on new Voluntary Direct Assignment Carriers within six (6) months of designation as a VDAC. The following criteria shall be reviewed:

- (a) Timely and accurate policy issuance
- (b) Timely and accurate processing of premium bearing endorsements
- (c) Timely and accurate issuance of indemnity checks
- (d) Timely and accurate reporting of policy and financial data to WCRIBMA and NCCI.

6. **Assignments.** The WCRIBMA will equitably assign applicants to each Voluntary Direct Assignment Carrier in accordance with Article XII.2.

7. **Reconciliation Process.**

- (a) For each policy year, a reconciliation process shall be undertaken to reconcile the percentage of premium assigned to each Voluntary Direct Assignment Carrier for that policy year with its share of the total assignable premium for that policy year. This process shall allow for:

- (i) Intermediate Reapportionment - An optional intermediate reapportionment of pool shares may be made within two years of the beginning of the policy year.
 - (ii) Final Reapportionment - All policy years, including those policy years for which an intermediate reapportionment was completed, will be subject to a final reapportionment of pool shares to be made within three years of the beginning of the policy year.
 - (b) Such reapportionment calculations shall be based on the current estimate of:
 - (i) The percentage of Residual Market premium assigned to the particular Voluntary Direct Assignment Carrier for the policy year.
 - (ii) The target percentage for the particular carrier for the policy year.
 - (c) A participation ratio shall be calculated for each Voluntary Direct Assignment Carrier as follows:
$$\frac{(\text{Target Percentage} - \text{Assigned Percentage}) \times \left(\frac{\text{Residual Market Premiums}}{\text{Reinsurance Pool Premiums}} \right)}{1}$$
 - (d) If a Voluntary Direct Assignment Carrier was assigned less than its proper share of assignable premium, as calculated by the WCRIBMA, it shall be given a positive participation ratio corresponding to the difference. If such carrier was assigned more than its proper share of assignable premium, it shall be given a negative participation ratio corresponding to the difference. The appropriate off-balance shall be applied to the participation ratios of carriers who are not Voluntary Direct Assignment Carriers, so that the total of all participation ratios is 100%.
 - (e) As used in the above formula, "Residual Market Premiums" shall be the total premiums in a policy year assigned to either Voluntary Direct Assignment Carriers or Servicing Carriers. As used in the above formula, "Reinsurance Pool Premiums" shall be the total premiums in a policy year assigned to Servicing Carriers.
 - (f) After the above reapportionments take place, each Voluntary Direct Assignment Carrier will have a participation ratio for each policy year and thus will share to some extent in the results of the Residual Market business written on behalf of the Pool by Servicing Carriers. However, that carrier will share to a lesser extent than if the carrier had not accepted voluntary direct assignments.
8. **Audit and Inspections.** The WCRIBMA shall have the right, through its representatives, at all reasonable times during the business day, to audit and inspect the books and records of any Voluntary Direct Assignment Carrier with respect to any policy or policies and claims thereunder coming within the purview of this Plan of Operation.

ARTICLE IX

FISCAL MATTERS

1. **Fiscal Year.** The fiscal year for the purpose of administering this Plan shall be the calendar year unless otherwise

established by the Residual Market Committee or Governing Committee.

- ~~1.2.~~ **Accounts.** Funds held temporarily for the benefit of Members shall be (a) held by the WCRI~~BMA~~, in its capacity as administrator of the Pool, or its designee, and (b) kept on deposit in such banks, trust companies or other depositories as may from time to time be designated and prescribed by the Residual Market Committee or Governing Committee. The WCRI~~BMA~~ or its designee shall have full authority to deposit, withdraw and invest such funds in order to carry out the purposes of this Plan of Operation. Accurate records shall be kept to identify such transactions.
- ~~2.~~ **Deposits.** Funds held temporarily by the Bureau for the benefit of members of the Pool, may be kept on deposit in such banks, trust companies or other depositories as may from time to time be designated and prescribed by the Residual Market Committee; and such designation shall be evidenced by an instrument signed by the Chairperson or the Vice-Chairperson of the Residual Market Committee, and countersigned by the President of the Bureau or the Treasurer. Accurate records shall be kept to identify the funds so deposited.
- ~~3.~~ **Withdrawals.** Any two (2) officers of the Bureau duly authorized by the Residual Market Committee shall have power to sign and countersign all checks, drafts or other orders for payment of money and to cause the endorsement of all commercial paper payable under this Plan.
- ~~4.~~ **Special Accounts.** Funds temporarily held for the benefit of members also may be kept on deposit with any authorized depository, but in a special account designated as such, subject to withdrawal upon check signed by any two (2) of the officers of the Bureau duly authorized by the Residual Market Committee if authorized by, and subject to, the terms and conditions contained in a written instrument signed by any two (2) of the officers of the Bureau authorized by the Residual Market Committee. Accurate records shall be kept to identify the funds so deposited.
- ~~5.~~ **Safe Deposit.** Access may be had to any safe deposit box, hired vault, or like place of safekeeping, standing in the name of the Pool, by any two (2) officers of the Bureau, duly authorized by the Residual Market Committee.
- ~~6.3.~~ **Investment Income.** All income on the funds held for the benefit of ~~m~~Members of the Pool shall, upon receipt thereof, become subject to all the appropriate provisions of this Plan of Operation.

~~7.~~ **ARTICLE XI**

INDEMNIFICATION

~~Indemnification.~~

1. Any person or insurer made, or threatened to be made, a party to any action, suit or proceeding (except an action to collect amounts billed by the Pool), because such person or insurer was a ~~m~~Member of the Pool, or a ~~s~~Servicing ~~e~~Carrier, or served as a member or representative of a member on the Residual Market Committee or other WCRI~~BMA~~Bureau committee, or was an officer or employee of the WCRI~~BMA~~Bureau acting on behalf of the Pool, shall be indemnified against all judgments, fines, amounts paid in settlement, reasonable costs and expenses

including attorney's fees, and any other liabilities that may be incurred as a result of such action, suit or proceeding, or threatened action, suit or proceeding, except in relation to matters as to which he, she or it shall be adjudged in such action, suit or proceeding to be liable by reason of willful misconduct in the performance of his, her or its duties or obligations to the Pool and, with respect to any criminal actions or proceedings, except when such person or insurer had reasonable cause to believe that his, her or its conduct was lawful.

2. Such indemnification shall be provided whether or not such person or insurer is a ~~member of the Pool~~, or a ~~s~~ervicing ~~e~~carrier, or is holding office, or is employed at the time of such action, suit or proceeding, and whether or not any such liability is incurred prior to the adoption of this Article. Such indemnification shall not be exclusive of other rights such person or insurer may have, and shall pass to the successors, heirs, executors or administrators of such person or insurer.
3. With respect to any action or suit to which this Article applies, the party to be indemnified hereunder shall give notice to the WCRIBMA as soon as practicable as soon as possible, but in no event later than one hundred and twenty (120) days of being served with litigation, of any action or suit. ~~and no~~ expenses (including attorneys' fees) shall be ~~incurred-reimbursed by~~ to such party, nor shall such action or suit be settled, without express written consent of the WCRIBMA, such consent not to be unreasonably withheld or delayed. Notices to the WCRIBMA shall be sent to the attention of the President of the WCRIBMA with a copy to its General Counsel or to such other person(s) designated by the WCRIBMA. All notices shall be deemed effective upon personal delivery or when received if sent by overnight delivery.
4. The termination of any such civil or criminal action, suit or proceeding by judgment, settlement, conviction or upon a plea of *nolo contendere*, or its equivalent, shall not in itself create a presumption that any such person or insurer was liable by reason of willful misconduct, or that he, she or it had reasonable cause to believe that his, her or its conduct was unlawful. If any such action, suit or proceeding is compromised, it must be with the approval of the Residual Market Committee; provided, however, that the Residual Market Committee may delegate to the President of the ~~WCRIBMA Bureau~~ the authority to approve any such compromise of financial liability requiring payment by the Pool which is less than an amount as may be fixed from time to time by the Residual Market Committee.
5. In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth in this Article, shall be determined by the Residual Market Committee, which shall also determine the time and manner of payment of such indemnification; provided, however, that a person or insurer who or which has been wholly successful, on the merits or otherwise, in the defense of a civil or criminal action, suit or proceeding of the character described in this Article shall be entitled to indemnification as authorized herein.
6. The Residual Market Committee may delegate to the President of the ~~WCRIBMA Bureau~~ the authority to determine, in a manner consistent with this Article, entitlement to indemnification, and the time and manner of payment of such indemnification, for any indemnification requiring payment by the Pool which is less than an amount as may be fixed from time to time by the Residual Market Committee.
7. Nothing herein shall be deemed to bind a person or insurer who or which the Residual Market Committee has determined not to be entitled to indemnification, or to preclude such person or insurer from asserting the right to such indemnification by legal proceedings.

8. Such indemnification as is herein provided shall be apportioned among all ~~Members~~, including any named in any such action, suit or proceeding pursuant to this Plan of Operation. Consistent with Article XII, Section (8), Members shall be assessed, as necessary, to fund the indemnification obligations provided in this Article.
9. Notwithstanding anything else to the contrary in this Plan of Operation, any Member that was or is a party, or is threatened to be made a party to any threatened, pending or completed action or suit in its capacity as a Voluntary Direct Assignment Carrier pursuant to the Plan of Operation shall not be entitled to indemnification under this Article.

ARTICLE XI

AMENDMENTS

~~**Amendments.** Amendments to this Plan of Operation may be made by the Bureau or may be made at the direction of the Commissioner upon reasonable notice to the Bureau and after a hearing, pursuant to G.L. c. 152, § 65C. All amendments to the Plan of Operation proposed by the Bureau shall be submitted to the Commissioner for approval and shall be effective as of the date indicated in the Commissioner's approval.~~

ARTICLE XII

ASSIGNMENTS, ASSESSMENTS AND EXPENSES

1. ~~**Application.**~~ This Plan of Operation shall apply to all risks that are insured or seek to be insured through the ~~Massachusetts Workers' Compensation Assigned Risk~~ Pool. An application for workers' compensation insurance to be written through the Pool must be submitted to the WCRIBMA Bureau on a form and in the manner prescribed by the Residual Market Committee.

- ~~2.a.~~ **2.** ~~**Assignment of Risks.**~~ The WCRIBMA Bureau shall review the information contained in an application ~~for assignment~~ and determine whether the applicant is eligible for assignment under G.L.M.G.L. c. 152, § 65A.

(a) If the WCRIBMA Bureau determines that an applicant is eligible for Pool coverage~~assignment~~, the WCRIBMA Bureau shall assign the applicant to a sServicing ~~e~~Carrier or ~~v~~Voluntary ~~d~~Direct ~~a~~Assignment ~~e~~Carrier.

(i) The WCRIBMA Bureau will equitably assign applicants to each ~~v~~Voluntary ~~d~~Direct ~~a~~Assignment ~~e~~Carrier based on each such Voluntary Direct Assignment eCarrier Group's percentage of the ~~t~~Total ~~n~~Net ~~w~~Workers' ~~e~~Compensation ~~i~~Insurance ~~p~~Premiums ~~w~~Written by all Members, as adjusted by any applicable take-out credit, ~~for all carriers in the~~ at most recent policy year for which data is available.

(ii) Applicants not assigned to a ~~v~~Voluntary ~~d~~Direct ~~a~~Assignment ~~e~~Carrier will be assigned to each sServicing ~~e~~Carrier based either on the terms of its sServicing ~~e~~Carrier contract with the WCRIBMA Bureau or based on each designated sServicing ~~e~~Carrier Group's percentage of the ~~t~~Total ~~n~~Net ~~w~~Workers' ~~e~~Compensation ~~i~~Insurance Premiums ~~w~~Written by all ~~Members~~ ~~premiums, unadjusted by take-out credit, for all servicing carriers in the most recent policy year for which data is available.~~ The Servicing Carriers' percentages are

adjusted so each is assigned its relative share of the residual market, after the Voluntary Direct Assignment Carriers are assigned their share.

~~(iii) The A-reconciliation procedure for vVoluntary dDirect aAssignment eCarriers- is can be found in Article IX.7 shall be established in accordance with such rules and procedures as the Residual Market Committee may adopt, subject to the approval of the Commissioner.-~~

(iv) Assignments may also be made in accordance with other specific rules and procedures as the Residual Market Committee may adopt, subject to the approval of the Commissioner pursuant to G.L.M.G.L c. 152, §65A.

(v) The WCRIBMA Bureau shall, upon the request of any sServicing eCarrier or vVoluntary dDirect aAssignment eCarrier, provide such servicing carrier, or voluntary direct assignment carrier carrier with a copy of the records used as the basis for assigning eligible applicants.

~~2.b. (vi) } Confidentiality of Assigned Risk Information.-~~ The assigned designated carrier shall keep in confidence and shall not, except as directed by the insured or the producer of record or as otherwise may be required by law or regulatory authority, disclose to any third party, such detailed information as it may obtain by virtue of its position as the assigned designated carrier.

3. Premiums. ~~With the exception of voluntary direct assignment carriers, t~~The WCRIBMA Bureau shall distribute the premiums received from Servicing Carriers to the participating mMembers of the Pool in proportion to their Net wWorkers' eCompensation iInsurance pPremiums wWritten, as adjusted by any applicable take-out credit in the state on a calendar year basis or as otherwise determined by the Residual Market Committee. The premiums distributed are subject to each mMember's obligations to the Pool as set forth in this Plan of Operation: and in accordance with the provisions of Section 8, Assessments and Refunds, and 9, Netting Out.

4. Losses and Expenses.

(a) The WCRIBMA shall invoice the losses and expenses of the Servicing Carriers to the participating Members in proportion to their Net Workers' Compensation Insurance Premiums Written, as adjusted by any applicable take-out credit, or as otherwise determined by the Residual Market Committee. The losses and expenses invoiced are subject to each Member's obligations to the Pool as set forth in this Plan of Operation and in accordance with the provisions of Section 8, Assessments and Refunds, and 9, Netting Out.

~~(b) Except with respect to claims, the cost of the interpretation of physical and X ray examinations of employees in assigned dust hazard risks, shall be a proper charge against, and shall be paid from, the general funds held on behalf of the members of the Pool provided the employer pays for the making of such examinations.-~~

(b) Except as the Residual Market Committee shall otherwise direct, payments to or on behalf of Members shall be limited to administration expenses, reimbursement for losses paid under policies to which these Articles apply, and for return premiums on such policies, and the payment of such refunds as may be allowed under this Plan of Operation.

~~(c) Except for costs of premium collection as established by the Bureau or any third party designated by the Bureau,~~ The Pool shall not assume for payment, and shall not be liable to pay, any expenses of any nature whatsoever incurred by ~~M~~members, except as provided for in this Plan of Operation and its Appendices.

45. Pool Administration Related Expenses.

(a) The amount of ~~a~~Net ~~w~~Workers' ~~e~~Compensation ~~i~~Insurance ~~p~~Premiums ~~w~~Written, as adjusted by take-out credit and used as the basis of all computations in this ~~Section, or elsewhere in this~~ Plan of Operation, shall also be used as the basis for allocating each participating ~~m~~Member's share of expenses which are not allocable directly to any assigned risk and which are incurred by the WCRIBMA Bureau in the administration of the Pool.

(b) A record shall be kept of all such expenses, and the amount thereof may be recovered from ~~m~~Members who satisfy their obligations under the Plan of Operation by participating in the ~~reinsurance-p~~Pool, by a charge against funds held by the WCRIBMA Bureau on behalf of such ~~m~~Members, or, in the discretion of the WCRIBMA Bureau and when deemed necessary, by an assessment levied under Section ~~7~~8 of this Article.

(c) Based on the amount of Net Workers' Compensation Insurance Premiums Written, as adjusted by take-out credit, Voluntary ~~d~~Direct ~~a~~Assignment ~~e~~Carriers shall be separately billed for their portion of ~~such-the~~ WCRIBMA's Pool-related administrative expenses. ~~In addition, voluntary direct assignment carriers shall be separately billed for expenses associated with inspection and audit and such other expenses of oversight as may be appropriate, which are directly allocable to risks assigned to such carriers.~~

~~—Except with respect to claims, the cost of the interpretation of physical and X-ray examinations of employees in assigned dust hazard risks, shall be a proper charge against, and shall be paid from, the general funds held on behalf of the members of the Pool provided the employer pays for the making of such examinations. Except as the Residual Market Committee shall otherwise direct, payments to or on behalf of members shall be limited to administration expenses, reimbursement for losses paid under policies to which these Articles apply, and for return premiums on such policies, and the payment of such refunds as may be allowed under this Plan of Operation. Except for costs of premium collection as established by the Bureau or any third party designated by the Bureau, the Pool shall not assume for payment, and shall not be liable to pay, any expenses of any nature whatsoever incurred by members.~~

56. Examinations and Reserves. The Residual Market Committee shall make or cause to be made such review as they may deem necessary of loss payments by ~~m~~Members and reserves held by ~~m~~Members for outstanding claims, which reserves, until the Residual Market Committee shall have determined upon a different reserve, shall be the estimated value of the claims reported by the ~~s~~ervicing ~~e~~Carrier under the applicable ~~s~~ervicing ~~e~~Carrier agreement.

67. Transactions, Accounts and Financial Statements. Separate accounts shall be maintained by the WCRIBMA Bureau covering transactions for each policy year. The WCRIBMA Bureau shall prepare and deliver to the ~~m~~Members a financial statement showing the apportionment of the expense of administration provided for herein and the condition of each account.

