



NATALIE A. HUBLEY
PRESIDENT

COMMONWEALTH AUTOMOBILE REINSURERS

101 Arch Street, Suite 400 Boston, Massachusetts 02110

www.commauto.com

617-338-4000

April 4, 2019

BULLETIN NO. 1078

DECISION

DISAPPROVAL OF PROPOSED CHANGES TO THE RULES OF OPERATION

Rule 29 – Assignment Process

Proposed changes to the Rules of Operation amending Rule 29 were filed with the Commissioner of Insurance on November 26, 2018. The proposed changes were furnished to all Members and interested parties as Bulletin No. 1067, dated November 26, 2018.

Under the provisions of Article X of the Plan of Operation, a proposed Rule of Operation becomes effective either upon approval by the Commissioner of Insurance, or upon expiration of 30 days from the time of submission, provided that no public hearing was requested within 5 days by an interested party and the Commissioner has not otherwise disapproved the Rule change within the 30-day period. On January 26, 2019, at the request of the Plymouth Rock Assurance Corporation, the Commissioner of Insurance held a public hearing to afford all interested parties an opportunity to provide oral or written comment on the proposed amendments to Rule 29.

In correspondence dated April 3, 2019, the Commissioner of Insurance disapproved proposed amendments to Rule 29.E. Accordingly, the Rule 29 credit factors currently in place for policies effective April 1, 2015 and subsequent will remain in effect for policies effective April 1, 2019 and subsequent. A copy of the Decision is attached.

MARIAN ADGATE
Corporate Documentation Specialist

Attachment



CHARLES D. BAKER
GOVERNOR

KARYN E. POLITO
LIEUTENANT GOVERNOR

COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

1000 Washington Street • Suite 810 • Boston, MA 02118-6200
(617) 521-7794 • FAX (617) 521-7475
<http://www.mass.gov/doi>

MIKE KENNEALY
SECRETARY OF HOUSING AND
ECONOMIC DEVELOPMENT

EDWARD A. PALLESCHI
UNDERSECRETARY

GARY D. ANDERSON
COMMISSIONER OF INSURANCE

Proposed Changes to CAR Rule 29, Assignment Process

Docket No. C2018-02

On November 14, 2018, the Commonwealth Automobile Reinsurers (“CAR”) Governing Committee voted to amend Section E of CAR Rule of Operation 29, Assignment Process. Rule 29 addresses the assignment to CAR members of applications for private passenger motor vehicle insurance from drivers who are unable to obtain such coverage on a voluntary basis and apply for coverage through the Massachusetts Automobile Insurance Plan (the “MAIP”). Rule 29 E establishes Credit Programs that allow a CAR member, rather than wait for assigned MAIP applications, to receive a credit for voluntarily writing business in certain operator classes and territories. On November 26, CAR submitted the proposed amendment to the Commissioner of Insurance (“Commissioner”) for his approval. On November 27, 2018, pursuant to Article X of the CAR Plan of Operation, the Plymouth Rock Assurance Company (“PRAC”) requested a hearing on CAR’s proposed amendment. A hearing notice, issued on December 19, 2018, scheduled a hearing for January 24, 2019.

CAR specifically proposes to amend Rule 29 E, subsection 3 (Credit Factors by Territory and Operator Class) that consists of a graphic matrix of 330 cells, each representing a combination of operator class and rating territory, and identifies the cells that are credit eligible and the applicable credit factor for each.¹ The proposed amendment would increase the number of credit eligible cells from 127 to 129. Of the 127 currently credit eligible cells, the credit factor

¹ Multiplying 10 operator classes by 33 Territories, numbered 1-27 and 40-45, produces 330 cells. Between April 1, 2017 and March 31, 2019, 127 of those cells were credit eligible.

