

Draft: 12/27/19

Market Conduct Annual Statement Blanks (D) Working Group
Conference Call
December 17, 2019

The Market Conduct Annual Statement Blanks (D) Working Group of the Market Regulation and Consumer Affairs (D) Committee met via conference call Dec. 17, 2019. The following Working Group members participated: Maria Ailor, Chair (AZ); Angela Dingus, Vice Chair (OH); Jimmy Harris (AR); Kurt Swan (CT); Scott Woods (FL); October Nickel (ID); Lori Cunningham (KY); Paul Hanson (MN); Teresa Kroll (MO); Jeffrey Arnold (PA); Michael Bailes (SC); Ned Gaines (WA); Jo LeDuc (WI); and Letha Tate (WV).

1. Adopted its Nov. 21 Minutes

The Working Group met Nov. 21 and took the following action: 1) adopted its Oct. 23 minutes; 2) agreed to change the Market Conduct Annual Statement (MCAS) due dates occurring on weekends and federal holidays to the next business day; and 3) extended the health MCAS filing deadline for 2020, 2021 and 2022 from April 30 to June 30.

Ms. Dingus made a motion, seconded by Mr. Swan, to adopt the Working Group's Nov. 21 minutes (Attachment __). The motion passed.

2. Discussed the Review of the Life and Annuity MCAS

Ms. Ailor said that the small group looking into changes to the life and annuity MCAS blanks will be reformed due to continued interest in this topic by some state insurance regulators and consumer representatives. The survey conducted in 2018 indicated most state insurance regulators thought the life MCAS needed to be more granular than just cash value and non-cash value products. Respondents seemed to favor variable and universal life products as the types of products they would like to have more data about. There was also a strong interest in individual pre-need, funeral and final expense life insurance. While most state insurance regulators were satisfied with the current data elements collected, there were still some suggestions for improvements. The responses were similar for the annuity blank but with less interest in more granular level beyond the fixed and variable annuities. More interest was expressed for additional data on equity indexed annuities.

Ms. Ailor asked for volunteers to lead this small group next year with the goal of having recommendations to the Working Group preferably before June 1, 2020, if possible, but no later than the NAIC Fall National Meeting. Those interested in leading or participating in the group are to send a request to Tressa Smith (NAIC).

3. Discussed the Review of the HO and PPA MCAS

Ms. Ailor said one of the Working Group's charges for 2020 is to review the MCAS data elements and the Data Call and Definitions for those lines of business that have been in effect for longer than three years and update them as necessary. In addition to the Life and Annuity lines, she stated the private passenger auto (PPA) and homeowners (HO) lines should be reviewed. She suggested a similar survey as the one done for life and annuity be sent for PPA and HO.

Ms. Ailor asked for volunteers to lead this group next year with the goal of having recommendations to the Working Group preferably before June 1, 2020, but no later than the NAIC Fall National Meeting. Those interested in leading or participating in the group are to let Ms. Smith know.

4. Discussed Vendor Single Interest Concerns for the Lender-Placed MCAS

Ms. Ailor said that during the Market Analysis Procedures (D) Working Group meeting on Oct. 31, members heard comments from Tom Keepers (Consumer Credit Industry Association—CCIA) about blanket vendor single interest (VSI) being included in the lender-placed MCAS blank. He expressed concern that due to the way blanket VSI is written and issued, the reporting in the MCAS may be skewed and noted it is a small market with premiums only in the tens of millions nationwide. Birny Birnbaum (Center for Economic Justice—CEJ) said during that same Market Analysis Procedures (D) Working Group meeting that blanket VSI is a lender-placed insurance product that is necessary for state insurance regulators to receive data for and recommended creating a special data call and developing a separate MCAS blank for it. Ms. Ailor said the issue would be

referred to this Working Group for discussion and next steps, and in response received letters from Mr. Keepers and Mr. Birnbaum. The letters were made available to the Working Group for review.

Ms. Ailor asked if Mr. Keepers was on the conference call and would like to comment. Mr. Keepers explained that blanket VSI is a two-party, single-interest commercial insurance policy that protects the lender's interest in the collateral against damage. He said consumers are not really engaged in the insurance transaction as no coverage is issued at point of sale, they are not a party to the lender-insurer master policy, and they are not issued individual certificates, so consumer cancellations and refunds do not apply. He explained that consumers are engaged in the lending process, not the insurance claims process, as by the time a claim is filed, the consumer has already defaulted on loan payments and the vehicle has been repossessed by the lender, such that the claim is between the lender and the insurer only. He further explained that there is not always a charge to consumers at loan closing and that he does not think the blanket VSI product should be included in the MCAS.

Ms. Ailor asked what kind of fee could be charged for this product, and Mr. Keepers said it generally ranges from \$25 to \$100 and sometimes higher. She also asked what kind of disclosures are provided to consumers, and he said in the lending documents, consumers are informed of this charge and their option to purchase it separately. He said the fee covers the collateral, and the lender may or may not charge the borrower.

Ms. Nickel said her understanding was that lenders always charged a fee for this type of product, and Mr. Keepers responded that there are plenty of carriers that do not charge fees for blanket VSI. She asked if insurers could track these types of claims, and Mr. Keepers confirmed they can. However, he said that this product is a commercial activity and that while it has fees that may be charged to consumers, it is a commercial product helping lenders mitigate their risks and consumers are not involved. He advised there is no forced placement and that it is just a claim filed to the insurer by the lender and that the only consumer involvement is the one-time fee at the time of the initial loan.