78. Assessments and Refunds.

- (a) Assessments shall be levied or refunds allowed by the WCRIBMA Bureau or its designee as it may from time to time deem reasonable and necessary. Assessments or refunds for account of a specified policy year shall be levied upon or allowed to all ~~m~~M~~em~~bers who were such during the calendar year corresponding to such policy year, and each ~~m~~M~~em~~ber shall pay such proportion of such assessment, and shall receive a proportionate share of such refund, as is determined by the relation which the ~~n~~Net ~~w~~Workers' ~~e~~Compensation ~~i~~nsurance ~~p~~remiums ~~w~~ritten, as adjusted by any applicable take-out credit, during such calendar year by such ~~Member member~~ shall bear to the total ~~n~~Net ~~w~~Workers' ~~e~~Compensation ~~i~~nsurance ~~p~~remiums ~~w~~ritten, as adjusted by any applicable take-out credit, during such calendar year by all ~~m~~M~~em~~bers. A ~~m~~M~~em~~ber may satisfy its obligation under this section by becoming a ~~v~~Voluntary ~~d~~Direct ~~a~~Assignment ~~e~~Carrier, and by satisfactorily discharging its responsibilities as a ~~v~~Voluntary ~~d~~Direct ~~a~~Assignment ~~e~~Carrier in accordance with Article IX of this Plan of Operation, ~~and the rules governing the Voluntary Direct Assignment Program.~~
- (b) The amount of ~~n~~Net ~~w~~Workers' ~~e~~Compensation ~~i~~nsurance ~~p~~remiums ~~w~~ritten, which shall serve as the basis of all computations in this ~~S~~section or elsewhere in this Plan of Operation and in any applicable ~~s~~Servicing ~~e~~Carrier agreement, shall be that shown by the records of the WCRIBMA Bureau. If the amount of ~~n~~Net ~~w~~Workers' ~~e~~Compensation ~~i~~nsurance ~~p~~remiums ~~w~~ritten for a specified calendar year is not available at the time of the levying of any assessment or the distribution of any refund, the ~~n~~Net ~~w~~Workers' ~~e~~Compensation ~~i~~nsurance ~~p~~remiums ~~w~~ritten for the preceding calendar year shall be used as the basis for a preliminary assessment or refund, but such preliminary assessment or refund shall be adjusted as soon as the ~~n~~Net ~~w~~Workers' ~~e~~Compensation ~~i~~nsurance ~~p~~remiums ~~w~~ritten for the specified calendar year become available. For the purposes of this section, the net written workers' compensation insurance premiums associated with large deductible policies which are written or renewed on or after January 1, 1994, or are in effect on or after January 1, 1995, shall be deemed to be the amount equal to the standard premium plus any applicable All Risk Adjustments Program amounts associated with such policies.
- (c) Unless otherwise approved by the Commissioner or the WCRIBMA Bureau, as Administrator of the Pool, the amount of any assessment levied shall be paid by the due date indicated on the quarterly invoice, or other statement, and the amount of any refund allowed shall be distributed within such reasonable time as may be determined by the Residual Market Committee, following the submission of the quarterly invoice, or other statement referred to herein.
- (d) If a ~~m~~M~~em~~ber fails to pay its assessment by the due date indicated on the quarterly invoice, or other statement, the ~~m~~M~~em~~ber shall pay a late payment fee of one and one-half (1½) percent of the amount due for each thirty (30)-day period of delay or portion thereof. If a ~~m~~M~~em~~ber has not paid its assessment, the WCRIBMA Bureau, or any third party designated by the WCRIBMA Bureau, may will send a written notice of default to the ~~m~~M~~em~~ber. Any balance owed to the Pool must be paid on or before the fifteenth calendar day following the date of mailing of the written notice of default ("Due Date"). If such balance remains unpaid as of the Due Date, ~~fifteenth calendar day following the date of mailing of the written notice of default~~, the ~~Member member~~ shall compensate the Pool for all damages and expenses incurred by the WCRIBMA Bureau, ~~as Administrator of the Pool~~, or any third party designated by the WCRIBMA Bureau as a result of its failure to

pay any balance owed to the Pool under this Plan of Operation. Damages and expenses as used herein shall include but not be limited to the reasonable attorney's fees incurred by the ~~WCRIBMA Bureau, as Administrator of the Pool,~~ or any third party designated by the ~~WCRIBMA Bureau~~ directly or indirectly with the collection of the balance due, the cost of all ~~WCRIBMA Bureau~~ staff time or staff time of any third party designated by the ~~WCRIBMA Bureau~~ spent in connection with staff efforts to collect the balance outstanding, all financial losses resulting from nonpayment, and all other expenses and losses relating thereto.

(e) In accordance with ~~G.L.M.G.L.~~ c.152, §65G, any ~~m~~Member shall be entitled to appeal to the Commissioner ~~of Insurance~~ any assessment, late payment fees, damages or expenses which were levied in accordance with this Plan of Operation. However, before commencing an appeal under §-65G or any other appeal arising out of a dispute regarding the Plan of Operation, the ~~m~~Member shall pay all undisputed outstanding assessments and all other undisputed amounts owed to the Pool but not disputed late payment fees, damages, expenses or attorney fees that the ~~WCRIBMA Bureau~~ has previously levied, and shall remain current on all amounts owed to the Pool while any appeal is pending. If the Commissioner ~~of Insurance~~ rules in favor of the ~~m~~Member, a proper adjustment, including interest at the prime rate and any damages and expenses assessed, will be made by the Pool to the ~~m~~Member's account.

(f) In order to protect the other ~~m~~Members ~~of the Pool,~~ the ~~WCRIBMA Bureau~~ shall have the authority to ensure that a member company pays all amounts owed to the Pool by taking actions which may include, any or all of those set forth in Article IV, Section 3. Member Obligations including parts (a) – (d) of that section.

~~Compliance with any order under Article IV, Section 3. Member Obligations (a) – (d) within the time specified therein shall be an obligation of membership.~~

(g) The ~~WCRIBMA Bureau~~ shall, upon request of a ~~m~~Member, provide such ~~m~~Member with a copy of the records used as the basis of calculating the ~~m~~Member's assessment or refund within ten (10) business days of its receipt of the ~~m~~Member's written request. Such a request for records, or any matters regarding the request for records, shall not suspend or abrogate the ~~m~~Member's ~~company's~~ obligation to pay and remain current on all amounts billed by the Pool.

~~Any Member member that wrote Massachusetts workers' compensation insurance in the voluntary market in 1990, but that was not assessed or allowed a refund for account of policy year 1990 in connection with any deficit or surplus resulting from the operation of the Pool workers' compensation insurance assigned risk pool in Massachusetts, may apply to the Commissioner to be certified for lump sum payments of Pool pool liabilities for account of policy years 1991, 1992 and 1993. The lump sum payment shall equal the product of the eligible Member's member's pool Pool participation ratio and the present value at the time of the lump sum payment of the residual market results, for each respective policy year.~~

~~The Commissioner shall determine the present value of the residual market deficit for policy year 1991 in 1/1/94 dollars based on a discounted cash flow analysis with appropriate inputs selected by the Commissioner.~~

~~The Commissioner, if deemed he or she deems it appropriate and necessary, shall determine the present value of the residual market results for policy years 1992 and 1993 in 1/1/95 dollars and 1/1/96 dollars, respectively. These determinations shall be made prior to 1/1/95 and 1/1/96 for each respective policy year. Members certified~~

~~Certified members shall be eligible for lump sum payments for policy years 1992 and 1993, unless the Commissioner deems it inappropriate or unnecessary to determine the above mentioned residual market results.~~

~~These lump sum payments for policy year 1991 shall be paid to the Pool pool by February 1, 1994 or an eligible member may elect to make payments on an installment plan whose term will end not later than December 31, 1995 and at an annual interest rate of 5% or at such other rate as the Commissioner may determine. These payments shall be used to pay Pool pool liabilities for policy year 1991. Eligible members that elect to make a lump sum payment for policy year 1991 shall have their otherwise determined participation ratios set equal to zero for that policy year. Members that do not make these lump sum payments shall have their participation ratios increased in proportion to their otherwise determined participation ratio so that the sum of all Members' members' participation ratios equals unity. Lump sum payments for policy years 1992 and 1993 shall be implemented in an analogous manner as described above.~~

~~In order to be certified for lump sum payments for policy years 1991, 1992 and 1993, the following requirements must be met:~~

- ~~(a) By January 20, 1994, the Member member must file with the Division of Insurance documentation demonstrating to the satisfaction of the Commissioner that its failure to be certified for lump sum payments would threaten its technical solvency pursuant to statutory accounting principles. At such time the Member member shall indicate whether it will, if certified, elect the lump sum payment option for policy year 1991 or whether such filing is solely for financial reporting requirements as set forth below. Within thirty (30) days of any determination by the Commissioner of the present value of the residual market results for policy year 1992 or policy year 1993, the Member member shall indicate whether it is electing the lump sum payment option.~~
- ~~(b) (b) Prior to issuance of an order of certification the Commissioner shall require such member to demonstrate that it can meet its obligations under the lump sum payment plan set forth herein as well as obligations for Pool pool liabilities and voluntary writings for policy years 1994 and beyond. In order to so demonstrate, such member Member must submit a satisfactory business plan describing the changes that would be made in the business and operations of the member Member in order to meet such obligations. The Commissioner may require such alterations to said plan as deemed he or she deems necessary and may require that an independent actuarial review be performed at the member Member's expense.~~

~~Members who are certified and elect to make a lump sum payment for their Pool pool liabilities for policy year 1991 shall reflect these liabilities in all required statutory filings (including Quarterly and Annual Statements) with the Division of Insurance beginning with their 1993 Annual Statement. Members who are certified and do not elect to make a lump sum payment for their Pool pool liabilities for policy year 1991 shall reflect their Pool pool liabilities for policy year 1991 as if they had elected to make the lump sum payment as described above in all statutory filings made in 1994 (including the 1993 Annual Statement). In addition, for all such statutory filings made in 1994 (including the 1993 Annual Statement) certified members shall not reflect any results of Pool pool operations for policy years 1992 and 1993. For all statutory filings made after 1994, the Commissioner shall determine the manner in which certified members shall reflect their Pool pool liabilities for policy years 1991, 1992 and 1993.~~

~~Any funds in escrow accounts established for an eligible member Member for those policy years where a lump~~

~~sum payment will be made shall be returned to the pool.~~

~~For policy years 1994 and beyond, all pool members may apply to the Commissioner to be certified for lump sum settlement in a manner analogous to that set forth above.~~

9. Netting Out. Notwithstanding any contrary provisions in this Plan of Operation, and notwithstanding any contrary forms of accounting methods or reports that may for convenience be used to determine the underlying amounts of particular ~~m~~Member or ~~s~~Servicing ~~e~~Carrier rights or obligations for any or all policy years, in computing at any given time the balance due to any ~~m~~Member from the Pool or to the Pool from any ~~m~~Member, whether or not a ~~s~~Servicing ~~e~~Carrier, all accounts for that ~~m~~Member shall be netted out, with only the net amount to be due either the ~~m~~Member ~~company~~ or the Pool at that time.

9.10. Distribution Upon Termination of the Pool. Upon termination of the ~~Pool~~, distribution by way of refund (if any) shall be made to the ~~m~~Members ~~of the Pool~~ entitled to participate therein, ~~subject to provisions of Section 2 (g) of Article IV of this Plan of Operation,~~ within such reasonable period of time as the Residual Market Committee in its sound discretion shall determine; and all provisions of this Plan of Operation and the Rules of Operation adopted hereunder relative to administration of the Pool shall remain in full force and effect until final distribution shall have been made.

ARTICLE XII~~IV~~

OBLIGATION OF MEMBERS AFTER TERMINATION OF MEMBERSHIP

Obligation of Members after Termination of Membership. Any company whose membership in the Pool has been terminated by withdrawal or by expulsion shall, nevertheless, with respect to risks subject to the Plan of Operation prior to midnight of the effective date of such termination, continue to be governed by this Plan of Operation and Rules of Operation promulgated hereunder.

ARTICLE XV

DEFINITIONS

7. ARTICLE XI~~IV~~

AMENDMENTS

Amendments to this Plan of Operation may be made by the WCRIBMA, in its capacity as Pool Administrator, following approval by the Residual Market Committee and the Governing Committee, ~~Bureau~~ or may be made at the direction of the Commissioner upon reasonable notice to the WCRIBMA ~~Bureau~~ and after a hearing, pursuant to M.G.L c. 152, § 65C. All amendments to the Plan of Operation proposed by the WCRIBMA ~~Bureau~~ shall be submitted to the Commissioner for approval and shall be effective as of the date indicated in the Commissioner's approval.

ARTICLE ~~XV~~^{XII}

EFFECTIVE DATE

~~Effective Date.~~ This Amended and Restated Plan of Operation, supersedes in its entirety the Plan of Operation dated
~~July 1, 2016,~~ as amended, and shall become effective as of the date indicated in the Commissioner's approval. ~~on~~
~~<date> July 1, 2000, or at such later time as it has been approved by either the Residual Market Committee or the~~
~~Governing Committee of the WCRIBMA Bureau, and the Commissioner of Insurance.~~

DRAFT

Appendix A - Performance Standards
(Redlined)

PERFORMANCE STANDARDS FOR ASSIGNED CARRIERS

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PERFORMANCE STANDARDS FOR ASSIGNED CARRIERS

INTRODUCTION

The following are the minimum Performance Standards for Servicing Carriers and Voluntary Direct Assignment Carriers. These Performance Standards apply whether a carrier performs the services in-house or contracts with outside service providers. Performance Standards that apply to both Servicing Carriers and Voluntary Direct Assignment Carriers will reference “assigned carriers.” Certain Performance Standards are only applicable to ~~s~~Servicing ~~e~~Carriers and will be identified as such. Assigned carriers are also responsible for complying with all statutes, regulations, and Pool rules.

~~These Performance Standards (“Standards”) have been created and are maintained by the Workers’ Compensation Rating and Inspection Bureau of Massachusetts (“WCRIBMA”) in its role as the administrator of the Massachusetts Workers’ Compensation Assigned Risk Pool and have been approved by the Massachusetts Commissioner of Insurance (“Commissioner”).~~

Failure to maintain these Performance Standards may result in penalties being imposed upon the assigned carrier by the WCRIBMA in accordance with ~~Article VII of the Pool’s Plan of Operation and Article V of the VDAC Program and the other provisions in this Appendix.~~ An assigned carrier’s failure to maintain these Performance Standards could be used as a factor in determining whether a Servicing Carrier’s or Voluntary Direct Assignment Carrier’s designation should be rescinded.

Audits of Servicing Carriers to establish compliance with the Performance Standards may be conducted in person or remotely. During an audit, Each sServicing eCarrier shall locate and provide all files, or exact duplicates, within the time allotted by the Pool Administrator or any of its on-site or remote auditors appointed pursuant to the Section 3 of “Appendix D, Determining the Servicing Carrier Fee.”~~section of this Appendix, no. 8.~~ ~~Failure to provide such files will result in the effects described in Sectionno. 4 of Appendix C, the section entitled, “Translating Compliance Ratios into an Effect on the Servicing Carrier Fee.”~~ Assigned carriers should maintain documentation in their files to provide to the auditors evidence of compliance, or attempted compliance, with these Performance Standards.

The definitions found in Article II of the Plan are applicable to ~~which are incorporated herein by reference~~For purposes of these Performance Standards, the following meanings shall apply:

With regard to the time standards included in these Performance Standards, ~~T~~the day following the date of receipt, issuance, or other required action is counted as the first day.

Section F of this Appendix contains a Table of Time Standards, which includes:

- An alphabetical listing of Subjects and Document Types,
- Recipients for each type of mailing
- Media options for each type of mailing
- Performance Standard or statutory references
- Timeframes, and

- Notes.

i.

- ii. ~~'Days' shall refer to calendar days, unless otherwise specified.~~
- iii. ~~'New Business' is defined as the first year that an employer is assigned to the carrier by the WCRIBMA. Block transferred policies are considered 'new business' to the receiving carrier, while policies that have been reassigned to the same carrier with a gap of no more than six months are not considered 'new business.'~~
- iv. ~~'Good faith' is defined as an observance of reasonable commercial standards of fair dealing.~~

A. UNDERWRITING AND AUDIT

1. POLICY ISSUANCE

a. General Information

Assigned carriers shall have operational responsibility for issuing policies accurately, utilizing forms prescribed by the WCRIBMA and/or approved by the Commissioner.

Assigned carriers must attach the most recently approved version of the following endorsements onto all Massachusetts assigned risk policies:

- ~~v.~~(1) WC000414 Notification of Change in Ownership Endorsement
- ~~vi.~~(2) WC000422 ~~MA~~-Terrorism Risk Insurance Program Reauthorization Act Disclosure Endorsement
- ~~vii.~~ (3) WC200301 MA Limits of Liability Endorsement
- ~~viii.~~ (4) WC200302 MA Assessment Charge
- ~~ix.~~ (5) WC200303 MA Notice to Policyholder Endorsement
- ~~x.~~ (6) WC200306 MA Limited Other States Insurance Endorsement
- ~~xi.~~ (7) WC200307 MA Assigned Risk Pool Eligibility Endorsement
- ~~xii.~~ (8) WC200405 MA Premium Due Date Endorsement
- ~~xiii.~~ (9) WC200601 MA Cancellation Endorsement
- ~~xiv.~~ (10) WC200604 MA Policy Definition Endorsement

All policies shall be issued in consideration of premiums and additional fees and charges as may be authorized by the WCRIBMA and approved by the Commissioner. Premium shall be calculated in accordance with the MA Manual, Appendix F, Massachusetts Residual Market Premium Algorithm. Assigned carriers shall not impose unauthorized charges to the policyholder ~~employer~~ to defray ~~carrier~~ costs or for any other reason.

All policies must have the proper experience rating applied, in accordance with the approved rules of the Experience Rating Plan Manual and the published Massachusetts Exceptions.

Assigned carriers are responsible for maintaining adequate safeguards to assure ~~insurer~~ their compliance with all statutes, regulations, pool procedures, these Performance Standards, and all terms and conditions of the policy contract, including endorsements.

b. New Business

(1) Within five (5) business days of the assigned carrier's receipt of the Notice of Assignment from the WCRIBMA, ~~the carrier it~~ must send a ~~notice letter~~ to the ~~insured policyholder and producer~~ that includes:

- ~~xv~~i. Assigned ~~C~~carrier telephone numbers
- ~~xvi~~ii. Key contact information
- ~~xvii~~iii. Information on where and how to file claims
- ~~xviii~~iv. Where and how to obtain certificates of insurance
- v. The policy number or other means of policy identification
- ~~xix~~vi. Request for insured's policyholder's permission to receive electronic correspondence as allowed by law or regulation.

(2) The policy will be accurately issued and sent to the policyholder and producer of record within thirty (30) days from the date ~~of~~ the Notice of Assignment, required premium, and properly completed application are received from the WCRIBMA.

(3) If the application sent by the WCRIBMA to the assigned carrier ~~insurer~~ along with the Notice of Assignment is not properly completed, any missing information shall be requested from the producer of record and/or the policyholder ~~insured~~.

(4) If a question of eligibility arises, the assigned carrier shall contact the WCRIBMA. If the employer is found to be ineligible for assigned risk coverage, the time standard for policy issuance is suspended as of the date of documented contact with the WCRIBMA. If the assigned carrier cannot resolve the eligibility issue within five (5) days of contacting the WCRIBMA, the carrier must notify the WCRIBMA immediately, and the WCRIBMA will advise if the coverage should be rescinded or the policy should be cancelled. The time standard for issuance of the policy restarts on the date the resolution of the eligibility issue is communicated by the assigned carrier to the WCRIBMA. When the time standard is restarted, the assigned carrier has the balance of the thirty (30)-day time period or ten (10) days, whichever is greater, to issue the policy.

c. Renewals/Non-Renewals

(1) At least forty-five (45) days, but not more than one hundred (100) days prior to the expiration of the policy, the assigned carrier shall send a renewal proposal as appropriate to the policyholder ~~employer~~ and the producer of record and retain a copy of the proposal for its record. The renewal proposal must contain the following:

- ~~xx~~i. The expiration date of the current policy.
- ~~xxi~~ii. The amount of the deposit premium.
- ~~xxii~~iii. The ~~due date~~ Due Date for the deposit premium, which shall be twenty (20) days prior to the current policy's expiration date ("Due Date").

~~xxiii~~.iv. The following statement: “Payment of the deposit premium will constitute the employer’s acceptance of and agreement to the terms and conditions of the policy.”