in all but 14 is 1.00; the remaining 14 range from 1.25 to 1.75.² Of the 113 cells now receiving a 1.00 credit factor, CAR proposes to reduce the credit factor in 79 from 1.00 to 0.80, to retain a factor of 1.00 in 34, and to reduce the factors in the remainder by varying amounts.³ CAR's proposal, in summary, increases the overall number of credit eligible cells by two and reduces the current credit factor for approximately two-thirds of the risks in credit eligible cells. If approved, the amendment would be effective for the rate year beginning April 1, 2019. CAR staff, at the Actuarial Committee meeting of November 1, 2018, noted that the projected effects of the amendment for the year beginning April 1, 2019, would be a 0.2 percent increase to credit eligible exposures and a 15.5 percent decrease to potential credit premium.

The statutory underpinning for Rule 29 E is M.G.L. c. 175, §113H that, for the stated purpose of controlling the size of the population of the residual market plan (*i.e.*, the MAIP) requires CAR annually to provide for territorial and classification credits to companies for voluntarily writing private passenger insurance in territories and classifications that would, without such credits, be disproportionately represented in the MAIP. The size of the credits is to be calibrated "to enhance the prospects that no classification or territory is disproportionately represented in the plan." PRAC bases its request for a public hearing on its position that CAR's proposed amendment to Rule 29 does not comply with the latter portion of the statutory mandate. It attached to its hearing request copies of letters dated November 15, 2015, November 13, 2017 and November 8, 2018 from the Office of the Attorney General to the CAR Governing Committee expressing her concern about proposals to reduce quota share credits in the MAIP and their effect on the overrepresentation of MAIP insureds in some cells.

At the January 24 hearing, Paula Gold, Esq., PRAC's Chief Regulatory Counsel; Glenn Kaplan, Esq., Chief of the Insurance and Financial Services Division at the Attorney General's Office; an insurance producer; the president of the Massachusetts Association of Insurance Agents ("MAIA"); and representatives of two CAR member companies, Mapfre and the Arbella Mutual Insurance Company ("Arbella"), made presentations. Before the hearing CAR, two additional CAR member companies and another insurance producer submitted written statements for the record. CAR's statement included an overview of proceedings at the CAR Actuarial and the Governing Committee meetings at which Rule 29 E was discussed; it attached to that

² Seven of the fourteen receive a credit of 1.25, five of 1.50, and two of 1.75.

³ The maximum credit factor is reduced from 1.75 to 1.50. The proposed credit factor applicable to Class 20 operators now exceeds 1.00 in only three cells. The two additional cells that would become credit eligible would both receive a credit of 1.00.

statement the Notices of those meetings, the exhibits that were distributed to committee members as a basis for discussion, and the Records of each meeting. After the hearing the record remained open through February 7 to accept additional commentary. Both PRAC and Arbella provided supplemental statements; two other CAR member companies and three insurance producers submitted comments.

Ms. Gold pointed out that credits are provided, by statute, to “enhance the prospects that no classification or territory is disproportionately represented” in the residual market, asserting that the requirement was included to protect residents of territories where insurers are less likely to write auto insurance on a voluntary basis. Citing the Attorney General’s correspondence to the Governing Committee in response to proposals to change Rule 29 E, she characterized those territories as communities that tend to be low income, have large minority populations and, on average, pay higher auto insurance premiums than other Massachusetts residents for less coverage. Ms. Gold noted that credits for writing business voluntarily in those areas make the business more attractive to insurers and provide an incentive to compete for it, thereby reducing the insurer’s share of assigned MAIP business. Consumers who are written voluntarily may benefit from access to coverages and programs that are not available to policyholders written through the MAIP.⁴

