

October 23, 2020

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VIA Electronic Mail: tcooper@naic.org; Rebecca.Rebholz@wisconsin.gov

RE: Proposed Pilot Program for Collection of Transactional MCAS Data

Dear Ms. Cooper:

The American Property Casualty Insurance Association (APCIA)¹ appreciates the opportunity to provide initial comments on a proposed pilot program for collection of transactional data for the Market Conduct Annual Statement (MCAS). As no details of a formal proposal have been exposed, APCIA's comments will focus on the general concept of collecting transactional data via MCAS.

Since its inception, MCAS has consisted of the collection of uniform summary market conduct-related data from individual companies to allow state regulators to compare a large group of different insurers to identify outliers among those insurers. Outliers may be subject to further analysis by regulators to determine if market analysis continuum actions are warranted. Such actions may include requests for more granular (at times, transactional) data to determine appropriate next steps in the market analysis process. In other words, while a regulator might eventually want transactional data for a certain aspect of a company's operations, requiring a company to provide transactional data at the beginning of the MCAS process is inefficient, burdensome and unnecessary for both companies and regulators.

Without a formal proposal and the requisite details on which to comment specifically, APCIA offers comments based on a brief discussion had on the most recent Market Conduct Annual Statement (D) Blanks Working Group call held September 30, 2020. The concept of a pilot program for collection of transactional MCAS data was raised and no regulators on the call offered support, or even expressed interest in such a program. The Center for Economic Justice did report that NAIC IT staff were interested in the project. While the fact that NAIC IT staff is capable and able to handle the data is laudable, APCIA asserts that the purpose of MCAS data collection is to provide *state regulators* with the data they feel necessary to perform their market analysis function. Without support and a demonstrated need from regulators for such a pilot program to perform these functions, APCIA questions the devotion of time and resources to exploring it.

¹ The American Property Casualty Insurance Association (APCIA) is the primary national trade association for home, auto, and business insurers. APCIA promotes and protects the viability of private competition for the benefit of consumers and insurers, with a legacy dating back 150 years. APCIA members represent all sizes, structures, and regions-protecting families, communities, and businesses in the U.S. and across the globe.

The collection of transactional data by a regulator from an insurer is typically done as part of a targeted or comprehensive market conduct examination, and, as such, is subject to heightened confidentiality protections, in part to protect the integrity of individual policyholder and claimant information. As MCAS is centrally reported through the NAIC, insurers rightfully question whether such protections could be guaranteed.

In addition, currently summary data related to lawsuits is included as part of MCAS submissions. There are numerous problems with insurers reporting this information on a transactional level, if that is, indeed, part of the ultimate proposal. Often, payments made in litigation are subject to confidentiality agreements. Collection of this data would interfere with a private party's right to contract since the parties would have contracted for the confidentiality provision. Moreover, transactional lawsuit and settlement information is vulnerable to misinterpretation. The initial amount offered will be based upon information known at the time of the offer. That almost always changes in the life of a litigated claim.

From an underwriting perspective, there are numerous challenges with reporting transactional data. For example, requiring carriers to report on changes in coverage; adding/replacing vehicles; adding/replacing drivers would be significantly cumbersome while the data really would not provide any potential regulatory concerns such as cancellation/non-renewal data. APCIA must ask, what would regulators even do with this information?

As a general matter, APCIA would also object to policy number and claim number reporting. That information is too granular and would permit a method of tracing to identify claimants and/or litigants who have not assented to disclosure of their information. While a policy number or claim number itself may not be private information, the ability to "reverse engineer" a claim based upon this identifying information is a valid concern, particularly when other potentially private information such as payment information negotiated under a confidentiality agreement is also disclosed.

The burden on an insurance company of pulling, validating and providing transactional level data across multiple data points is enormous and unjustified by any regulator need (or even expressed desire) for such information during what is supposed to be an annual standard reporting process. Many companies have to expend thousands of dollars (including staff and systems costs) every year preparing hundreds if not thousands of MCAS reports for their varying companies and lines of business. While this burden is expected as part of the normal summary reporting for MCAS, it increases exponentially for transactional level data.

Importantly, APCIA does not question the authority of individual state regulators to request transactional data from insurers as part of a formal market conduct action. We do question the appropriateness and necessity of collecting such data through a baseline market analysis tool such as MCAS.



Thank you for the opportunity to provide comments. If you have any questions or would like to discuss any of our comments further, please let us know.

Respectfully Submitted,

A handwritten signature in black ink that reads "Lisa Brown". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Lisa Brown
Sr. Director, Market Conduct and Counsel