~~xxiv~~.v. An offer of medical and indemnity benefits deductibles. ~~In~~ (In accordance with MA 211 CMR 11~~3~~5.00, assigned carriers must offer medical and indemnity benefits deductibles on all assigned risk policies.) ~~As the WCRIBMA notifies applicants of the availability during the application process, the carriers are only required to notify policyholders their insureds upon renewal.~~

(2) If the required deposit premium is postmarked by the Due Date, the assigned carrier will issue and send to the policyholder and producer of record an accurate renewal policy within thirty (30) days after the receipt of the required deposit premium. ~~Note that if~~ If the postmark date is not legible, ~~then~~ the receipt date should be utilized.

(3) If the required deposit premium is not postmarked by the Due Date, the assigned carrier must send a Notice of Non-Renewal to the policyholder~~employer~~, the producer of record, and the WCRIBMA. The Notice of Non-Renewal must include the reason for nonrenewal and must state, “Your policy will terminate on the policy expiration date, xx/xx/xxxx.” (Provide the exact date.) The Notice of Non-Renewal must be sent in enough time so that the policyholder ~~insured~~ and the WCRIBMA receive the Notice at least ten (10) days prior to the expiration date of the current policy. The assigned carrier must, at a minimum, retain for its records a certificate of mailing receipt from the United States Postal Service showing the name and address of the insured as stated in the policy.

2. PAYROLL AND CLASSIFICATION VERIFICATION

a. Assigned Carrier Review

Prior to the issuance of a policy, and during the policy period as new information becomes available, the assigned carrier shall review the name of the business, the description of operations, the payroll and classification codes, and any information the assigned carrier has available to ensure that the policy premium being charged is reasonable.

b. Accuracy of Exposure Base and Classification

When there is reason to doubt the accuracy of the annual exposure base or whether the ~~insured~~ policyholder has been properly classified, the assigned carrier shall verify the information provided through interim audit or by obtaining additional information from the policyholder~~employer~~. The carrier should make sound underwriting judgments in adjusting the annual exposure.

If the assigned carrier has reason to believe that the risk is improperly classified, the carrier shall provide the WCRIBMA with sufficient information to determine whether a classification

change is appropriate. ~~Note that assigned~~ Assigned carriers are not required to notify the WCRIBMA before adding or deleting classifications for temporary employment agencies or construction operations.

The assigned carrier shall consider the effects of inflation, economic trends in the insured's industry, employment level changes in the policyholder's ~~insured's~~ operation, and utilize the latest available audit and claim history information to develop current policy premium and deposit premium.

During the policy term, the assigned carrier may discover or receive, either through audit, claim information, loss control survey, or other means, verifiable payroll information that is not consistent with the annual exposure base or classification information that raises doubts about the accuracy of the policy's classifications. Within thirty (30) days of the discovery of the inconsistent payroll or classification information, ~~The assigned carrier must investigate and decide whether a change is necessary and determine a course of action. within 30 days of the discovery or receipt of the inconsistent payroll new information.~~

3. ENDORSEMENTS

- a. When an endorsement is requested by the policyholder ~~insured~~, the assigned carrier must:

~~(1)~~ Within ten (10) days of the receipt of the request, either:

- ~~a)~~ i) Issue a denial of the endorsement along with an explanation of the reason(s) of the denial, or
- ~~b)~~ ii) Request any additional information that may be required. The request should state that if the additional information is not received within twenty (20) days of the assigned carrier's request, the endorsement request will not be honored.

~~(2)~~ Accurately issue the endorsement within ten (210) days of the receipt of the request or all requested information.

- b. When it is determined by the assigned carrier that an endorsement is necessary, the carrier must issue such endorsement within ten (4510) days of making that determination. The assigned carrier must have procedures in place to compare final audit reports with renewal payrolls and other information to determine if any additional endorsements are necessary. The assigned carrier must issue an additional premium endorsement if the additional premium generated is at least \$500 or 25% of the estimated annual premium, whichever is the lesser amount.

4. CANCELLATIONS

- a. Cancellations Initiated by the ~~Insured~~ Policyholder or Their Authorized Representative

Written requests for cancellation submitted by the policyholder~~insured~~ or their authorized representative (for example, the producer of record or finance company with Power of Attorney~~....~~) must be processed and a Notice of Cancellation must be issued and mailed within five (5) business days after the receipt of the request and required documentation.

The effective date of the cancellation must be determined by the assigned carrier to ensure that either:

- (1) ~~1~~-ten (10) days' written notice of such cancellation is given to the WCRIBMA in accordance with Performance Standard E.1., or
- (2) ~~2~~-the cancellation date coincides with a record of replacement coverage that is on file with the WCRIBMA.

A Notice of Cancellation, reflecting the reason and effective date of cancellation, must be sent to the WCRIBMA, the policyholder~~insured~~, and any authorized representative or finance company.

The assigned carrier must, at a minimum, retain for its records a certificate of mailing receipt from the United States Postal Service showing the name and address of the policyholder~~insured~~ as stated in the policy.

b. Cancellations Initiated by the Assigned Carrier

(1) Statutory Reasons

Cancellation and notification procedures will be initiated by the assigned carrier in accordance with ~~M.M.G.L., Chapter c.~~152, ~~§§Sections~~ 63 and 65B, in the following cases as permitted by ~~§Section~~ 55A:

- (i) nonpayment of premium
- (ii) fraud or material misrepresentation affecting the policy or insured; or
- (iii) a substantial increase in the hazard insured against.

For cancellations for nonpayment of premium, refer to Performance Standard A.8., Billings.

(2) Loss of Eligibility

In accordance with the Massachusetts Assigned Risk Pool Eligibility Endorsement, WC200307, the policyholder's~~employer's~~ compliance with the following eligibility requirements is material to the continuation of assigned risk pool coverage. ~~The assigned carrier may initiate a mid-term cancellation if~~ the policyholder ceases to comply with any of the conditions described in the Massachusetts Assigned Risk Pool Eligibility Endorsement, the assigned carrier may initiate a mid-term cancellation in accordance

with the following. ~~, after two documented, good faith attempts made by the assigned carrier, one by certified mail, the employer fails to comply with any of these policy conditions:~~

If the policyholder employer fails to...	And the assigned carrier cancels the policy, then the assigned carrier must...
Fully cooperate with attempts to conduct premium audits or inspect the premises for loss control purposes, ...	Report the cancellation citing the reason 'Material Misrepresentation / Fraud' (WCIO reason code #21).
Keep records of information needed to compute premium and provide the assigned carrier with copies of those records when asked for them, ...	Report the cancellation citing the reason 'Material Misrepresentation / Fraud' (WCIO reason code #21).
Comply with the assigned carrier's reasonable, critical loss control recommendations (s See <u>Performance Standard C.4.</u>), ...	Report the cancellation citing the reason 'Material Misrepresentation / Fraud' (WCIO reason code #21).
Allow the assigned carrier to make a careful inspection of their operation for the purpose of measuring the hazards, making recommendations for the health and safety of employees and determining the rate or rates which will be adequate and reasonable for the policy, ...	Report the cancellation citing the reason 'Material Misrepresentation / Fraud' (WCIO reason code #21).

In instances of the policyholder's failure to cooperate with the carrier's right to conduct a premium audit, before they can initiate mid-term cancellation, the assigned carrier must make two good faith attempts to audit, one for which they must retain for their records a certificate of mailing receipt from the United States Postal Service.

(3) Effective Date of Cancellation

The effective date of the cancellation must be determined by the assigned carrier so that ten (10) days' written notice of such cancellation is given to the WCRIBMA and the ~~policyholder~~ ~~insured~~.

(4) Notice and Reporting Requirements

A Notice of Cancellation, reflecting the reason and effective date of cancellation, must be sent to the WCRIBMA in accordance with Performance Standard E.1. the ~~policyholder~~ ~~insured~~, and any authorized representative or finance company known to the ~~assigned carrier~~ ~~insurer~~ at the time the Notice of Cancellation is being sent. If the cancellation is due to non-payment of premium, the amount due must be shown on the Notice of Cancellation ~~Cancellation Notice~~.

The assigned carrier must, at a minimum, retain for its records a certificate of mailing receipt from the United States Postal Service showing the name and address of the policyholder~~insured~~ as stated in the policy.

Assigned carriers must report non-compliance and subsequent compliance to the WCRIBMA in accordance with Performance Standard E.2.

5. REINSTATEMENTS

A request for reinstatement must be accepted or denied and communicated to the WCRIBMA in accordance with Performance Standard E.1., to the policyholder~~insured~~ and any authorized representative or finance company, within five (5) business days after receipt of:

- a. The request for reinstatement,
- b. The receipt of funds satisfying the premium obligation, or
- c. The receipt of the item correcting the fault that caused the issuance of the Notice of Cancellation.

~~Notification of the reinstatement must be sent to the WCRIBMA within five (5) business days of issuance.~~ If an assigned carrier notified a Certificate Holder named on a Certificate of Insurance of a pending cancellation, and that policy is subsequently reinstated, then the carrier must also notify the Certificate Holder of the reinstatement within five (5) business days of issuance.

6. CERTIFICATES OF INSURANCE

If the policy has been issued, and the assigned carrier has been requested to issue a Certificate of Insurance, the assigned carrier will issue and distribute a Certificate of Insurance by email or facsimile to each contact provided, within two (2) business days of its receipt of a fully and accurately completed Massachusetts Assigned Risk Pool Request for Certificate of Insurance Form or a like form, where the first day is defined as the day after the request was received. If no email address or fax number is provided for a person or persons to whom the Certificate of Insurance should be issued, then the assigned carrier will mail the Certificate of Insurance to the mailing address(es) provided on the form, if any.

For new business where the policy has not yet been issued, the time standard is ten (10) days from the date the assigned carrier is in receipt of both:

- a. —the assignment package and deposit premium from the WCRIBMA and
- ~~a.~~b. —a fully and accurately completed Massachusetts Assigned Risk Pool Request for Certificate of Insurance Form or a like form.

~~If an assigned carrier notified a Certificate Holder named on a Certificate of Insurance of a pending cancellation, and that policy is subsequently reinstated, then the carrier must also notify the Certificate Holder of the reinstatement within five (5) business days of issuance.~~

Assigned carriers must not authorize producers of record or other parties to issue Certificates of Insurance~~certificates of insurance~~.

7. PRODUCER FEES

Producers of record with valid individual or business entity Massachusetts producers' licenses will be paid by the assigned carrier as premium is collected, except that premium collected by a collection agency or an attorney engaged and remunerated by the assigned carrier will not be subject to a producer fee. The following fee schedule is applicable to assigned risk policies:

PRODUCER FEE SCHEDULE	
First \$1,000	9% of Standard Premium
Next \$4,000	5% of Standard Premium
Next \$95,000	4% of Standard Premium
Over \$100,000	3% of Standard Premium

The assigned carrier is required to process and ~~send mail~~ fee payments within thirty (30) days from the date the policy is issued or thirty (30) days from the receipt of premium, whichever is later. The fee payment may also be applied to commissions which the producer owes to the carrier from other assigned risk policies.

8. BILLINGS

a. Billing Cycle

~~Servicing carrier~~Assigned Carriers should complete billing procedures within ~~forty-five (45) calendar~~ days for premium or deductible balances due, installments, interim audits, endorsements, and final audits. The ~~forty-five (45)-~~ day billing cycle begins on the date of the billing and includes thirty (30) days from the date of billing and a fifteen (15) day period for follow up.

b. Billing Statements

(1) Amounts due less than \$100 will not be required to be billed, excluding final billing, until the cumulative amount of premium due for a single policy period exceeds \$100.

(2) Billing statements for additional premium of \$100 or greater shall be mailed within ten (10) business days of posting the transaction on assigned carriers' ~~the company~~ records. If billing is on an installment basis, and an installment is due within the next thirty (30) days, the additional premium may be allocated among all remaining installments.

(3) Assigned carriers' ~~B~~billing statements must indicate that the amount due must be *received* by the due date (as opposed to being *postmarked* by the due date).

(4) Assigned carriers' ~~B~~billing statements must include a clear explanation of the bill and specific information on how the policyholder ~~employer~~ may inquire about the billing determination.

(5) Assigned carriers' ~~B~~billing procedures, where all or a portion of the amount due is disputed, shall include prompt redetermination of the amount due and reasonable explanation of the basis for the billing, as necessary; as well as information on how the employer may appeal the billing determination.

c. Collection Attempts

~~Servicing carrier~~Servicing Carriers must make at least two (2) documented attempts to collect the premium within the billing cycle. Billings, notifications of delinquent accounts, cancellation notices and telephone contact are all considered attempts to collect.

On all accounts with an outstanding balance of \$10,000 or more, a documented phone call to the policyholder~~employer~~ must be made by the ~~servicing carrier~~Servicing Carrier in addition to the initial billing and one written follow-up collection attempt.

d. Cancellation

If ~~premium amounts~~ payments for current or prior policies are not postmarked within forty-five (45) ~~calendar~~ days from the date of mailing the billing statement, the ~~servicing carrier~~assigned carrier should implement cancellation procedures in accordance with the provisions of ~~M.G.L., Chapter c. 152, §§~~Sections 55A, 63 and 65B. Note that if the postmark date is not legible, then the assigned carrier must rely on the receipt date. ~~Cancellation~~ Notices of Cancellation must be mailed in accordance with Performance Standard A.4b.

The policy may not be cancelled if:

- A payment plan has been signed by the policyholder~~insured~~ and the assigned carrier, and all payments have been received in accordance with their payment plan~~agreement~~; ~~or~~
- A bona fide dispute exists and the assigned carrier has received the non-disputed premiums; ~~or~~
- The premium due was not billed or is not delinquent; ~~or~~
- The premium amount due shown on the Notice of Cancellation is received on or before the policy termination date.

e. Return Premium

Return premium adjustments will be ~~sent mailed~~ by the assigned carrier within ten (10) business days of recording on ~~assigned carrier company~~ records.

Any return premium checks shall be made payable to the ~~policyholder insured~~, unless a valid power of attorney is on file, in which case the return premium checks shall be made payable to the party with power of attorney. The check shall be mailed to the payee.

In cases in which a financed policy is cancelled midterm and the policyholder does not cooperate with audit requests, the assigned carrier may not retain more than three (3) times the prorated premium, with a short rate penalty applied, unless the ~~assigned~~ carrier has evidence that the original premium estimate was significantly deficient. The balance of the premium shall be returned to the finance company.

The check shall be made on the gross amount of the return premium, unless the ~~policyholder insured~~ owes the assigned carrier premium on other Massachusetts assigned risk workers' compensation policies. In that case, the assigned carrier shall either return or bill the net of the return premium and the owed premium, as appropriate.

A bill for the unearned commission shall be sent to the producer of record, or an offset may be made against other commissions due to the same producer from the assigned carrier on other assigned risk business.

9. COLLECTION AGENCY PROCEDURES

Premium Past Due	Collection Activity
\$0 - \$999	Collections are important but are at servicing carrier <u>Servicing Carrier</u> discretion.
\$1,000 and Over	<p>Uncollectible accounts must be referred by the servicing carrier <u>Servicing Carrier</u> to a collection agency on file with the WCRIBMA for further collection activity within fifteen (15) days of the completion of the forty-five (45)-day billing cycle, unless:</p> <ul style="list-style-type: none">• potential for imminent settlement is evident, or• the premium is in dispute and the dispute is being actively resolved. <p>Servicing carrier <u>Servicing Carriers</u> must obtain preapproval from the WCRIBMA to refer to outside counsel instead of pursuing collection activity.</p> <p>An uncollectible account must have been with a collection agency for at least sixty (60) days from the date of referral by the servicing carrier <u>Servicing Carrier</u> before the servicing carrier can report the initial chargeback to NCCL <u>in accordance with Performance Standard E.3.</u></p>

10. AUDITS

a. Physical Audit

A Physical Audit is defined as an audit of payroll, whether conducted at the policyholder's location or virtually at a remote site, that is based upon an auditor's examination of the policyholder's books of accounts and original payroll records (in either electronic or hard copy form) as necessary to determine and verify the exposure amounts by classification. Any review of the records that is conducted virtually must include interaction with the insured or their authorized representative.

b. Preliminary Physical Audits

A Preliminary Physical Audits ("PPAs") must be completed by the assigned servicing carrier for ~~all qualifying employers~~ those policyholders that qualify in accordance with Performance Standard A.10~~ee~~ and must be completed within 120 days of the policy effective date, or receipt of assignment, whichever is later.

Exception: ~~Commonwealth of Massachusetts Regulation 211 CMR 111.00~~The MA Manual, Rules IX-E and IX-F, - requires that all carriers audit policies issued to employee leasing companies and Professional Employer Organizations within ninety (90) days of the policy effective date.

Prior to PPAs, auditors must be provided access to complete policy information, including but not limited to payroll and claims data, experience rating factors, adverse loss conditions, suspected payroll and classification discrepancies.

If the policyholder~~employer~~ did not qualify for a PPA at policy issuance but the policy was endorsed within 120 days of the policy effective date and now meets the PPA requirement, then the assigned carrier must conduct the PPA within seventy-five (75) days of the endorsement date.

If the policyholder~~employer~~ did qualify for a PPA at policy issuance but the policy was endorsed within 120 days of policy issuance and no longer qualifies for a PPA, then the assigned carrier is not required to conduct the PPA.

~~b.c.~~ Final Physical Audits

Final Physical Audits must be completed by the assigned servicing~~carrier~~ for ~~all qualifying employers~~ those policyholders that qualify in accordance with Performance Standard A.10~~fe~~. ~~Final Physical Audits must be completed, billed and recorded on the assigned carrier's records within:~~

- ~~• 90 days of the notification of cancellation if initiated by the employer,~~

- ~~• 90 days of the policy expiration or cancellation date if initiated by the assigned carrier,~~

Prior to Final Physical Audits, auditors must be provided access to complete policy information, including but not limited to payroll and claims data, experience rating factors, adverse loss conditions, suspected payroll and classification discrepancies.

If a Final Physical Audit is not required, then the assigned carrier must conduct a final mail ~~or telephone~~ audit. Assigned carriers must obtain, via a documented attempt, the most recent applicable state and/or federal tax forms on all mail ~~and telephone~~ audits to assess the reasonableness of all reported payroll.

d. Mail ~~and Telephone~~ Audits

A mail ~~or telephone~~ audit is an audit during which the policyholder submits externally verifiable payroll, tax or other requested information through the mail or by electronic means, yet typically includes no direct interaction with the assigned carrier. Mail ~~and telephone~~ audits are only permitted when a physical audit is not required. The assigned carrier shall make a documented, good faith effort to obtain the most recent IRS 941 Form(s) or its equivalent from the policyholder on all mail ~~and telephone~~ audits to assess payroll.

e. Timeliness of Completion of Final Audits

All final audits, including both Final Physical Audits and Final Mail Audits, must be completed, billed, recorded and closed on the assigned carrier's records within:

- Ninety (90) days of the notification of cancellation if cancellation was initiated by the policyholder, and
- Ninety (90) days of the policy expiration or cancellation date if cancellation was initiated by the assigned carrier.

f. Minimum Audit Frequency Requirements ~~Qualifying Employers~~

Audits are to be conducted by assigned ~~servicing~~ carriers in accordance with Performance Standards ~~A.10.a-lg~~ based on the following minimum frequencies, premium ranges and governing classifications for all employers except domestic servants. While these are the minimum requirements, assigned ~~servicing~~ carriers are not precluded from physically auditing non-qualifying ~~employers~~ policyholders based on sound underwriting judgment.