Ms. Gold observed that in a competitive marketplace for private passenger auto insurance, CAR members are free to decide how much credit eligible business they will write voluntarily. Describing the credit system as a “free-market approach to managing the residual market,” she contends that it offers insurers a choice that does not harm them but benefits the public. Ms. Gold pointed out that although the MAIP now represents only 1.25 percent of the private passenger auto insurance market, the overrepresentation of certain cells in that market is still a problem that should be addressed through credit allocation. CAR now proposes to retain credit factors but, as of April 1, 2019, generally to reduce them by 20 percent a year until they disappear. PRAC argues that this approach does not resolve the question of disproportionate representation. It asks the Commissioner to disapprove CAR’s proposed amendment to Rule 29, remand the rule to CAR for changes that are consistent with the statute, and provide CAR with direction on utilizing credits to address disproportionate representation in a small MAIP.⁵

⁴ The Attorney General stresses the significance to consumers of a marketplace that maximizes their availability to obtain insurance written voluntarily.

⁵ In September, 2018, PRAC presented the Actuarial Committee with a proposal to index Market Share Group Ranges by year, with varying minimum thresholds for credit eligibility. The Committee reviewed that, as well as

CAR members Mapfre and Arbella supported CAR's proposed amendment. Mapfre's executive vice president, John Kelly, asserted that it is important that the annual credit offer reflect changed market conditions, noting that credits have not changed since 2015. He commented that CAR based its proposal on market conditions in the last three years and phases in changes over five years, during which it will monitor and review data that would reveal any effect on the size of the residual market of reduced credit values. Mr. Kelly noted that CAR arrived at its proposal after extensive discussion and that a majority of the marketplace, including companies that benefit the most from the current credit levels, agreed to it as the best for the Massachusetts marketplace. In Mapfre's opinion, carriers no longer need credits to encourage them to write voluntary business in any territory because they can now file actuarially adequate rates for any territory and that the size of available credits can be reduced without adversely affecting the size of the residual market. Mr. Kelly stated that Mapfre writes business voluntarily in credit-eligible territories because it is good business and does not make its decisions based on the availability of credits. He noted that CAR members who do not want to receive MAIP assignments may voluntarily write credit eligible business or buy credits from insurers who have excess credits, but contended that high credit factors should not be retained for the purpose of supporting the secondary market. Mr. Kelly suggested that credits undermine the statutory mandate that residual market assignments should generally reflect the market share of a participating carrier.

Arbella offered statements from Lynellen Ramirez, chief actuary for the Arbella Mutual Insurance Company and its counsel, Roberta Fitzpatrick, Esq. Arbella asserted that the rule requiring CAR to review credits annually recognizes that market conditions change and that the credit process should remain fluid. It pointed out that the size of the residual market for private passenger auto insurance declined between the end of 2007 and 2018, from 4.3 percent to 1.25 percent of the total market. Ms. Ramirez, the chair of CAR's Actuarial Committee, noted that the committee met three times before developing the proposed amendment to Rule 29, pointing out that it reduces the amount of available credit premium by tempering the credits in some cells, but does not entirely eliminate credit from any cell that is now credit eligible. She described the

the model that ultimately became the basis for its proposed changes to Rule 29. E. The Actuarial Committee rejected PRAC's proposal, commenting that in its first year, it would increase credit eligible exposures by 72.7 percent and potential credit premium by 8.7 percent. We decline to comment further on a proposal that is not part of the proposed amendment that is before us.

proposed amendment as the first step in what is anticipated to be, absent increases in the size of the residual market, a series of credit decreases until credits are removed from cells where they are shown to be unnecessary. Ms. Ramirez asserted that the size and makeup of the MAIP is not correlated with the removal of credits, but that data demonstrate that in a competitive marketplace companies can and do write these risks profitably. She suggested that competition itself, not credit availability, is the driving factor in decisions to write business in credit eligible cells voluntarily and is the reason for the reduced size of the MAIP.