Mr. Birnbaum said one of the things that distinguishes VSI from other types of lender-placed insurance (LPI) is that consumers are charged for force-placed insurance regardless of whether they have a lapse of coverage or not. The other difference is how premium is calculated because rather than being based on an individual vehicle, it is based on the entire portfolio. The third difference is the absence of tracking the borrower's insurance. He said VSI is a commercial policy issued to the lender and the insurers charge a premium to the lender, not to the borrower. The insurers are not involved in the fee charged by the lender to the borrower. It is a master policy issued to the lender and like traditional LPI, there is no individual lender or property for the underwriting. This puts consumers in a vulnerable position with no market power in the event of damage to the vehicle. Because of the differences in premium calculation and exposure count versus traditional LPI, blanket VSI and traditional LPI comparisons for underwriting, claims and suit data are not compatible and need to be reported separately. The CEJ recommends that VSI be broken out as a separate coverage within the LPI exhibit, which would enable state insurance regulators to address any problems with VSI that are raised by the CCIA.

Ms. Ailor said the Working Group needs to evaluate and decide on how to move forward, whether it be keeping the blank the same and offering further instructions and clarity as to how these products should be reported, adding it as a separate coverage in the blanks or removing it completely. Ms. Ailor asked that everyone review the comments submitted by the CEJ and the CCIA and to consider the discussion today and let Ms. Smith know if volunteers are interested in being part of the small group that will review this topic further in 2020.

5. Discussed the Other Health MCAS Data Call Approved by the Market Analysis Procedures (D) Working Group

Ms. Ailor said the Marketing Analysis Procedures (D) Working Group adopted "other health" as the next line of business for MCAS, and the Market Regulation and Consumer Affairs (D) Committee adopted it during the Fall National Meeting. Industry and state insurance regulators expressed concerns with how broad and ambiguous the term "other health" is, and this Working Group must carefully draft the data call so that the data elements, definitions and instructions are detailed and clear and there is no ambiguity about what is reported. Ms. Ailor said an immense amount of experience was gained from the health blank implementation. Data from the short-term, limited duration (STLD) template is available for review as a starting point.

For the "other health" MCAS blank to be successful, industry representatives, individual companies, state insurance regulators and consumer representatives participating in the group will need to be tasked with developing the draft. Ms. Ailor asked that volunteers be on the drafting group, and that those interested in leading or participating in this to notify Ms. Smith.

6. Discussed the Extraordinary Circumstance Definition for Health Extension Requests

Ms. Ailor said the due date for the health MCAS that was extended to June 30 for 2020, 2021 and 2022 will return to April 30 in 2023. Industry representatives made assurances that companies will not ask for individual extensions beyond June 30 except in extraordinary circumstances. Industry representatives have provided a letter with a proposed definition of “extraordinary circumstances,” and the letter has been made available on this Working Group’s web page for review.

Ms. Ailor asked if Joe Zolecki (Blue Cross and Blue Shield Association—BCBSA) would like to address the Working Group to discuss the letter, and Samantha Burns (America’s Health Insurance Plans—AHIP) said Mr. Zolecki was unable to attend the conference call and addressed the Working Group with regard to the letter on behalf of the Health Industry Interested Parties (HIIP) group. Ms. Burns stated the determination for extension request would be at the ultimate discretion and approval of the domestic state. She said the circumstances they consider to be extraordinary and outside of the carrier’s control, among other things, are the following: acts of God, mergers and requisitions, system issues, vendor issues, delayed new or modified federal Centers for Medicare & Medicaid Services (CMS) requirements, and substantive new health MCAS reporting requirements implemented by state insurance regulators.

Mr. Birnbaum stated the list of extraordinary circumstances provided by the HIIP group is far too expansive and that mergers and acquisitions are under the discretion and control of the carrier. System and vendor issues are also subject to the control of the carrier, which reinforces concerns about granting the extension for health MCAS data. He suggested that a list be specified by state insurance regulators for situations that would not qualify as an extraordinary circumstance.

Ms. Burns advised she does not believe carriers have control over the issues that arise stemming from mergers and requisitions and vendor issues and that these items should qualify as extenuating circumstances and be left up to the state to decide.

Mr. Gaines said in Washington, they receive requests extensions the day before the due date, claiming issues with collecting third-party data, even though the carrier just requested data from the vendor. Ms. Burns agreed this type of scenario should not fall under an extraordinary circumstance.

Ms. Ailor explained the extension to June 30 from April 30 has already been granted and that any additional extension is at the discretion of the state, not the domestic state, but the state in which the MCAS must be filed. Requests for extensions are addressed individually, and system issues, vendor issues and the laborious tasks sometimes associated with collecting information from third parties are some of the reasons that the extension to June 30 was granted.

Ms. Burns asked if there would be a vote on this definition, and Ms. Ailor said she does not believe a vote is needed. Randy Helder (NAIC) confirmed a vote is not necessary as the decision to extend beyond June 30 is ultimately up to the state that is receiving the filing.

7. Discussed Any Other Matters Brought Before the Working Group

Ms. Ailor advised she is stepping down as Working Group chair. She said Arizona will still be a member of this Working Group and that anyone interested in learning more about the chair role is asked to contact the NAIC, Mr. Helder, Ms. Smith or Ms. Ailor directly.

Having no further business, the Market Conduct Annual Statement Blanks (D) Working Group adjourned.

W:\National Meetings\2020\Spring\Cmte\D\MCAS WG\12 17 Meeting.docx