NEW BUSINESS	
Premium Range	
\$50,000 +	A Preliminary Physical Audit and a Final Physical Audit must be completed, regardless of governing classification.

Massachusetts Assigned Risk Pool Plan of Operation

Appendix ~~B~~A

\$10,000 - \$49,999	A Preliminary Physical Audit and a Final Physical Audit must be completed on all risks with the following governing class codes. All other risks must receive a Final Physical Audit.							
	0016	0036	0042	0046	0050	0106	<u>0917</u>	2702
	3365	3724	3726	5020	5022	5037	5040	5057
	5059	5102	5146	5160	5183	5188	5190	5213
	5215	5221	5222	5223	5348	5402	5403	5437
	5443	5445	5462	5472	5473	5474	5478	5479
	5480	5506	5507	5508	5509	5538	5545	5547
	5606	5610	5645	5701	5703	5705	6003	6005
	6204	6217	6229	6233	6251	6252	6306	6319
	6325	6400	7219	7230	7231	<u>7380</u>	7502	7515
	7538	7539	7601	7720	7855	8018	<u>8044</u>	8227
	8380	8393	8742	8745	8829	9014	9016	9079
	<u>9521</u>	<u>9533</u>	9534	0037	5069	5651	9529	
\$5,000 – \$9,999	A Preliminary Physical Audit and a Final Physical Audit must be completed on all risks with the following governing class codes. All other risks must receive a Final Physical Audit.							
	3365	5040	5057	5059	5022	5183	5213	5221
	5403	5437	5445	5474	5479	5538	5545	5547
	5606	5645	7219	<u>8044</u>	5069	5651		
\$1 - \$4,999	A Final Physical Audit must be completed on all risks with the following governing classifications. A final mail or telephone audit must be completed on all risks not receiving a Final Physical Audit.							
	<u>0917</u>	3365	3726	5020	5022	5037	5040	5057
	5059	5102	5146	5160	5183	5188	5190	5213
	5215	5221	5222	5223	5348	5402	5403	5437
	5443	5445	5462	5472	5473	5474	5478	5479
	5480	5506	5507	5508	5509	<u>5538</u>	5545	5547
	5606	5610	5645	5701	5703	5705	6003	6005
	6204	6217	6229	6233	6251	6252	6306	6319
	6325	6400	7219	7230	7231	<u>7380</u>	7538	7601
	7855	<u>8044</u>	8227	<u>9521</u>	<u>9533</u>	9534		
	5069	5651	9529					
ALL	A Preliminary Physical Audit and a Final Physical Audit must be completed on all risks engaged in leasing employees to others or in providing temporary help to others, regardless of premium size.							

RENEWAL BUSINESS	
Premium Range	

\$10,000 +	A Final Physical Audit must be completed every year for all risks.
\$1,000 - \$9,999	A Final Physical Audit must be completed at least once every three <u>(3)</u> years for all risks. A final mail or telephone audit must be completed on all risks not receiving a physical audit.
ALL	A Preliminary Physical Audit and a Final Physical Audit must be completed every year on all risks engaged in leasing employees to others or in providing temporary help to others, regardless of premium size.

~~d. Mail and Telephone Audits~~

~~Mail and telephone audits, during which the employer submits externally verifiable payroll, tax or other requested information through the mail or by electronic means, are only permitted when a physical audit is not required. The assigned carrier shall make a documented, good faith effort to obtain the most recent IRS 941 form(s) or its equivalent from the insured on all mail and telephone audits to assess payroll.~~

eg. Policyholder~~Employer~~ Requested Audits

Physical audits will be performed by the assigned carrier whenever requested by the policyholder~~employer~~ with reasonable grounds. The requested audit must be completed, billed, recorded and closed on the company records within ninety (90) days of the receipt of the request.

~~f~~h. WCRIBMA Requested Audits

The WCRIBMA may at any time request that an assigned carrier perform a physical audit on a policyholder. The assigned carrier shall perform that audit as instructed and then provide a copy of the completed audit, ~~and the~~ audit notes and work papers to the WCRIBMA within fifteen (15) days of the audit's completion.

gi. Audit Scheduling ~~and Uncooperative Employers~~

Assigned carriers must make reasonable attempts to schedule physical audits or obtain audit information for mail ~~or telephone~~ audits. The attempts to begin scheduling appointments must be made early in the process to ensure the timeliness requirements are met. These 'attempts' include written correspondence (e.g., U.S. mail, e-mail or fax), telephone contact, or other, depending on the assigned carrier's documented procedures. The producer of record should be included on all written attempts to audit.

j. Uncooperative Policyholders

If at least two (2) documented, good-faith attempts to conduct a physical audit or obtain audit information for a mail ~~or telephone~~ audit have been made ~~(one by certified mail)~~, and the insured has not complied, then the assigned carrier should initiate cancellation procedures on the current policy for 'material misrepresentation' since the policyholder has not complied with the agreed upon terms of the policy contract. (See Performance Standard A.4b.)

Assigned carriers must report non-compliance and subsequent compliance to the WCRIBMA in accordance with Performance Standard E-2. ~~(See Standard E1.)~~

k. Audit Disputes

If an ~~policyholder~~insured disputes the accuracy of an audit, the assigned carrier should contact the policyholder~~insured~~ and producer and resolve the dispute ~~accuracy of the audit~~ within thirty (30) days from the date of receipt of written notice of the dispute. The dispute should be resolved ~~concluded~~ either by revising the audit billing, or by written notice to the policyholder~~insured~~ and producer that the original audit is accurate.

h. Documentation

Assigned carriers must document the following in their files:

- (1) • All attempts to schedule and conduct physical audits
- (2) • All attempts to conduct mail and telephone audits
- (3) • All requests for, or receipt of, audit information
- (4) • Any other item or decision that impacts policy premium or coverage.

B. CLAIMS

1. REGISTERING/RECORDING

- a. All First Reports of Injury will be screened upon receipt and separated by lost-time and medical-only claims. First Reports of Injury should either be manually date stamped or electronically stamped with the date received.
- b. All claims for medical or indemnity benefits reported by telephone, facsimile, mail or any other means should be established with a claim number and assigned to a file handler within one working day of the date received, with the assignment date documented.

2. INVESTIGATION

- a. Investigations should include obtaining medical and other pertinent records as well as securing detailed statements from the policyholder~~employer~~, injured worker ~~employee~~ and witnesses, to the extent they are granted and appropriate. The extent of the investigation

should be based on consideration of the following issues: severity of injury, potential extent of disability, potential for an employers' liability action, jurisdiction, causal relationship of the workplace incident to the disability, lateness of reported claim, lack of witnesses in claims where liability is questionable, and other such factors surrounding the compensability of the claim. The documentation should be prepared in anticipation of being presented at the Massachusetts Department of Industrial Accidents ("DIA").

Detailed statements should be taken for the following:

- Fatalities
- Spinal cord injuries
- Paralysis injuries
- Head injury/brain damage
- Serious Psychological stress
- Burns and severe disfigurement
- Heart attack
- Serious Occupational disease
- All injuries where issues of origin exist

~~Detailed statements should also be taken for:~~

- Incidents with delayed disability, additional periods of disability, or late reporting, to investigate potential intervening accidents
- Controverted cases with expectations of litigation
- Incidents involving potential recovery (i.e., third-party and second – injury fund cases)

All lost-time accidents should be investigated at least to the extent of:

- contacting either any person to whom the claimant or survivor reported the injury or the person held responsible at the employer for confirming the facts of the injury;
 - attempting to contact the claimant; and
 - attempting to contact the treating physician. The treating physician may be contacted by the ~~assigned~~servicing carrier's utilization review vendor representative.
- b. Contact, or documented attempts of contact, with the injured worker or representative in cases involving serious injury shall be made within one working day of receipt of assignment.
- c. Initial investigation of assigned claims should be completed within the fourteen (14) day statutory requirement, or if paid without prejudice, no more than sixty (60) days.
- d. Investigation will also include, but not be limited to, the following:

- (1) Contact with the ~~policyholder employer/~~ or supervisor, and any witnesses as needed, within two (2) business days of receipt of assignment, to verify accident details and to lay the foundation for the injured worker's return to light or full duty.
- (2) Where the ~~Injured worker employee~~ has not returned to work, contact with the treating clinician's office within two (2) business days of receipt of assignment in the absence of medical documentation from the onset to gather information concerning medical history, diagnosis, treatment, causal relationship, and return to work target date.
- (3) Verification of average weekly wage and computation of indemnity benefits consistent with jurisdictional requirements.
- (4) Report all lost-time injury claims to the ISO Claims Search. Investigation should include the filing of Inquiry Reports with other insurers/administrators, when appropriate.
- (5) Either a full captioned report to the file should be completed with the conclusion of investigation, or the assigned carrier must maintain an automated system which includes as data elements all the items relevant to the investigation. Such terms shall include but not be limited to coverage, jurisdiction, claim date, accident description, compensability, disability, medical history, subrogation, Second Injury Fund potential, potential employer's liability exposure, reserves, average weekly wage, and outstanding issues as well as plans for future handling.
- (6) On claims involving payment of benefits under ~~M.G.L. Ch. c.152 §Section~~ 34A (Permanent And Total) or ~~§Section~~ 31 (~~S~~urvivors ~~B~~enefits) contact will be made at least once each calendar year with the claimant. On cases involving payment of ~~§Section~~ 34, (Temporary Total) or ~~§Section~~ 35, (Temporary Partial) benefits, contact with the claimant will be made at least once a quarter. Personal contact with a claimant is required where allowed and subject to an individual's legal representation.
- (7) A subrogation investigation shall be conducted simultaneously with the compensability investigation, including statements, photographs, diagrams, engineering opinions and preservation of evidence to support a recovery, where appropriate.

Each file should contain a documented determination as to the appropriateness of subrogation, based on this investigation. Insureds should have access to this information at any time upon request. ~~In addition,~~

~~i~~n ~~the any~~ case of an injury resulting from a motor vehicle accident involving a third party where ~~,if~~ subrogation is not pursued, ~~the policyholder may then upon~~ request a letter explaining the reasons for the ~~insurer's assigned carrier's~~ non-pursuit of subrogation. The ~~assigned carrier~~ should ~~be provided~~ a response to the ~~policyholder employer~~ within nine (9) months of the incident or sixty (60) days of the ~~policyholder's employer's~~ request, whichever is the later date.

e. Continuing items of investigation and/or development (which should be addressed in the file):

- (1) Consideration of Second Injury Fund possibilities.
- (2) Possibility of apportionment or contribution.
- (3) Social Security or other applicable offsets.
- (4) Need for physical or vocational rehabilitation.
- (5) On claims involving payment of benefits under ~~§Section~~ 34A (Permanent ~~and And~~-Total) where there is a question of disability, fraud, or where otherwise appropriate, activity checks/surveillances should be conducted by the assigned carrier or its representative at least every six months. Claims where widow, widower's or dependent benefits are being paid should receive activity checks or contact at least annually.

3. ACCEPTANCE OR DENIAL

- a. If a claim is compensable, issue first payment within fourteen (14) days of assigned carrier's receipt of an ~~e~~Employer's ~~f~~First Report of Injury (Form 101), or an initial written claim for weekly benefits on a form prescribed by the DIA, whichever is received first, and in accordance with statutory requirements.
- b. If denial of compensability is in order, ensure that a prompt and legally sufficient denial is made with clear, factual basis and grounds for denial to the proper parties, followed up with timely administrative filings, where required, consistent with vigorous defense for non-meritorious claims.

4. RESERVING

- a. Establish initial medical and indemnity loss reserves within fourteen (14) ~~calendar~~ days of assignment to the ~~file-claim~~ handler commensurate with all known factors. Adequate reserves represent the ~~file-claim~~ handler's judgment of the potential costs involved in achieving maximum medical improvement and a return to work on full duty based upon known information and claims judgment.
- b. Revise loss reserves whenever developments occur that change the ultimate claim exposure. Document with reserve worksheets, or other appropriate means, the basis for reserve changes.
- c. In reporting estimates on fatal and permanent total cases, utilize authorized tables where appropriate and provide comments on any deviation.
- d. Reserve estimates should be reviewed by a qualified member of the claim department, other than the ~~assigned adjuster~~claim handler, at regular 120 day intervals.

5. DISABILITY MANAGEMENT

- a. Arrange for adequate and reasonable medical care necessary to treat the injury or illness.

- b. Dependent upon the case circumstances, the nature of the injury, and the extent of the disability, all consistent with sound claims practice and law, initiate, determine, and/or implement the following:

- (1) Promote a team approach to limiting disability through continuing follow-up contact with injured worker, ~~policyholder~~employer, and physician at intervals consistent with the injury and estimated length of disability and establishment of return-to-work target dates.

Make a good faith attempt to provide the treating physician with a complete job description to facilitate an objective evaluation of the injured worker's ability to return to the job.

- (2) Independent medical examinations (where allowed by law) should be utilized where questions of disability, causal relationship, need for surgery and/or existing treatment, or where reports of treating physician are not forthcoming.
- (3) If return to the ~~individual's injured worker's~~ regular job with the ~~policyholder~~insured does not appear medically feasible or is unavailable, explore the availability or return to other employment, modified or light work duties consistent with medical capabilities.
- (4) Provide ~~v~~vocational rehabilitation in the form of alternative work, modified work, job placement, on-the-job training, schooling, ensuring compliance with statutory and/or regulatory provisions.

6. MEDICAL CARE AND COST CONTROL

- a. An integrated medical management program that includes pre-accident medical care arrangements, timely reporting of accidents, PPO/PPN/HMO/and similar contracts, utilization review as required by the DIA regulations in effect, hospital pre-certification/pre-admission review, return-to-work programs and catastrophic case management shall be developed and applied to individual claims, consistent with the severity of injury.
- b. Periodic paper or electronic reports must be obtained from the treating physician and/or other medical practitioners for the status of the injured worker's injury and medical care and for use in conjunction with medical bill screening.
- c. Screen all medical bills to ensure treatment is related to the injury, and charges are reasonable and necessary; review and approve all medical invoices in accordance with applicable statutes and regulations, relative value studies and/or professional medical cost surveys.
- d. Where no questions of compensability or reasonableness exist and physician reports have been received, pay all bills within thirty (30) days or earlier.
- e. Where questions of compensability or reasonableness exist, notify the medical vendor within thirty (30) days, explaining the reasons for the need for further information or investigation.

7. HEARINGS AND SETTLEMENTS

- a. Ensure that all cases are properly prepared prior to conciliation, conference, hearing, trial, or arbitration, including but not limited to the following:
 - (1) Documentation of complete pre-trial preparation in the areas at issue, such as coverage, liability and disability and ~~casual~~-causal relationship issues, including proper instructions and authorization of the insurer representative at conciliation.
 - (2) Have available all necessary lay and professional witnesses or their depositions prior to formal hearing, trial, or arbitration.
 - (3) If the proceeding encompasses issues relative to extent of disability and/or permanent impairment, the appropriate medical reports, opinions and ~~7~~ witnesses should be made available and ready for testimony or deposition, in accordance with statutory requirements.
 - (4) If the proceeding is to be handled by an attorney, ensure timely delivery of the file material for preparation. Document the attorney's receipt of the claim file and the assigned carrier's ~~insurer's~~ communications to its attorney regarding the merits of the issues to be litigated and the probable success of the litigation. If an adverse finding is made, the attorney should ~~comment~~ document the file about the costs and the merits of the appeal and case law issues, including the potential impact on future claims costs.
 - (5) Review attorney bills to ensure that they reflect billing practices and expense controls that are consistent with the attorney/assigned carrier agreement.
 - (6) When outside counsel is utilized by the assigned carrier, the defense attorney's Initial Report should be produced within thirty (30) days of receipt of assignment. A Pre-Trial Report should be produced by any outside defense counsel at least thirty (30) days prior to a hearing or, if such counsel receives less than forty (40) days' notice of a hearing, no later than ten (10) days from receipt of such notice. In all instances, Initial Reports and Pre-Trial Reports shall be completed prior to the applicable proceedings.
- b. Assuming plaintiff attorney willingness and consistency with sound claims judgment, conduct settlement negotiations promptly after completion of investigation. Do not, as a matter of tactics or standard operating procedure, wait until day of pre-trial, conference or hearing. Prior to settlement negotiations, the file will be documented relative to estimated settlement value.
- c. Base all settlements of permanency or compromise settlements on sound claims judgment consistent with compensability investigation, medical evidence developed and exposure, in accordance with the law and benefit structure.

8. PAYMENT CONTROL

All benefit payments and filings required to be made to the DIA will be documented and made timely in accordance with statutory provisions and regulations.

9. SUPERVISION

Document team review or supervisor/management direction and control of claim handling consistent with the injury severity.

10. ~~FILING~~ REPORTING

All file activity will be fully documented either by paper or electronically, and shall include:

- a. Sources of information and dates of activity.
- b. Copies of police reports, marriage and/or birth certificates, etc., when appropriate.

C. LOSS CONTROL

The primary objective of these Loss Control Performance Standards is to eliminate, reduce and/or control sources of occupational injury and illness to ~~employers~~ policyholders' workers.

1. NOTIFICATION OF LOSS CONTROL SERVICES

Upon policy issuance, the policyholder and producer of record will be notified by the assigned carrier, in writing, of available loss control services and safety information, including instructions for obtaining services and information.

2. POLICYHOLDER~~EMPLOYER~~-REQUESTED LOSS CONTROL SERVICES

Any assigned risk policyholder may request loss control services from its assigned carrier regardless of the size of its operation or its claim history. The assigned carrier is responsible for allocating financial resources, qualified personnel, and time in reasonable amounts sufficient to provide comprehensive loss control services to its policyholders.

- a. The assigned carrier will provide appropriate consultation in the form of accident prevention programs, accident trending, safety seminars, safety literature and other administrative aids which will support the loss control efforts of the policyholder.
- b. The assigned carrier will encourage the policyholder to designate a specific individual(s) as safety coordinator and contact person.
- c. When an on-site visit is requested by the policyholder~~insured~~ or when an on-site visit is deemed necessary by the assigned carrier, the assigned carrier will assign a designated loss control representative to oversee the delivery of services to the policyholder.
- d. When the policyholder requests loss control services, the assigned carrier will respond to the policyholder within fifteen (15) business days of the receipt of the request. The assigned carrier must either provide requested loss prevention materials (as described in subsection 2.a. above) or, when appropriate, conduct a loss control survey (as described in subsection 3.

~~B~~below) within sixty (60) days from the date of the policyholder's request. Requests for assistance in the evaluation and control of imminent danger exposures will be given high priority.