Ms. Fitzpatrick, responding to concerns about the effect of reduced MAIP credits on urban agents, opined that insurers are actively competing for good business in urban areas, and do so by contracting with agents to provide insurance in the voluntary market. She, too, attributed the reduced size of the MAIP to the effect of increased competition. Ms. Fitzpatrick questioned whether any cells are now disproportionately represented in the residual market. Contrasting the percentage of business that was ceded to CAR in 1988 and the current population of the MAIP, she commented that 98 percent of private passenger insurance is now written on the voluntary market and that, in eleven urban territories with historically high participation in the residual market, the voluntary market is writing 96.6 percent of the business. Ms. Fitzpatrick pointed out that MAIP participation is not a constant in any territory and upward or downward changes from year to year may be due to many factors other than credits. Disagreeing with Plymouth Rock's assertion that the proposed Rule 29 amendment would be noncompliant with the statutory language that credits are needed to control the size of the residual market, she contended that CAR has determined that credits at the current level are not necessary and that a planned gradual reduction will allow CAR to evaluate the effect of changing credits on the residual market and to reverse direction if needed.

Four CAR members, Progressive Insurance, Preferred Mutual, GEICO and the Liberty Mutual Insurance Company ("Liberty Mutual") submitted statements opposing CAR's proposed Rule 29 amendment. Progressive asserts that the amendment focuses only on reducing credits, not on addressing disproportionate representation of territories and classes in the MAIP, as required by statute. The long-range plan to reduce credits would, Progressive claims, almost eliminate credits in many cells, decrease the incentive to carriers to write insurance voluntarily in those areas and increase their MAIP population. It considers monitoring insufficient to understand the full impact of the proposed changes because companies may react in different ways over time, and their approaches may not immediately affect the size of the residual market.

Preferred Mutual contends that the current credit values have contributed to the reduced size of the MAIP, and that lowering those values could again increase its size. It points out that annual changes in credit values would effectively require insurers each year to evaluate their business plans with respect to the residual market, a process that may involve issues of company stability and is disruptive to the market place. Preferred Mutual favors retaining a credit system that, in its view, is working.

Liberty Mutual stated that it does consider the value of credits when making decisions on underwriting and pricing business, and has renewed business that it would have non-renewed were it not for the MAIP credit. It views credits as a feature of assigned risk plans and a part of a healthy residual market that gives carriers an incentive to write and retain risks voluntarily. Liberty Mutual considers that the current Rule 29 establishes a level playing field because it allows carriers options for meeting their involuntary market obligations. Looking at the private passenger market as a whole, it asserts that while it is more competitive than ten years ago, there are still pricing, underwriting and regulatory restrictions that affect insurers' ability to charge adequate rates in some segments. Liberty Mutual contends that despite the reduction in the MAIP population, Massachusetts has one of the larger involuntary markets, nationwide, and that CAR should focus potential changes to the credit system on efforts to reduce the size of the MAIP further and to balance the interests of all participants in the residual market.

GEICO, similarly, considers that CAR should undertake its annual review of the Rule 29 credit factors with the goal of continued reduction of the MAIP population, pointing out that Massachusetts is one of only four states in which the residual market for automobile insurance exceeds one percent. To that end, it asserts that the current rule should be continued. GEICO is also concerned that CAR's multi-year goal to eliminate credits entirely will potentially increase the MAIP population and adversely affect consumers. It observes that the Actuarial Committee offered no evidence that the proposed amendments would positively benefit Massachusetts consumers or reduce the size of the residual market; GEICO suggests that they could impede progress toward that goal.

John Olson, an insurance producer located in Lynn, MA, on behalf of himself and three other producers with offices in Lynn, spoke in opposition to the proposed credit reduction in urban areas such as Lynn.⁶ Mr. Olson noted that when competition in the auto insurance

⁶ The Lynn agents, he noted, continued to take the position they articulated at the February 25, 2016 hearing on proposed changes to Rule 29. Mr. Olson contended that the only change over three years was a higher likelihood that residents of Lynn would be assigned to the MAIP.

marketplace was instituted, he and other urban agents sought to ensure that urban residents would continue to have access to quality products and prices. Rule 29 credits, he stated, were viewed as a way to achieve that goal. According to the Lynn producers, many insurers consider MAIP credits when underwriting and pricing urban drivers, and reducing those credits will only lead to higher prices for drivers who already pay more than their suburban neighbors. They assert that companies also take those credits into account when evaluating their urban agents and, without them, might decline to offer those agents voluntary contracts, giving producers no option but to place auto insurance through the MAIP. Mr. Olson commented that the credit system is intended to prevent certain cells from being overrepresented in the MAIP, asserting that CAR has no mandate to reduce credits.