3. LOSS CONTROL SURVEYS

A Loss Control Survey ~~Loss Control Surveys~~ ("LCS") ~~is are~~ generally initiated by the assigned carrier in accordance with the requirements set forth in this Performance Standard C.3, but may also be requested by the policyholder~~employer~~ as provided in Performance Standard C.2.

a. Contents of a Loss Control Survey

An LCS includes, but is not limited to:

- (1) An analysis of all available accident experience to determine causes and trends, supported by loss runs or other related documentation.
- (2) An on-site review of potential policyholder~~employer~~ exposures, specifically identifying conditions and operations that could cause loss. Imminent danger hazards must be discussed with policyholder management during the LCS.
- (3) Review and documentation of policyholder loss control program and activities including, employee training programs, safety management firm ~~representation (organization)~~, safety policy, procedures, goals and funding, etc.
- (4) A description of the nature and size of the operations, number of locations and loss potential for classification and underwriting purposes.

b. Recommendations

Recommendations are the result of an LCS and must be presented to the policyholder in accordance with Performance Standard C.4.

c. Timelines and Procedures

(1) New Policies

~~An LCS~~ An in-person Loss Control Survey must be performed for all policyholders that qualify ~~qualifying employer (as defined in accordance with Performance Standard C.3d)~~, at all ~~qualifying~~ locations ~~that qualify in accordance with (as defined in Performance Standard C.3e)~~, within 120 days of the policy effective date or receipt of the Notice of Assignment by the assigned carrier, whichever is later.

In addition, regardless of whether an policyholder~~employer would be considered a 'qualifying employer'~~ qualifies for an LCS for the current policy period, the assigned carrier must perform an LCS if the policyholder~~employer~~ meets the following conditions:

- the assigned carrier has knowledge of a prior LCS that contained critical recommendations, and
- the assigned carrier has no knowledge that the critical recommendations in that prior LCS have been satisfied.

(2) Renewal Policies

An LCS must be performed for all policyholders that currently qualify in accordance with Performance Standard C.3d, at all locations that currently qualify in accordance with Performance Standard C.3e~~currently qualifying employer, at all qualifying locations,~~ within 120 days of the policy effective date if an LCS has not been conducted within the last three (3) policy periods, regardless of whether or not the ~~employer~~ policyholder qualified for an LCS during the last three (3) policy periods.

~~In addition, regardless~~ Regardless of whether an policyholder ~~employer would be considered a 'qualifying employer'~~ qualifies for an LCS for the current policy period, the assigned carrier must perform an LCS if the assigned carrier's prior LCS contained critical recommendations.

d. Minimum Loss Control Survey Frequency Requirements per Policyholder ~~Qualifying Employers~~

LCSs are to be conducted according to the following criteria, which include: ~~with the following~~ premium ranges, governing classifications (for Hazard Groups D through G excluding Admiralty codes), experience rating modifications, and locations for all policies except domestic servant policies. While these are the minimum requirements, assigned carriers are encouraged to perform LCSs for non-qualifying employers based on sound underwriting judgment.

Premium Range	Governing Classification Codes				
\$25,000 and Over	All employers, regardless of governing classification codes.				
<u>\$10,000 - \$24,999</u>	<u>0016</u>	<u>0079</u>	<u>0106</u>	<u>1430</u>	<u>1438</u>
	<u>1463</u>	<u>1624</u>	<u>1655</u>	<u>1701</u>	<u>1710</u>
	<u>1747</u>	<u>1748</u>	<u>2014</u>	<u>2115</u>	<u>2211</u>
	<u>2260</u>	<u>2402</u>	<u>2702</u>	<u>2710</u>	<u>2731</u>
	<u>3018</u>	<u>3027</u>	<u>3030</u>	<u>3040</u>	<u>3081</u>
	<u>3082</u>	<u>3085</u>	<u>3336</u>	<u>3365</u>	<u>3620</u>
	<u>3724</u>	<u>3726</u>	<u>4000</u>	<u>4021</u>	<u>4024</u>
	<u>4034</u>	<u>4036</u>	<u>4239</u>	<u>4439</u>	<u>4583</u>
	<u>4635</u>	<u>4665</u>	<u>4740</u>	<u>4771</u>	<u>4777</u>
	<u>4825</u>	<u>4829</u>	<u>5020</u>	<u>5022</u>	<u>5037</u>
	<u>5040</u>	<u>5057</u>	<u>5059</u>	<u>5102</u>	<u>5146</u>
	<u>5160</u>	<u>5183</u>	<u>5188</u>	<u>5190</u>	<u>5213</u>
	<u>5221</u>	<u>5222</u>	<u>5223</u>	<u>5348</u>	<u>5403</u>
	<u>5437</u>	<u>5445</u>	<u>5462</u>	<u>5472</u>	<u>5473</u>
	<u>5474</u>	<u>5478</u>	<u>5480</u>	<u>5506</u>	<u>5507</u>

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	9154 9156 9178 9179 9180 9182 9186 9403 9410 9501 9505 9533 9534 9545 9549 9552 9553
Experience Rating	
1.40 and higher with an estimated annual premium of \$10,000 and higher	All employers, regardless of governing classification code and status of experience rating.

e. Minimum Loss Control Survey Requirements – per Location ~~Qualifying Locations~~

For all ~~qualifying employers~~ policyholders that qualify for a LCS and that have ~~with~~ a single location, the assigned carrier must conduct the LCS at the single location.

For all ~~qualifying employers~~ policyholders that qualify for a LCS and that have ~~with~~ multiple locations, the assigned carrier must conduct the LCS at each location that has an annual premium of \$10,000 or higher for the qualifying class codes. If no single location has an annual premium of \$10,000 or higher for the qualifying class codes, then an LCS should be conducted at the principal location of the policyholder ~~insured~~ as determined by the assigned carrier.

4. RECOMMENDATIONS

Recommendations are the result of a Loss Control Survey and include written guidance for the policyholder which addresses actual or potential exposures and, where applicable, make suggestions for program activities or management principles. There are two types of recommendations:

a. Critical Recommendations

Critical recommendations address exposures of imminent danger or serious loss potential or continuing losses, which indicate uncontrolled exposures expected for the type of operation as indicated in A.M. Best's Loss Control Manual or similar materials.

The assigned carrier must notify both the policyholder ~~employer~~ and the producer of record of critical recommendations in writing within fourteen (14) days of the completion of the LCS. The notification must advise that failure to comply with these recommendations may result in cancellation of coverage, as provided in the Massachusetts Assigned Risk Pool Eligibility Endorsement.

Within sixty (60) days from the date the notification is sent, the assigned carrier must contact the policyholder ~~employer~~ to ensure compliance with the recommendations. The

~~policyholder~~~~employer~~ can demonstrate compliance with critical recommendations virtually or with written notification, signed by an officer or owner of the insured ~~entity~~~~employer~~.

If the ~~policyholder~~~~insured~~ has not demonstrated that it has, within ninety (90) days, substantially complied or intends to so comply within a reasonable time, with the assigned carrier's~~reasonable~~, critical recommendations, then the assigned carrier may initiate cancellation proceedings in accordance with Performance Standard A.4. The reason for the cancellation must be reported as 'fraud / material misrepresentation', WCIO Cancellation Reason Code 21.

Assigned carriers must report non-compliance and subsequent compliance to the WCRIBMA in accordance with Performance Standard E.2.

b. Advisory Recommendations

Advisory recommendations address minor exposures that exist but do not present an imminent danger or serious loss potential.

Advisory recommendations must be provided to the ~~policyholder~~~~employer~~ and the producer of record in writing within thirty (30) days of the completion of the LCS.

Additional loss control services may be provided where, at the assigned carrier's discretion, it determines~~they determine~~ the services will be effective in reducing losses.

D. CUSTOMER SERVICE

The assigned carrier shall establish written customer service ~~S~~standards that include, but are not limited to:

1. Responding to written policyholder, producer of record or injured worker~~employee~~-initial inquiries and complaints regarding a particular matter within ten (10) business days. If telephone inquiries are received, the assigned carrier should require that a written request be submitted.
2. Resolving issues ~~other than audit disputes~~ within thirty (30) days of the date of receipt of written correspondence.~~,~~
3. If requested, making loss records available within thirty (30) days of the request.~~,~~
4. Creating written internal procedures and management accountabilities for monitoring compliance with these Performance Standards.

If the ~~policyholder~~~~insured~~ makes a request for a review of the method by which their classifications, rates, premiums or audit results were determined, as permitted by the MA Notice to Policyholder Endorsement, the assigned carrier must convey the results of that review within thirty (30)~~—~~ days. If

the policyholder is not satisfied with the results of the review, the assigned carrier shall notify the policyholder that pursuant to the MA Notice to Policyholder Endorsement, the insured may submit a written request for review to the WCRIBMA.

E. POLICY, UNIT STATISTICAL AND DATA REPORTING

1. POLICY DATA

All assigned carriers are responsible for timely and accurate reporting of data to the WCRIBMA in accordance with the Massachusetts Workers' Compensation Statistical Plan and the WCIO Workers' Compensation Data Specifications Manual. The following must be reported:

- a. ~~•~~ Policies
- b. ~~•~~ Endorsements
- c. ~~•~~ Cancellations, Reinstatements, Non-renewals
- d. ~~•~~ Noncompliance and Compliance Transactions
- e. ~~•~~ Unit Statistical Reports

~~• Annual Financial Aggregate Data (as required in Part II of the MA Statistical Plan)~~

2. NONCOMPLIANCE AND SUBSEQUENT COMPLIANCE TRANSACTIONS

Assigned carriers must report noncompliance and subsequent compliance to the WCRIBMA. The purpose of this requirement is:

- a. ~~•~~ Noncompliance Reporting – to identify risks that are ineligible for participation through the Pool~~assigned risk pool~~ and exclude them from assigned risk coverage until such time as the eligibility issue has been resolved
- b. ~~•~~ Compliance Reporting – to reestablish the eligibility for assigned risk coverage for a risk that was previously reported as noncompliant

The noncompliance and subsequent compliance transactions must either be reported electronically as a WCIO Record Type Z1, Transaction Code 17 or through the Member's Area of the WCRIBMA's website.

Noncompliance transactions must be reported to the WCRIBMA within five (5) business days of the determination of ineligibility. In situations that the assigned carrier is currently providing coverage for the policyholder~~employer~~, the noncompliance transaction should be reported along with the cancellation transaction.

Compliance transactions must be reported to the WCRIBMA within five (5) business days of the event correcting the previously reported noncompliance issue.

3. QUARTERLY AND ANNUAL ACTUARIAL AND FINANCIAL REPORTING ~~TO NCCI~~

~~Servicing carrier~~Servicing Carriers are also responsible for segregating and reporting actuarial and financial ~~servicing carrier~~Servicing Carrier data to NCCI in accordance with NCCI's Servicing Carrier Reference Guide and Pool Data Reporting Guide, including any Massachusetts exceptions that have been communicated to the ~~servicing carrier~~Servicing Carriers.

In accordance with the Massachusetts Workers' Compensation Statistical Plan, assigned carriers are also required to submit to the WCRI/BMA the Policy Year Residual Market Call (Call 2A), the Accident Year Residual Market Call (Call 3A), and the Residual Market Direct Written Premium Call (Call 5).

F. TABLE OF TIME STANDARDS

Before a carrier is permitted to send or post documents or funds electronically, the policyholder must have granted the assigned carrier permission to send electronic correspondence or funds.

<u>Subjects & Document Types (Alphabetical Listing)</u>	<u>Send to, as Applicable</u>	<u>Mailing Type, as Applicable</u>	<u>Reference</u>	<u>Timeframe</u>	<u>Notes</u>
<u>Audit Dispute</u>	<u>Policyholder, Producer</u>	<u>Paper or Electronic</u>	<u>A.10.k.</u>	<u>...resolved within 30 days from the date of the receipt of written notice of the dispute</u>	
<u>Audits - Final</u>			<u>A.10.e.</u>	<u>...completed, billed, recorded and closed within 90 days of policy cancellation or expiration</u>	<u>When initiated by the assigned carrier</u>
<u>Audits - Policyholder Requested</u>			<u>A.10.e.</u> <u>A.10.g.</u>	<u>...completed, billed, recorded and closed within 90 days of the receipt of the request</u>	<u>When initiated by the policyholder</u>
<u>Audits - Preliminary Physical</u>			<u>A.10.b.</u>	<u>...completed within 120 days of policy effective date or receipt of assignment, whichever is later</u>	<u>Exception for employee leasing companies and PEOs: within 90 days of policy effective date. (Rule IX.E.7.)</u>
<u>Audit Scheduling Letter</u>	<u>Policyholder Producer</u>	<u>Mail, email, fax telephone or other depending on carrier's documented procedures</u>	<u>A.10.i.</u>	<u>Early in the process to ensure the timeliness requirements are met</u>	<u>In order to cancel, at least two good faith attempts must be made, and for one of the attempts, the carrier must retain a certificate of mailing from the USPO.</u>
<u>Billing Cycle</u>			<u>A.8.a.</u>	<u>...completed within 45 days for premium or deductible balances due, installments interim audits, endorsements or final audits</u>	<u>The 45 day billing cycle begins on the date of the billing and includes 30 days from the date of billing and a 15 day period for follow up.</u>

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<u>Subjects & Document Types (Alphabetical Listing)</u>	<u>Send to, as Applicable</u>	<u>Mailing Type, as Applicable</u>	<u>Reference</u>	<u>Timeframe</u>	<u>Notes</u>
<u>Billing Statements (\$100 or higher)</u>	<u>Policyholder, Finance Co.</u>	<u>Paper or Electronic</u>	<u>A.8.b.(2)</u>	<u>...mailed within 10 business days of posting the transaction on the Servicing Carriers' records</u>	<u>If billing is on an installment basis, and an installment is due within the next 30 days, the additional premium may be allocated among all remaining installments.</u>
<u>Cancellation Notices (All) initiated by assigned carrier</u>	<u>Policyholder, Producer, Auth. Rep., WCRIBMA</u>	<u>Paper; Electronic to WCRIBMA only</u>	<u>A.4.b.(3) M.G.L. c. 152 §63 M.G.L. c. 175 §187C</u>	<u>The cancellation date must be determined so 10 days written notice is given to the WCRIBMA & the policyholder.</u>	<u>If cancelling for nonpayment, the amount due must be shown on the Cancellation Notice. Carrier must retain a Certificate of Mailing Receipt from the USPO.</u>
<u>Cancellations initiated by assigned carrier for non-payment of premium</u>	<u>Policyholder, Producer, Auth. Rep., WCRIBMA</u>	<u>Paper</u>	<u>A.8.d. M.G.L. c. 152 §63 M.G.L. c. 175 §187C</u>	<u>If premium amounts due are not postmarked within 45 days of mailing of billing statements, SC should implement cancellation procedures</u>	<u>If the postmark date is not legible, the carrier must rely on the receipt date. Carrier must retain a Certificate of Mailing Receipt from the USPO.</u>
<u>Cancellation Notices: initiated by policyholder or authorized representative</u>	<u>Policyholder, Producer, Auth. Rep., WCRIBMA</u>	<u>Paper</u>	<u>A.4.a. M.G.L. c. 152 §63 M.G.L. c. 175 §187C</u>	<u>Issued and mailed within 5 business days after the receipt of the request</u>	<u>The effective date of cancellation must be determined to ensure that either 1) 10 days' written notice is given to the WCRIBMA, or 2) the cancellation date coincides with a record of replacement coverage on file with the WCRIBMA. Carrier must retain a Certificate of Mailing Receipt from the USPO.</u>

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<u>Subjects & Document Types (Alphabetical Listing)</u>	<u>Send to, as Applicable</u>	<u>Mailing Type, as Applicable</u>	<u>Reference</u>	<u>Timeframe</u>	<u>Notes</u>
<u>Certificates of Insurance</u>	<u>Each contact provided on the MA ARP Request for Certificate of Insurance Form or a like form</u>	<u>Email, Fax, or Mail *</u>	<u>A.6.</u>	<u>Policy issued: ...issue and distribute within 2 business days of request</u> <u>New business/policy not issued: ...issue and distribute within 10 days of receiving both the NOA package and the request</u>	<u>* depending on distribution information provided</u>
<u>Claim – Contact with Injured Worker</u>			<u>B.2.b..</u>	<u>... within 1 business days of receipt of assignment</u>	
<u>Claim – Contact with Policyholder</u>			<u>B.2.d.(1)</u>	<u>...within 2 business days of receipt of assignment</u>	
<u>Claim – Contact with Treating Physician’s Office</u>			<u>B.2.d.(2)</u>	<u>...within 2 business days of receipt of assignment in the absence of medical documentation (when the claimant has not returned to work)</u>	
<u>Claim – Cost Control – No Question of Compensability & Physician’s Reports Received</u>			<u>B.6.d.</u>	<u>Pay bills within 30 days</u>	
<u>Claim – Cost Control – Question of Compensability</u>			<u>B.6.e.</u>	<u>Notify medical vendor within 30 days</u>	<u>Explain the reasons for the need for further information or investigation.</u>
<u>Claim – Establish Initial Reserves</u>			<u>B.4.a.</u>	<u>...within 14 days of assignment to file handler</u>	

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<u>Subjects & Document Types (Alphabetical Listing)</u>	<u>Send to, as Applicable</u>	<u>Mailing Type, as Applicable</u>	<u>Reference</u>	<u>Timeframe</u>	<u>Notes</u>
<u>Claim – First Payment, if Compensable</u>	<u>Injured Worker</u>	<u>Paper or Electronic</u>	<u>B.3.a.</u>	<u>...issue first payment within 14 days of assigned carrier's receipt of First Report of Injury or other DIA form</u>	<u>In accordance with Statutory Requirements</u>
<u>Claim – Hearing – Outside Counsel</u>	<u>Assigned Carrier</u>		<u>B.7.a.(6)</u>	<u>Initial Report should be produced within 30 days of assignment</u> <u>Pre-Trial Report should be produced at least 30 days prior to hearing</u>	<u>Pre-Trial Report - if such counsel receives less than 40 days' notice of a hearing, no later than 10 days from receipt of such notice.</u>
<u>Claim – Initial Investigation</u>			<u>B.2.c.</u>	<u>...completed within 14 days or ... 60 days if paid without prejudice</u>	<u>Statutory Requirement</u>
<u>Claim – Motor Vehicle – Non-Subrogation Inquiry from Policyholder</u>	<u>Policyholder</u>	<u>Paper or Electronic</u>	<u>B.2.d.(7)</u>	<u>...respond within 9 months of incident or 60 days of inquiry, whichever is later</u>	
<u>Collection Agency Referrals</u>			<u>A.9.</u>	<u>...made within 15 days of the completion of the 45 days billing cycle.</u>	<u>Exception:</u> <ul style="list-style-type: none"> <u>potential for imminent settlement is evident, or</u> <u>the premium is in dispute and the dispute is being actively resolved.</u> <u>Servicing Carriers must obtain preapproval from the WCRIBMA to refer to outside counsel instead of pursuing collection activity.</u>

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Appendix ~~B~~A

<u>Subjects & Document Types (Alphabetical Listing)</u>	<u>Send to, as Applicable</u>	<u>Mailing Type, as Applicable</u>	<u>Reference</u>	<u>Timeframe</u>	<u>Notes</u>
<u>Customer Service</u>	<u>Policyholder, Producer, Injured Worker</u>	<u>Paper or Electronic</u>	<u>D</u>	<ul style="list-style-type: none"> - <u>Respond to inquiries within 10 days</u> - <u>Resolve issues within 30 days</u> - <u>Provide loss records within 30 days</u> - <u>Provide results of premium review within 30 days</u> 	
<u>Endorsements, Determined by Carrier</u>	<u>Policyholder, Producer</u>	<u>Paper or Electronic</u>	<u>A.3.b.</u>	<u>...issue endorsement within 10 days of making the determination that an endorsement is necessary</u>	
<u>Endorsements, Requested by Policyholder</u>	<u>Policyholder, Producer</u>	<u>Paper or Electronic</u>	<u>A.3.a.</u>	<u>...within 10 days of receipt of request, issue denial or request additional info.</u> <u>...within 10 days of the receipt of request or requested additional info, issue endorsement.</u>	<u>Requests for assistance in the evaluation and control of imminent danger exposures will be given high priority.</u>
<u>Investigate & decide whether a payroll or class change is necessary</u>			<u>A.2.</u>	<u>Within 30 days of the discovery of inconsistent payroll or class information</u>	
<u>Loss Control Services – Notification of</u>		<u>Paper</u>	<u>C.1.</u>	<u>Upon policy issuance</u>	
<u>Loss Control Services – Policyholder Requested</u>			<u>C.2.d.</u>	<ul style="list-style-type: none"> - <u>Respond within 15 business days of receipt of request</u> - <u>Provide materials or services within 60 days from request</u> 	

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Appendix [B](#)

Subjects & Document Types (Alphabetical Listing)	Send to, as Applicable	Mailing Type, as Applicable	Reference	Timeframe	Notes
Loss Control Survey – as required for qualifying policyholders and locations			C.3.c.(1&2)	New business ... Performed within 120 days of policy effective date or receipt of Notice of Assignment, whichever is later Renewal business ... Performed within 120 days of the policy effective date if a LCS has not been done within 3 years	
Loss Control Survey – Advisory Recommendations	Policyholder, Producer	Paper or Electronic	C.4.b.	Provide within 30 days of completion of the Survey	
Loss Control Survey - Critical Recommendations	Policyholder, Producer	Paper or Electronic	C.4.a.	- Provide notification within 14 days of completion of the Survey - Ensure Compliance within 60 days from date notification is sent - Initiate Cancellation for Noncompliance within 90 days from date notification is sent	The notification must advise that failure to comply with these recommendations may result in cancellation of coverage.
New Business Letters	Policyholder Producer	Paper	A.1.b.(1)	Send notice within 5 business days of receipt of NOA from WCRIBMA	Includes a request for policyholder's permission to receive electronic correspondence.
Noncompliance & Compliance Transactions	WCRIBMA	Electronic	E.2.	Reported within 5 business days of determination of ineligibility or subsequent eligibility	

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<u>Subjects & Document Types (Alphabetical Listing)</u>	<u>Send to, as Applicable</u>	<u>Mailing Type, as Applicable</u>	<u>Reference</u>	<u>Timeframe</u>	<u>Notes</u>
<u>Non-Renewal Notice</u>	<u>Policyholder, Producer</u>	<u>Paper</u>	<u>A.1.c.3.</u>	<u>The Policyholder must receive the Notice at least 10 days prior to expiration.</u>	<u>Carrier must retain a Certificate of Mailing Receipt from the USPO.</u>
<u>Non-Renewal Notice</u>	<u>WCRIBMA</u>	<u>Electronic</u>	<u>M.G.L. c. 152 §63</u>	<u>The WCRIBMA must receive the Notice at least 10 days prior to expiration.</u>	<u>Statutory Requirement</u>
<u>Policy Issuance</u>	<u>Policyholder, Producer</u>	<u>Paper or Electronic</u>	<u>A.1.b.2.</u>	<u>New: issued and sent within 30 days from the date the NOA, required premium & properly completed app are received from WCRIBMA</u> <u>Renewal: issued and sent within 30 days after receipt of required deposit premium</u>	<u>Time standard suspended if employer is found to be ineligible. See A.1.b.4.</u>
<u>Policy Issuance</u>	<u>WCRIBMA</u>	<u>Electronic</u>	<u>M.G.L. c. 152, §63</u>	<u>Reported within 5 days of issuance</u>	<u>Statutory Requirement</u>
<u>Producer Fee Payment</u>	<u>Producer</u>	<u>Paper or Electronic</u>	<u>A.7.</u>	<u>Process and send fee payments within 30 days of policy issuance or receipt of premium, whichever is later</u>	
<u>Reinstatement Notice</u>	<u>Policyholder, Producer, Auth. Rep., Certificate holder</u>	<u>Paper or Electronic</u>	<u>A.5.</u>	<u>Communicated within 5 business days after the receipt of the request, receipt of funds satisfying the premium obligation, or receipt of the item correcting the fault.</u> <u>Certificate Holder: ...within 5 business days of issuance</u>	<u>If an assigned carrier notified a Certificate Holder named on a Certificate of Insurance of a pending cancellation, and that policy is subsequently reinstated, then the carrier must also notify the Certificate Holder of the reinstatement within 5 business days of issuance.</u>

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Appendix ~~B~~A

<u>Subjects & Document Types (Alphabetical Listing)</u>	<u>Send to, as Applicable</u>	<u>Mailing Type, as Applicable</u>	<u>Reference</u>	<u>Timeframe</u>	<u>Notes</u>
<u>Reinstatement Notice</u>	<u>WCRI BMA</u>	<u>Electronic</u>	<u>A.5.</u>	<u>Reported within 5 business days after the receipt of the request, receipt of funds satisfying the premium obligation, or receipt of the item correcting the fault.</u>	
<u>Renewal Proposal</u>	<u>Policyholder, Producer</u>	<u>Paper or Electronic</u>	<u>A.1.c.1.</u>	<u>Send the proposal >= 45 days & <= 100 days from expiration date</u>	
<u>Return Premium Adjustments</u>	<u>Policyholder, Party with Power of Attorney</u>	<u>Paper or Electronic</u>	<u>A.8.e.</u>	<u>Mailed within 10 business days of recording on carrier records</u>	<u>In cases in which a financed policy is cancelled midterm and the policyholder does not cooperate with audit requests, the assigned carrier may not retain more than 3 times the prorated premium, with a short rate penalty applied, unless the assigned carrier has evidence that the original premium estimate was significantly deficient.</u>

Appendix B - PLRIP (Redlined)

~~APPENDIX TO THE~~
~~MASSACHUSETTS ASSIGNED RISK POOL~~
~~PLAN OF OPERATION~~
~~MASSACHUSETTS WORKERS' COMPENSATION~~
~~ASSIGNED RISK POOL~~
PAID LOSS RATIO INCENTIVE PROGRAM
"PLRIP"

The following incentive program for ~~s~~Servicing ~~e~~Carriers in Massachusetts has been developed based on paid loss ratio relativities. For each ~~s~~Servicing ~~e~~Carrier, paid loss ratio relativities will be calculated by policy year for Massachusetts assigned risks by dividing the ~~s~~Servicing ~~e~~Carriers' paid loss ratio (to written minus uncollectible premium) by the average paid loss ratio for all ~~s~~Servicing ~~e~~Carriers in the ~~Massachusetts~~-Pool. This program will be applied on a Company Group basis.

1. Program Applicability

A ~~s~~Servicing ~~e~~Carrier with premium less than \$2.5 million in the ~~Massachusetts~~-Pool is not subject to any incentive or disincentive.

~~in this Commonwealth. This is meant to reduce the administration cost in dealing with a relatively small servicing carrier.~~

~~This program will be effective beginning with policy year 1993. In other words, the first year of paid loss ratios evaluated will be policy year 1993.~~

2. Calculation of Incentives and Disincentives

Definition of Variables

MR	—=	Maximum Relativity Factor
mR	—=	Minimum Relativity Factor
P	—=	Carrier w Written p Premium minus u Uncollectible p Premium
SLR	—=	State a Average p Paid plus e Case l Loss r Ratio
Carrier Rel	=	Carrier p Paid l Loss r Ratio
	=	Carrier p Paid l Loss r Ratio / s State a Average p Paid l Loss r Ratio

Disincentive: If $MR < \text{Carrier Rel}$, = $P \times SLR \times (\text{Carrier Rel} - MR)$

Incentive: If $mR > \text{Carrier Rel}$, = $P \times SLR \times (mR - \text{Carrier Rel})$

There is an aggregate limit on Incentives/Disincentives of 9% of premium subject to the program.

Note that Disincentives are assumed to be negative.

The formulas for calculating the incentives and disincentives are in Exhibit 1.

3. Annual Evaluation of Paid Loss Ratios

Each policy year will have five annual evaluations. The first evaluation will be after the completion of the policy year (policy year 1993-2020 at 12/31/94, etc.). The final evaluation for policy year 1993-2020 will be based on experience reported as of 12/31/98.

Incentives/Disincentives will be calculated on an annual basis in accordance with the page entitled "Determining the Servicing Carrier Fee." following.

Premium Size Group	Minimum Relativity Factor	Maximum Relativity Factor
$\leq \$2.5$ mill	None	None
$> \$2.5$ mill & $\leq \$10$ mill	.900	1.100
$> \$10$ mill & $\leq \$30$ mill	.925	1.075
$> \$30$ mill & $\leq \$50$ mill	.950	1.050
$> \$50$ mill	.975	1.025

To avoid the back and forth transfer of funds and to consider the fact that more immature data is less reliable, not all of the calculated Incentive/Disincentive will be dispensed/billed for preliminary adjustments. The portion of the Incentive/Disincentive dispensed will depend upon the evaluation number. See the chart below as an example for policy year 1993-2020.

Evaluation Number	Date	Portion of Incentive/Disincentive Dispensed
1	December 31, 2021	20%
2	December 31, 2022	40%
3	December 31, 2023	60%
4	December 31, 2024	80%
5 (Final)	December 31, 2025	100%

Each evaluation for a policy year considers losses paid since the beginning of the policy year. Because of this, the ~~i~~ncentive/~~d~~isincentive calculated on a subsequent evaluation will be offset by ~~net-out~~ any payments made or received from earlier evaluations.

4. Experience Used

The experience data referred to is the assigned risk portion of business for ~~s~~ervicing ~~e~~arriers. The data used for calculating ~~i~~ncentives/~~d~~isincentives will be ~~s~~ervicing ~~e~~arrier ~~p~~aid ~~l~~osses, Paid Allocated Loss Adjustment Expenses ("ALAE"), ~~w~~ritten ~~p~~remium, and ~~u~~ncollectible ~~p~~remium as reported by the Servicing Carriers to NCCI quarterly.

Loss ~~r~~atios will be calculated ~~to~~ by dividing Paid Losses plus Paid ALAE by ~~w~~ritten ~~p~~remium ~~minus less~~ ~~u~~ncollectible ~~p~~remium. ~~However, to the extent that Massachusetts Pool rules for a given policy year allow appeals, any uncollectible premium which the servicing carrier appeals to obtain servicing carrier allowance and wins, will be included.~~

5. ~~Medical Cost Containment Expenses/~~Allocated Loss Adjustment Expense

~~To the extent Massachusetts pool rules for a given policy year provide for reimbursements of servicing carriers for medical cost containment, allocated loss adjustment expenses, etc.,~~ Reimbursed ALAE expenses will be added to ~~p~~aid ~~l~~osses to calculate the relativities. Since such expenses should serve to lower losses, the addition of any such reimbursed expenses should not adversely impact a ~~s~~ervicing ~~e~~arrier. The ~~a~~verage ~~p~~ool ~~p~~aid ~~l~~oss ~~r~~atios would also be adjusted to include any such reimbursed expenses. The purpose of including reimbursed expenses would be to discourage ~~s~~ervicing ~~e~~arriers from requesting reimbursement of costs which are not effective in reducing losses. ~~The statewide average servicing carrier fee will be adjusted to the extent that any reimbursements are made for such expenses. [See items 1 and 2 on the page entitled "Determining the Servicing Carrier Fee."]~~

6. Capping of Losses

In order to limit the impact of ~~very~~ large losses, paid losses will be capped at \$250,000 per claim and/or \$500,000 per occurrence. Losses will be capped at \$100,000 per claim and/or \$200,000 per occurrence for preliminary adjustments at the first and second evaluations. If a multiple occurrence claim does not qualify for capping because the sum of the component claims is too small, then each individual claim within the multiple occurrence will be evaluated for capping.

~~For several reasons, the limit on large losses used in the calculation is lower for earlier evaluations of a policy year. —Very large losses are not considered in earlier evaluations to avoid discouraging servicing carriers from making lump sum payments. —Additionally, a very large paid loss could have a bigger impact on a servicing carrier's paid loss ratio when the policy year is immature.~~

Since cumulative paid loss amounts are not reported by claim, ~~this would require servicing carriers to report losses which should be capped. The loss cap was selected large enough so that the~~

~~administrative burden of reporting individual large paid loss amounts is not burdensome.~~ the large losses contemplated by the Paid Loss Ratio Incentive Program are those losses reported on a quarterly basis by the Servicing Carriers to NCCI in their Residual Market Large Loss (LGL) Data. Since paid ALAE is not included in NCCI's Large Loss Data Call, the WCRIBMA directly obtains the paid ALAE for each large loss reported by each Servicing Carrier.

~~Carriers~~

~~The definition of a group is to be found in the Pool Plan of Operation.~~

Formula for Calculating Incentives and Disincentives

~~Note: The maximum Incentive/Disincentive is capped at 9% of premium subject to this program.~~

Appendix C – Translating Compliance Ratios
into an Effect on the Servicing Carrier Fee
(Redlined)

TRANSLATING COMPLIANCE RATIOS INTO AN EFFECT ON THE SERVICING CARRIER FEE

1. **DEFINITIONS.** —For the purposes of this [Appendix](#), ~~section~~ the following terms are defined below.
 - a) “Aggregate Rating” means the ~~s~~[S](#)ervicing ~~e~~[C](#)arrier’s total score for each audit category.
 - b) “Compliance Ratio” means a value, expressed as a percentage, reflecting the ~~s~~[S](#)ervicing ~~e~~[C](#)arrier’s performance with respect to a [Performance](#) Standard. When a [Performance](#) ~~s~~[S](#)tandard is missed through no fault of the ~~s~~[S](#)ervicing ~~e~~[C](#)arrier, the carrier will in that instance be treated as complying with that [Performance](#) Standard and no deduction will be taken from the ~~s~~[S](#)ervicing ~~e~~[C](#)arrier’s score.
 - c) “Rating Value” means the result of comparing the Compliance Ratio for any [Performance](#) Standard to the Scoring Range for that [Performance](#) Standard. All Rating Values shall be one of the following: commendable, satisfactory, marginal or unsatisfactory. [Servicing](#) Carriers will receive from four points to one point, respectively, for each commendable, satisfactory, marginal and unsatisfactory Rating Value.
 - d) “Scoring Range” or “Scoring Ranges” shall refer to the ranges set forth in ~~the second and fourth paragraphs of no.~~[Section](#) 2, below.
 - ~~e) “Standard” or “Standards” refers to any of the Performance Standards set forth in the section entitled, “Performance Standards for Servicing Carriers,” within the audit categories.~~
 - ~~e~~[f](#)) “Weight Factor” means any of the factors assigned in the Aggregate Rating Tables ~~that follow in~~ this ~~section~~[Appendix](#).
2. **SCORING.** —In any year in which the ~~on-site~~ audit program is undertaken pursuant to an order of the Commissioner as provided in [Section 23 of the Appendix D -](#), “Determining the Servicing Carrier Fee,” ~~no. 6~~, each ~~S~~[S](#)ervicing ~~e~~[C](#)arrier’s Compliance Ratio for each [Performance](#) Standard tested during the ~~on-site~~ audit will be compared to the Scoring Ranges. In any such audit, the Compliance Ratios will be determined using samples of at least 125 claims files, 100 underwriting files and 40 loss control files.

For the categories of Underwriting and Audit ([Table C.5-2](#)), ~~Claims Handling and Loss Control & Miscellaneous (Table C.5-3), and Claims (Table C.5-4)~~ the ~~s~~[S](#)ervicing ~~e~~[C](#)arrier shall receive a commendable Rating Value for any Compliance Ratio between 99% and 100%, inclusive. The ~~s~~[S](#)ervicing ~~e~~[C](#)arrier shall receive a satisfactory Rating Value for any Compliance Ratio of at least 95% but less than 99%. The ~~s~~[S](#)ervicing ~~e~~[C](#)arrier shall receive a marginal Rating Value for any Compliance Ratio of at least 80% but less than 95%. The ~~s~~[S](#)ervicing ~~e~~[C](#)arrier shall receive an unsatisfactory Rating Value for any Compliance Ratio lower than 80%.

The Performance Standards in the Financial Reporting audit category (Table C.5-1) shall be divided into quantitatively measured Performance Standards and qualitatively measured Performance Standards.

The quantitative Performance Standards included in the fee calculation shall be:

- accurate reporting of policy information,
- accurate reporting of claim information,
- accurate premium calculation,
- accurate calculation and reporting of producer fees,
- proper coding and reporting of losses and expenses, ~~and~~
- accurate reporting of outstanding loss information~~;~~
- timely reporting of uncollectibles,
- accurate reporting of uncollectibles,
- accurate reporting of recoveries, and
- proper application of producer fee and servicing carrier allowance percentages.

The qualitative Performance Standards included in the fee calculation shall be

- financial reporting systems and procedures,
- claims processing controls, and
- premium processing controls~~;~~ and
- ~~proper application of producer fee and servicing carrier allowance percentages.~~

For the quantitative ~~p~~Performance Standards in the Financial Reporting category, the ~~s~~Servicing ~~e~~Carrier shall receive a satisfactory Rating Value for any Compliance Ratio between 95% and 100%, inclusive. The ~~s~~Servicing ~~e~~Carrier shall receive a marginal Rating Value for any Compliance Ratio of at least 80% but less than 95%. The ~~s~~Servicing ~~e~~Carrier shall receive an unsatisfactory Rating Value for any Compliance Ratio lower than 80%.

The auditors will directly assign Rating Values for the qualitative Performance Standards in the Financial Reporting category, rather than use any Scoring Ranges.

3. EFFECT ON THE SERVICING CARRIER FEE. ~~—~~The auditors shall determine Aggregate Ratings, and a corresponding effect on the servicing carrier fee, for each servicing carrier audit as follows:

- a) Points for each Performance Standard are calculated by multiplying the respective Weight Factor by the points corresponding to the Rating Value awarded for each Performance Standard.
- b) The products of the points and the Weight Factors are then added together for each audit category: ~~—(Financial Reporting (Table C.5-1), Underwriting and Audit (Table C.5-2), Claims~~

~~Handling~~, Loss Control and Miscellaneous (Table C.5-3), and Claims (Table C.5-4) ~~Financial Reporting~~) to determine the Aggregate Rating for each category.

- c) Each Aggregate Rating is then converted into an effect on the servicing carrier fee using the ~~table~~, “Effect of ~~Performance Standards Audit Results~~ on Servicing Carrier Fee,” tables in Section 6 of this Appendix ~~that follows the “Determining the Servicing Carrier Fee” section~~.
- d) The effects on the servicing carrier fee for each of the four audit categories are added together yielding the post rating servicing carrier fee.
- e) Any adjustments for a ~~s~~Servicing ~~e~~Carrier’s failure to provide requested files are calculated as provided in ~~no~~ Section 4, below.
- f) The off-balance factors are calculated and applied.

4. **ADJUSTMENT FOR MISSING FILES.** ~~-If a~~ sServicing ~~e~~Carrier fails to provide one or more files requested by the Pool Administrator or the ~~on-site~~ auditor as required in the third paragraph of the Introduction to Appendix AB - “Performance Standards for Servicing Assigned Carriers” ~~section~~, no replacement files will be requested, and the post rating servicing carrier’s ~~post rating~~ fee will be multiplied by the ratio of total provided files for all categories to total requested files for all categories to calculate the servicing carrier fee, before application of off-balance factors.

Example 1. ~~Servicing-e~~Servicing ~~e~~Carrier A is requested to provide 250 claims files for audit, 200 underwriting and audit files and 75 loss control files. Carrier A cannot locate 10 of the requested claims files. Carrier A’s post rating servicing carrier fee is 21%. Carrier A’s servicing carrier fee, before off-balancing, is 20.6% (21% ~~*x~~ 515/525).

Example 2. ~~Servicing-e~~Servicing ~~e~~Carrier B is requested to provided 250 claims files for audit, 200 underwriting and audit files and 75 loss control files for audit. Carrier B cannot locate 5 of the requested loss control files. Carrier B’s post rating servicing carrier fee is 21%. Carrier B’s servicing carrier fee, before off-balancing, is 20.8% (21% ~~*x~~ 520/525).

Massachusetts Assigned Risk Pool Plan of Operation
Appendix C

5. AUDIT AGGREGATE RATING TABLES.

ON-SITE AUDIT AGGREGATE RATING TABLE C.5-1 FINANCIAL & DATA REPORTING PERFORMANCE STANDARDS							
			(A)		(B)		(C)
		<u>Associated Standards</u>	Weight Factor	x	Rating Value	=	Rating
<u>1</u>	Accurate Reporting of Policy Information	<u>E.1., E.2., E.3.</u>	4		S = 3		
<u>2</u>	Accurate Reporting of Claim Information	<u>E.1., E.3.</u>	4		M = 2		
<u>3</u>	Financial Reporting Systems and Procedures *	<u>Qualitative</u>	4		U = 1		
<u>4</u>	Accurate <u>Calculation and Reporting of</u> Premium Calculation	<u>A.1.a.</u>	3				
<u>5</u>	Accurate Calculation, <u>Payment</u> , and Reporting of Producer Fees	<u>A.7., E.3.</u>	3				
<u>6</u>	Proper Coding and Reporting of Losses and Expenses	<u>E.3.</u>	3				
<u>7</u>	Timely Reporting of Uncollectibles	<u>E.3.</u>	2				
<u>8</u>	Accurate Reporting of Uncollectibles	<u>E.3.</u>	2				
<u>9</u>	Accurate Reporting of Outstanding Loss Information	<u>E.3.</u>	2				
<u>10</u>	Accurate Reporting of Recoveries	<u>E.3.</u>	2				
<u>11</u>	Claims Processing Controls *	<u>Qualitative</u>	2				
<u>12</u>	Premium Processing Controls *	<u>Qualitative – A.1.a.</u>	2				
<u>13</u>	Proper Application of Producer Fee and Servicing Carrier Allowance Percentages	<u>Appendix D</u>	2				
	Totals		35				

* Qualitative Performance Standards

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ON-SITE AUDIT AGGREGATE RATING TABLE C.5-2 UNDERWRITING & AUDIT PERFORMANCE STANDARDS							
			(A)		(B)		(C)
		<u>Associated Standards</u>	Weight Factor	x	Rating Value	=	Rating
<u>1</u>	Additional Premium Endorsements	<u>A.3.b.</u>	4		C = 4		
<u>2</u>	Compliance with Audit Frequency Requirements	<u>A.10.f.</u>	4		S = 3		
<u>3</u>	Proper Application of Experience Modifications	<u>A.1.a.</u>	4		M = 2		
<u>4</u>	Completion and Billing of Final Audits	<u>A.8.a-b., A.10.c-e., A.10.i-k.</u>	4		U = 1		
<u>5</u>	Compliance with Established <u>Billing and</u> Collection Procedures	<u>A.8., A.9.</u>	3				
<u>6</u>	Issuance of Renewal Quotes	<u>A.1.c.</u>	3				
<u>7</u>	Policy Issuance	<u>A.1.</u>	3				
<u>8</u>	Processing of Requested Endorsements and Processing of Cancellations <u>and Reinstatements</u>	<u>A.3.a., A.4., A.8.d., A.5.</u>	3				
<u>9</u>	Proper Application of Required State Endorsements	<u>A.1.a.</u>	2				
	Totals		30				

ON-SITE AUDIT AGGREGATE RATING TABLE C.5-3 LOSS CONTROL & MISCELLANEOUS PERFORMANCE STANDARDS							
			(A)		(B)		(C)
		<u>Associated Standards</u>	Weight Factor	x	Rating Value	=	Rating
<u>1</u>	Loss Control Consulting Surveys	<u>C.2., C.3.</u>	4		C = 4		
<u>2</u>	Loss Control Services & Recommendations	<u>C.4.</u>	4		S = 3		
<u>3</u>	Accounting/Statistical and Results Reporting	<u>E.1., E.3.</u>	3		M = 2		
<u>4</u>	Customer Service, <u>including issuance of Certificates of Insurance</u>	<u>A.6., D</u>	2		U = 1		
<u>5</u>	Loss Records	<u>D.3.</u>	2				
<u>6</u>	Notification of Loss Control Services	<u>C.1.</u>	2				
	Totals		17				

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ON-SITE AUDIT AGGREGATE RATING TABLE C.5-4 CLAIM PERFORMANCE STANDARDS							
			(A)		(B)		(C)
		<u>Associated Standards</u>	Weight Factor	x	Rating Value	=	Rating
<u>1</u>	Investigation	<u>B.2.</u>	4		C = 4		
<u>2</u>	Disability Control	<u>B.5.</u>	4		S = 3		
<u>3</u>	Medical <u>Care and Costs</u> Control & <u>Payment Control</u>	<u>B.6., B.8.</u>	4		M = 2		
<u>4</u>	Reserving	<u>B.4.</u>	4		U = 1		
<u>5</u>	Acceptance/Denial	<u>B.3.</u>	3				
<u>6</u>	Hearings	<u>B.7.a</u>	3				
<u>7</u>	Settlements	<u>B.7.b-c</u>	2				
<u>8</u>	Supervision/File Reporting	<u>B.9., B.10.</u>	2				
<u>9</u>	Claim Recording	<u>B.1.</u>	1				
	Totals		27				

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Appendix C

6. **EFFECT OF ~~PERFORMANCE STANDARDS~~ AUDIT RESULTS ON SERVICING CARRIER FEES.**

TABLE C.6-1	
*Effect on Servicing Carrier Fee	Score on Audit of Financial Reporting Performance Standards
0.0%	96 - 105
-0.5%	93 - 95
-1.0%	82 - 92
-1.5%	70 - 81
-2.0%	35 - 69
Total weight of subcategories is 35.	

TABLE C.6-2	
*Effect on Servicing Carrier Fee	Score on Audit of Underwriting & Audit Performance Standards
0.0%	90 – 120
-0.5%	85 – 89
-1.0%	80 – 84
-1.5%	75 – 79
-2.0%	70 – 74
-2.5%	65 – 69
-3.0%	60 – 64
-3.5%	45 – 59
-4.0%	30 - 44
Total weight of subcategories is 30.	

TABLE C.6-3	
*Effect on Servicing Carrier Fee	Score on Audit of Loss Control & Miscellaneous Performance Standards
1.0%	65 - 68
0.5%	60 - 64
0.0%	51 - 59
-0.5%	48 - 50
-1.0%	44 - 47
-1.5%	41 - 43
-2.0%	37 - 40
-2.5%	34 - 36
-3.0%	17 - 33
Total weight of subcategories is 17.	

TABLE C.6-4	
*Effect on Servicing Carrier Fee	Score on Audit of Claims Performance Standards
1.0%	102 – 108
0.5%	95 – 101
0.0%	81 – 94
-0.5%	77 – 80
-1.0%	73 – 76
-1.5%	69 – 72
-2.0%	66 – 68
-2.5%	62 – 65
-3.0%	58 – 61
-3.5%	54 – 57
-4.0%	45 – 53
-4.5%	36 – 44
-5.0%	27 - 35
Total weight of subcategories is 27.	

* Effects are as a percentage of premium.

Appendix D – Determining the Servicing
Carrier Fee (Redlined)

DETERMINING THE SERVICING CARRIER FEE

- ~~1. For policy year 1993, the starting servicing carrier fee will be 30%. An off-balance factor must be applied to obtain an overall premium weighted servicing carrier fee equal to 27% minus the ratio of reimbursements received by all servicing carriers for expenses (e.g. medical cost containment, allocated loss adjustment expenses, etc.) to the total pool premium. This off-balance procedure will be implemented at each adjustment to the servicing carrier fee.~~
- ~~2. For policy year 2000, the initial servicing carrier fee will be 22%. An off-balance factor must be applied to obtain an overall premium weighted servicing carrier fee equal to 22% minus the ratio of reimbursements received by all servicing carriers for expenses to the total pool premium. This off-balance procedure will be implemented at each adjustment to the servicing carrier fee. These reimbursements will not include allocated loss adjustment expenses, which will be reported with losses and reimbursed as losses are. In addition, carriers will retain that portion of the premium which reflects the expense constant most recently approved by the Commissioner.~~
- ~~3. For all policies written on or after October 1, 2002, the servicing carrier fee will be 22.2%. An off-balance factor must be applied to obtain an overall premium weighted servicing carrier fee equal to 22.2% minus the ratio of reimbursements received by all servicing carriers for expenses to the total pool premium. This off-balance procedure will be implemented at each adjustment to the servicing carrier fee. These reimbursements will not include allocated loss adjustment expenses, which will be reported with losses and reimbursed as losses are. In addition, carriers will retain that portion of the premium which reflects the expense constant most recently approved by the Commissioner.~~
- 4.1. For all policies written on or after July 1, 2004, the servicing carrier fee will be 18.8%. An off-balance factor must be applied to obtain an overall premium weighted servicing carrier fee equal to 18.8%, minus-excluding the ratio of reimbursements received by all sServicing eCarriers for expenses to the total pPool premium. This off-balance procedure will be implemented at each adjustment to the servicing carrier fee. These reimbursements will not include allocated loss adjustment expenses, which will be reported with losses and reimbursed as losses are. Carriers will continue to retain that portion of the premium which reflects the expense constant most recently approved by the Commissioner. In addition, effective 7/1/04, the Insolvency Fund Assessment will be excluded from the calculation of the servicing carrier fee. Servicing carriers will be reimbursed for payments they made to the Insolvency Fund, as they are for other statutory assessments.
- ~~5. The paid loss ratio incentive program will provide a ±9% swing. Servicing carriers' minimum and maximum relativity factors under the paid loss ratio incentive program are as follows:~~

Premium Size Group	Minimum	Maximum
Relativity	Relativity	
Factor	Factor	

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Less than \$2.5 mil.	None	None
\$2.5 mil. - \$10 mil.	.900	1.100
>\$10 mil. - \$30 mil.	.925	1.075
>\$30 mil. - \$50 mil.	.950	1.050
Over \$50 mil.	.975	1.025

~~6. For policy years 1993 and 1994, the servicing carrier fee is subject to an overall minimum of 15% and an overall maximum of 35%.~~

~~7. The performance standards program has been devised to provide a swing on each of the four on-site audit aggregate rating categories: underwriting and audit, loss control performance standards, claim performance standards, and financial reporting. The total swing from performance standards would be +2% to -14%.~~

~~8.2.~~ On or before December 31 of each year, the Commissioner shall indicate whether an on-site audit of all servicing carriers by a firm designated by the WCRI~~BMA~~ Bureau and approved by the Commissioner shall be undertaken the following year to measure each ~~s~~Servicing ~~e~~Carrier's performance during one or more completed calendar years. In making a determination on this matter, the Commissioner shall consider whether use of an outside firm for an annual audit would be economically feasible because of the size of the Pool or the segment of the Pool serviced by ~~s~~Servicing ~~e~~Carriers. The WCRI~~BMA~~ Bureau may order that carriers perform self-audits during any years that outside audits are not ordered by the Commissioner; provided, however, that no servicing carrier fee shall be affected by ~~any~~ the results of any self-audits ~~or result or evaluation relating thereto~~. Each audit by a firm designated by the WCRI~~BMA~~ Bureau and approved by the Commissioner shall encompass the preceding three years, or all the years since the last such audit was conducted, whichever is the shorter period. However, in no event shall any audit encompass any year prior to calendar year 2001. All the servicing carrier fees for the entire period that is the subject of a one-year or multi-year outside audit~~evaluation~~ shall be adjusted to reflect the score or scores given each carrier on such audit~~evaluations~~ in accordance with this Plan.

~~9. The performance based servicing carrier fee in its entirety is effective as of 1/1/94. In calendar year 1994 the auditing process will be implemented. When the auditing process is completed for all servicing carriers, servicing carrier fees will be adjusted based on the results of the performance evaluations subject to items 1 and 2 above. Subsequent adjustments will be made based on the results of the Paid Loss Incentive Program. For policy year 1993 the servicing carrier fee is subject only to the Paid Loss Incentive Program and the overall balancing and capping constraints discussed above.~~

3. For any given policy year, when the auditing process is completed for all Servicing Carriers, servicing carrier fees will be adjusted based on the results of the on-site audit. Additional adjustments will be made based on the results of the Paid Loss Ratio Incentive Program. -The Performance Standards program has been devised to provide a swing on each of the four on-site audit aggregate rating categories: Underwriting & Audit Performance Standards, Loss Control & Miscellaneous Performance

Massachusetts Assigned Risk Pool Plan of Operation
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Standards, Claim Performance Standards, and Financial & Data Reporting Performance Standards. The total swing from performance standards would be +2% to -14%.

- ~~10.~~ For the purpose of determining the service carrier fees under this program, percentages are of ~~s~~Standard ~~p~~Premium, i.e., not including ARAP surcharges ~~or MARRP adjustments~~. Standard ~~p~~Premium is defined and described in Appendix F – Massachusetts Residual Market Premium Algorithm of the Massachusetts Workers' Compensation and Employers Liability Insurance Manual.

DRAFT

EFFECT OF PERFORMANCE STANDARDS ON SERVICING CARRIER FEE

Score on	Score on
*Effect on	*Effect on
Servicing	Servicing
Carrier Fee	Carrier Fee
Performance	Performance
Standards	Standards
0.0% 90-120	0.0% 96-105
0.5% 85-89	0.5% 93-95
1.0% 80-84	1.0% 82-92
1.5% 75-79	1.5% 70-81
2.0% 70-74	2.0% 35-69
2.5% 65-69	
3.0% 60-64	
3.5% 45-59	
4.0% 30-44	
Total weight of subcategories is 30.	Total weight of subcategories is 35.
Score on	Score on
*Effect on	*Effect on
Servicing	Servicing
Carrier Fee	Carrier Fee
Performance	Performance
Standards	Standards
1.0% 102-108	1.0% 65-68
0.5% 95-101	0.5% 60-64
0.0% 81-94	0.0% 51-59
0.5% 77-80	0.5% 48-50
1.0% 73-76	1.0% 44-47
1.5% 69-72	1.5% 41-43
2.0% 66-68	2.0% 37-40
2.5% 62-65	2.5% 34-36
3.0% 58-61	3.0% 17-33
3.5% 54-57	
4.0% 45-53	
4.5% 36-44	
5.0% 27-35	
Total weight of subcategories is 27.	Total weight of subcategories is 17.

4. *Effects are as percentage of premium.

Exhibit B

List of Significant Changes Made to the Pool Plan of Operation:

General

Changes to the Table of Contents are not red lined.

Article I – Name

None

Article II – Definitions

Prior Article II, Designation of Administrator, is now Article III.

Definitions were moved from prior Article XV to Article II, and several definitions were moved into this Article to consolidate all the definitions that were scattered throughout the Plan of Operation and its Appendices. Additionally, several new definitions were introduced. Since Definitions were moved to the beginning of the Plan, the remainder of the Articles have been renumbered.

The following Definitions were moved to Article II from other parts of the Plan:

- Company Group
- Days
- Good Faith
- Insolvent
- Insurer
- New Business

The following Definitions were added:

- Appeals Committee
- Annual Meeting
- Commissioner of Insurance
- Constitution
- DIA
- Effective Date
- Governing Committee
- Insolvency Fund
- MA Manual
- Member
- NAIC
- NCCI
- Plan of Operation
- Participation Ratio
- Performance Standards
- Residual Market Committee
- WCRIBMA

4. The definition of Company Group was amended to specify that groups are identified by their NAIC group numbers.

18. The definition of Net Workers Compensation Insurance Premiums Written ("NWCIPW") was amended as follows:
- a) "the gross direct premiums charged, less all premiums (except dividends and savings refunded under participating policies) returned to policyholders for all Workers' Compensation and Occupational Disease Insurance" was changed to "calendar year Direct Premiums Written reported on the Workers Compensation line of the Annual Statement".
 - b) "Special National Defense Comprehensive Rating or Special National Defense Premium Discount Plans" was changed to "National Defense Projects Rating Plan".
 - c) The language "...on or after January 1, 1994, or in effect on or after January 1, 1995" applicable to large deductible policies was removed.
 - d) The sentence, "The term 'net workers' compensation insurance premiums written' shall also include all premium received by non-admitted carriers on policies issued by such carriers for coverage in the state if such policies are deemed to meet employer obligations under the workers' compensation statute of the state" was removed.
26. The definition of Standard Premium was changed **from**, "*Standard premium is defined and described in Section VI of the Massachusetts Workers' Compensation Unit Statistical Plan (see "Total Standard Premium"). For the purpose of determining the servicing carrier fees as provided in the Appendix, percentages are of standard premium, i.e., not including ARAP surcharges or MARRP adjustments*" **to** "*"Standard Premium" is defined and described in Appendix F of the MA Manual, the Residual Market Premium Algorithm.*"
27. The following was added to the definition of Voluntary Direct Assignment Carrier: "Voluntary Direct Assignment Carriers retain the premiums collected on their direct assignment policies and are responsible to pay all losses and expenses associated with their direct assignment policies."

Article III – Designation of Administrator

None

Article IV – Purpose and Limitations

None

Article V – Membership

This Article was reorganized so that Member Obligations preceded Insolvency.

- 3a The following language was added: "Under all circumstances, the WCRIBMA shall be entitled to offset any liabilities of the Insolvent Member to the Pool against any liabilities of the Pool to the Insolvent Member."
- 3b It was clarified that if a Servicing Carrier or VDAC should go insolvent, we will only reassign policyholders with active policies.
- 3ci The following language was added: "Under all circumstances, the WCRIBMA shall be entitled to offset any liabilities of the Insolvent Member to the Pool against any liabilities of the Pool to the Insolvent Servicing Carrier."

- 3d With regard to limiting the Pool's obligation in case of a VDAC's insolvency, since a VDAC Carrier can also be a Servicing Carrier, we felt that 'upon risks to which this Plan of Operation applies' was too broad because that term could include servicing carrier losses and expenses. As such, we limited the language to VDAC losses and expenses (i.e., we added 'in accordance with Article IX').

Similar to the above, the following language was added: "Upon the insolvency of a Member who is also acting in the capacity of a Servicing Carrier, all amounts due to such Insolvent Servicing Carrier from the Members as a result of the reinsurance provided to such Servicing Carrier and all amounts due from the Insolvent Servicing Carrier shall be merged into one account and deemed mutual debts and credits which the WCRIBMA may offset."

Article VI – Member Meetings

4. With regard to the explanation of when a quorum is reached, we changed 'a quorum should be reached when individual Members representing at least 51% of NWCIPW are present' to 'a quorum should be reached when Company Groups representing at least 51% of NWCIPW are present'.
- 5a. With regard to voting rights, we changed 'each Member being entitled to one vote' to 'each Company Group should be entitled to one vote'.
- 5b. Similarly, we changed 'proposed actions being adopted when an affirmative vote is cast by *Members* writing not less than 51% of the NWCIPW' to 'proposed actions being adopted when an affirmative vote is cast by *Company Groups* writing not less than 51% of the NWCIPW'.

Article VII – Residual Market Committee

- 1b. We changed the number of members on the RMC from 'not more than ten' to 'no fewer than five (5) and not more than ten (10), unless otherwise directed by the Governing Committee'.
- 1d. Since the current language of 'The RMC shall have a mixture of eight carriers and two non-carriers' assumes there are exactly ten members, we replaced it with the following, "The Residual Market Committee shall have a mixture of no fewer than five (5) but not more than eight (8) Members, plus two (2) non-Pool members."

In addition, since the current language of "No more than six (6) of the eight (8) Pool members shall be servicing carriers" requires there to be eight Members and ignores representation by VDACs, we changed it to read, "No more than 80% of the Members shall be Servicing Carriers or Voluntary Direct Assignment Carriers."

It was deemed that alternates are no longer necessary.

- 3b. The following language was added to mirror the new language in the WCRIBMA Constitution: "Only Members are eligible to serve as Chairperson and Vice Chairperson. A Chairperson pro tem, elected by committee members present, shall act as Chairperson at any meeting in the absence of the Chairperson and Vice Chairperson."
- 4b. The following language was added per the Division's request: "The Commissioner shall be notified in advance of all Residual Market Committee meetings and will be invited to attend all such meetings."
- 5b. The following language was removed as it was deemed no longer relevant: "...subject to the requirement that there be at least one affirmative vote of a stock carrier and one affirmative vote of a non-stock carrier."

- 5c. New subsection (c) addresses votes by mail, telephone, etc. The new language mirrors language pertaining to Committee votes in the WCRIBMA Constitution.
7. The Disputes and Appeals section was reworded to reflect current circumstances. At one point, there were two (2) separate appeals committees - one for the voluntary market and one for the residual market. Those were combined into a single Appeals Committee by vote of the Governing Committee on October 7, 1999.
8. The Servicing Carrier section was removed because the qualifications and conditions are outlined in this Plan, which is subject to the approval of the Commissioner, not the Residual Market Committee.
9. The Audit and Inspection section was removed from the Residual Market Committee Article and added to both the Servicing Carrier and Voluntary Direct Assignment Carrier Articles, VIII and IX.

Article VIII – Servicing Carriers

1. The statement, ‘Subject to the approval of the Commissioner, an insurer can be both a Servicing Carrier and a Voluntary Direct Assignment Carrier’ was originally included in the definition of ‘voluntary direct assignment carrier’, and it is now included in both Articles VIII and IX.
2. The minimum and maximum number of Servicing Carriers in the Designation section was changed from ‘one or more’ to ‘at least two (2) but not more than five (5)’.
3. The minimum and maximum number of Servicing Carriers in the Selection Pursuant to a Competitive Bid section was changed from ‘one or more’ to ‘at least two (2) but not more than five (5)’.
- 3-4. Original sections 3 and 4 were combined into 3a & b since both involved selection through a competitive bid process.
- 4b. Changed the minimum voluntary market share **from**, ‘has and maintains, at a minimum, a workers compensation voluntary market share of 1% in the Commonwealth of Massachusetts’ **to** ‘currently maintains and, during the five (5) years immediately preceding the request to be designated or selected as a Servicing Carrier has maintained, a workers compensation voluntary market share of at least two percent (2%) in the Commonwealth of Massachusetts.’
- 4c. Changed the ‘financial strength and stability’ criteria **from** ‘has and maintains a record of financial stability and strength’ **to** ‘(c) currently maintains, and during at least the five (5) years immediately preceding the request to be designated or selected as a Servicing Carrier has maintained, a record of financial stability and strength, including, but not limited to, an AM Best Financial Strength Rating (FSR) of “A-” or better.’
- 4d. Technical Advice from WCRIBMA – This language was included in the VDAC Program and is also applicable to Servicing Carriers, so it was added here.
- 4e. WCRIBMA informs the Commissioner that a Servicing Carrier is no longer eligible – This language was included in the VDAC Program and is also applicable to Servicing Carriers, so it was added here.
5. The New Servicing Carrier Review section has been added at the suggestion of the Servicing Carrier Working Group.
- 6c. The language that was deleted in 6c is now in 6b, so 6c could be deleted.
8. Assignments – This language was included in the VDAC Program and is also applicable to Servicing Carriers, so it was added here.

9. Audit & Inspections – This language was moved from the Residual Market Committee section (previously VII.9.)

Article IX – Voluntary Direct Assignment Carriers

The VDAC Program, which was approved as a stand-alone Program effective January 1, 1994, has been incorporated into the Plan of Operation. The changes made to the original VDAC Program are described here.

1. A carrier's ability to be both a SC and a VDAC was originally included in the definition of 'voluntary direct assignment carrier', and it is now included in both Articles VIII and IX.
2. The deadline for a Member to apply to the Commissioner has been changed from October 1 to September 1, and the amount of time the Commissioner has to respond has been expanded from 60 days to 90 days.
- 4a. The eligibility criteria to become a VDAC carrier has been changed **from** 'has or has had **for any year during the five year period** immediately preceding the request to be designated a voluntary direct assignment carrier a workers' compensation voluntary market share of at least 1% in the Commonwealth of Massachusetts' **to** 'has and has maintained for the five year period immediately preceding the request to be designated a voluntary direct assignment carrier a workers' compensation voluntary market share of at least 1% in the Commonwealth of Massachusetts'.
5. The New Voluntary Direct Assignment Carrier Review section has been added to mimic the New Servicing Carrier Review section.

Article X – Fiscal Matters

Article X was updated to reflect current banking practices.

Article XI – Indemnification

This Article was split up into numbered paragraphs.

3. The proposed language in this section was borrowed from NCCI's National Pool Bylaws and Servicing Carrier Reference Guide. We changed '...as soon as practicable...' to '...as soon as possible, but in no event later than one hundred and twenty (120) days of being served with litigation.' We also changed, '...no expenses (including attorneys' fees) **shall be incurred** by such party...' to '...no expenses (including attorneys' fees) **shall be reimbursed** to such party...'
9. Added to clarify that VDACS are not eligible for indemnification.

Note that prior Article XI – Amendments, was moved to Article XIV.

Article XII – Assignments, Assessments and Expenses

- 2ai-ii The Plan was clarified to reflect the current practice of basing the VDAC Carriers' and Servicing Carriers' assignment ratios on the NWCIPW of the entire Carrier Group, not just of the individual carrier.

Also, the inclusion of the word 'policy' at the end of paragraphs (i) and (ii) gave the impression that policy year data is used to calculate assignment ratios, but calendar year data is used. The word 'policy' was removed to prevent confusion.

- 2aii The description of the calculation of Servicing Carriers' assignment ratios was adjusted to clarify that take-out credits are not utilized in the calculation.

We also added clarifying language to explain that the Servicing Carriers' quota shares are adjusted to reflect the fact that they receive assignments after the VDACS are assigned their share.

3. Premiums – Added language to clarify that the Members' share of the Servicing Carriers' Premiums is based on their share of the NWCIPW as adjusted by any applicable Take Out Credit.
4. The "Expenses and Payments" section was changed to "Losses and Expenses"; it was split into 4-Losses and Expenses and 5-Pool Administration Related Expenses; it was also divided into subsections for easier reading. Note that in the current Plan, the Bureau's Administrative expenses were addressed first, and we changed the order to address the Servicing Carriers' losses and expenses first.
 - 4a. Since it seemed to be missing from the Plan, we replicated the language in 3-Premiums, and made it applicable to Losses and Expenses.
 4. The following language was removed due to its lack of relevance. "Except with respect to claims, the cost of the interpretation of physical and X-ray examinations of employees in assigned dust hazard risks, shall be a proper charge against, and shall be paid from, the general funds held on behalf of the members of the Pool provided the employer pays for the making of such examinations."
 - 4c. The language, "Except for costs of premium collection as established by the Bureau or any third party designated by the Bureau" was deleted because the Pool only assumes the cost of the collection attorneys hired by SCs, and collection agencies all work on a contingency basis. In the same paragraph, since the Pool does pay for the Servicing Carriers' Paid ALAE, the following language was added, "The Pool shall not assume for payment, and shall not be liable to pay, any expenses of any nature whatsoever incurred by Members, except as provided for in this Plan of Operation and its Appendices."
 - 5c. We deleted the following language since expenses associated with inspection and audit are not treated any differently than the WCRIBMA's other expenses, "In addition, voluntary direct assignment carriers shall be separately billed for expenses associated with inspection and audit and such other expenses of oversight as may be appropriate, which are directly allocable to risks assigned to such carriers."
 - 8b. The definition of NWCIPW includes this language, so we did not feel it needed to be duplicated here, "For the purposes of this section, the net written workers' compensation insurance premiums associated with large deductible policies which are written or renewed on or after January 1, 1994, or are in effect on or after January 1, 1995, shall be deemed to be the amount equal to the standard premium plus any applicable All Risk Adjustments Program amounts associated with such policies."
 - 8f. The language concerning the compliance with orders under Member Obligations is also in Article V.2., so we deleted it here.
 - 8g. All of the language in section 8 after 8g is historical, so it has been removed since it is available in the prior versions on the website.
10. Since this section concerns the termination of the Pool, the reference to an insolvent member who the WCRIBMA may choose to include or exclude seemed irrelevant, so the reference was deleted. ("...subject to provisions of Section 2(g) of Article IV of this Plan of Operation...")

Article XIII – Obligations of Members After Termination of Membership

None

Article XIV – Amendments

Amendments was previously Article XII. It was moved toward the end of the Plan.

Article XV – Effective Date

None

Appendix A – Performance Standards

Changed the order and made the Performance Standards Appendix A and PLRIP Appendix B.

In general, and when possible, the Standards have been more thoroughly numbered.

Introduction

Two sentences regarding Servicing Carrier audits were added to the Introduction:

‘Audits of Servicing Carriers to establish compliance with the Performance Standards may be conducted in person or remotely.’

‘Assigned carriers should maintain documentation in their files to provide to the auditors evidence of compliance, or attempted compliance, with these Performance Standards.’

A description of contents of the new Table of Time Standards was added.

The definitions in the Performance Standards have been moved to Article II of the Plan.

A. Underwriting and Audit

1. Policy Issuance

b. (1) The requirements for the New Business Letters have been updated to include a request for the policyholder’s permission to receive electronic correspondence as allowed by law or regulation. We also added that the New Business Letter needs to be sent to both the policyholder and the producer.

b. (2) The Standard stating that the policy will be accurately issued within 30 days was updated to say the policy will be accurately issued and sent to the policyholder and producer of record within 30 days.

c. (1) v. The sentence ‘As the WCRIBMA notifies applicants of the availability during the application process, the carriers are only required to notify their insureds upon renewal’ was removed because it was not directly related to Renewals/Non-Renewals.

2. Payroll and Classification Verification

None

3. Endorsements

In general, due to electronic processing capabilities, the WCRIBMA and the Working Group agreed that the assigned carriers do not need as long to process endorsements; therefore, we changed it so carriers must either deny, request additional information, or issue the endorsement within ten (10) days, regardless of whether the policyholder requested the endorsement or the carrier discovered the need for the endorsement.

4. Cancellations

b. (2) In the Cancellation/Loss of Eligibility section, we changed the requirement that one of the attempts to audit or inspect be sent by certified mail to a requirement that for one of the attempts, the carrier retains for its records a certificate of mailing receipt from the USPO. We also clarified that that mailing requirement is only applicable when a policyholder does not cooperate with the carrier’s attempts to audit.

5. Reinstatements

We expanded the Reinstatement language by clarifying they need to be sent to the WCRIBMA, the policyholder, and any authorized representative or finance company within five days of either the request for reinstatement, the receipt of funds satisfying the premium obligation, or receipt of the item correcting the fault that caused the cancellation.

We also moved from the Certificate section to the Reinstatement section, the requirement that any Certificate Holder who was sent a cancellation notice must also be sent a reinstatement notice.

6. Certificates of Insurance

We clarified that the Performance Standards applicable to Certificates of Insurance are only applicable to the certificates that are issued by the carrier (and not by the WCRI BMA).

7. Producer Fees

We include language to clarify that the producer's license can be an individual license or a business entity license.

8. Billings

a. The word 'calendar' was removed since 'days' is now a defined term meaning calendar days.

a-b & d-e. The WCRI BMA and the Working Group agreed that for consistency purposes, the billing standards should be applicable to both Servicing Carriers and VDACS, so 'Servicing Carrier' and 'company' were changed to 'Assigned Carrier'. However, we left c., Collection Attempts, applicable to Servicing Carriers only.

9. Collection Agency Procedures

None.

10. Audits

- a. A description of Physical Audits was added to clarify that 'physical audits' are those that contain interactions with the policyholder (to differentiate them from Mail Audits) and can be done physically or virtually at a remote location.
- b. In 2020, new rules applicable to PEOs ([see CL 2367](#)) were approved by the Division of Insurance. The Standard has been updated to include those rules.
- c. The time standard was moved from c – Final Physical Audit to e – Timeliness of Completion of Final Audits.
- d. The Mail Audits standard was moved up within the Audits section. Also, the description of Mail and Telephone Audits was revised to remove all references to Telephone Audits and to clarify that Mail Audits typically do not contain any interactions with the policyholder.
- e. Timeliness of Completion of Final Audits is a new section created to show that the timeliness standard (which is unchanged) is applicable to both Final Physical Audits and Mail Audits.
- f. The 'Qualifying Employers' section was renamed 'Minimum Audit Frequency Requirements'. Classes 0037, 5069, 5651, 9529 were removed because they are no longer active, and classes 0917, 7380, 8044, 9521 and 9533 were added.
- i. Scheduling and Uncooperative Employers were split into two separate sections. A standard was added that producers of record should be included on all written attempts to audit.
- j. The references to telephone audits and certified mail have been removed.
- k. A standard was added that the producer should be included on all dispute related correspondence.

B. Claims

1. Registering/Recording

None.

2. Investigation

None.

3. Acceptance or Denial

None.

4. Reserving

In a. and d., the terms 'file handler' and 'assigned adjusted' were both changed to 'claim handler'.

C. Loss Control

3.c.(1) We added language to clarify that an in-person LCS must be performed.

3.d. The list of codes was overhauled to include only and all class codes in Hazard Groups D through G, excluding all Admiralty codes.

4.a. We added that a policyholder can demonstrate compliance with critical recommendations either virtually or in writing.

D. Customer Service

None.

E. Policy, Unit Statistical and Data Reporting

None.

F. Table of Time Standards

This newly added table was added to assist the carriers by consolidating the time standards. It also addresses what mailings can and cannot be sent electronically and what special conditions, if any, exist for each type of mailing.

Appendix B – PLRIP

Changed the order and make the Performance Standards Appendix A and PLRIP Appendix B.

It doesn't show in the red lining, but the last sentence in the first paragraph ("This program will be applied on a Company Group basis") was moved here from the last section of the Appendix.

1. The reason(s) for excluding small carriers from the program do not need to be explained, so the language was removed. Also, since the historical versions of the Plan are available in the Archive, we removed the starting date.

2. The formulas for calculating the Incentives and Disincentives were previously in Exhibit 1 of this Appendix, but we moved them to the beginning.

As currently approved, the formula for the Disincentive results in a positive number. Instead of adjusting the formula, we added the following wording, "Note that Disincentives are assumed to be negative."

3. The table of premium ranges and Max/Min factors was moved from the Determining the Servicing Carrier Fee Appendix, unchanged.

4. Experience Used - ALAE should have been added to this paragraph in 2000 when we started reimbursing servicing carriers for paid ALAE in addition to the servicing carrier allowance. This does not reflect a change in procedure, just an updating of language.

In MA, servicing carriers have always been paid their fee for uncollectible premiums, so we deleted the last sentence in section 4. It was a carry-over from NCCI's program.

5. Medical Cost Containment / ALAE - References to Medical Cost Containment Expenses have been deleted since per the MA Stat Plan, Medical Cost Containment Expenses are included in the definition of Allocated Loss Adjustment Expenses.

The last sentence in section 5 was deleted because it should have been deleted in 2000 when we started reimbursing for paid ALAE outside of the servicing carrier allowance.

6. Capping of Losses – The following sentence is being added, “If a multiple occurrence claim does not qualify for capping because the sum of the component claims is too small, then each individual claim within the multiple occurrences will be evaluated for capping.” This practice has been in place for years. It does not contradict the rule as currently stated and is just being added for clarification and to ensure consistency.

The reasoning for the capping of large losses does not need to be included in the Program, so it is being deleted.

In the last paragraph, the original language about reporting large losses was replaced with the current practice, which is the utilization of the Residual Market Large Loss (LGL) Data reported by the servicing carriers to NCCI on a quarterly basis.

Appendix C – Translating Compliance Ratios into an Effect on the Servicing Carrier Fee

- 1e Since ‘Standard’ is a defined term in the Plan of Operation, we deleted it in Appendix C.
- 2 Some of the Standards that were listed as qualitative are quantitative, so we moved them to the proper list.
5. The Rating Tables were numbered for easier reference, and the Performance Standards associated with each rating element were added to each Rating Table. Also, the wording in several of the Standards was expanded to make sure all the Standards are accounted for in the Rating Tables.
6. The Scoring Tables were numbered for easier reference.

Appendix D – Determining the Servicing Carrier Fee

We deleted all of the historical paragraphs (#s 1, 2, 3, 6 & 9) because they are no longer relevant, and copies of the historical Plans of Operation are available in the Archive on our website.

5. The PLRIP Size Groups were moved to the PLRIP Appendix.
7. The text in #7 was moved down in the Appendix to new paragraph #3.
- 3 This new paragraph contains the language from old paragraph #7. Additional language was added at the beginning to clarify that the audit results and PLRIP have an impact on the servicing carrier allowance.

The Effect of Performance Standards on Servicing Carrier Fee tables was moved to Appendix C. Formatting was removed when deleted.