Mr. Olson's interests were echoed in comments from Nick Fyntrilakis, president of the Massachusetts Association of Insurance Agents ("MAIA"). He observed that MAIA recognizes the importance of a healthy competitive insurance market in the Commonwealth, and wants to insure that MAIA members have continued access to voluntary markets. Such access, Mr. Fyntrilakis commented, will help avoid any proliferation of the MAIP population.⁷

CAR submitted a written statement describing the 2018 process for reviewing MAIP quota share credits, attaching to it records of three Actuarial Committee meetings and relevant portions of the transcript of the Governing Committee meeting at which the proposed Rule 29 amendment was approved. It noted that a majority of members of those two committees contend that the volume of credit premium in the quota share system is excessive and detrimental to the fair and equitable distribution of the MAIP residual market burden among CAR Members and assert that in the current healthy competitive marketplace those credit premiums are not needed to enhance the likelihood that no class or territory will be disproportionately represented in the residual market. Those members assert that the formula now codified in Rule 29 for determining credit factors, applied to the current market, indicates that the need for credit has decreased and that its retention exacerbates inequities in the quota share assignment process. CAR confirmed that the Rule 29 amendment retains credit eligibility in all cells for which credit is now available but proposes to reduce the value of those credits, generally by 20 percent, for the year beginning

⁷ Three other producers commented on the proposed amendment to Rule 29; two opined that the credit system benefits direct writers more than agency companies and questioned the extent to which credit availability is a factor in offering to write insurance on a voluntary basis. A third contended that statements at the hearing demonstrated that companies have competing interests but did not address the effect of the proposed credit reduction on policyholders.

April 1, 2019 and to apply similar reductions over five years until the excess credits are eliminated. The amendment does not explicitly address future reductions; the long term plan developed at the Actuarial Committee, if implemented annually the next few years would, over time, achieve the 2016 proposal to eliminate a large number of cells from credit eligibility.⁸

Discussion

The statutory goal of the credit eligibility system is to control the size of the residual market by providing to companies that voluntarily write private passenger automobile credits for writing policies in territories and operator classifications (*i.e.*, cells) that would otherwise be “disproportionately represented” in the residual market. Over time, in a market in which rates were fixed-and-established, the residual market had grown to include over 50 percent of policyholders, particularly inexperienced operators and residents of urban territories. The transition in 2008 from a market in which insurance rates were fixed and established to a competitive system in which insurers file their own rates and compete for business on the basis of price and policy enhancements coincided with a shift in the structure of the residual market from a pool whose losses were shared by CAR Members to an assignment system. Applications for private passenger insurance that were not written in the voluntary market were submitted to the MAIP and assigned to CAR members on a proportional basis reflecting their share of the total private passenger market, calculated by Manual premium.

The quota share plan in Rule 29 consists of seven sections.⁹ As an incentive to members to write insurance voluntarily, particularly in territories and for driver classes that had largely populated the residual market pool, Section E.2 offers credits in an amount that “equal[s] the annual Private Passenger Motor Vehicle MAIP Premium for the risk as if it has been insured through the MAIP, multiplied by the appropriate factor” shown in the policy effective date tables in Section E. 3. Although CAR, by statute, must review credits annually, neither the statute nor the rules require annual changes or prescribe formulae for determining when credits will achieve the statutory goal of avoiding disproportionate representation of any cell in the MAIP.¹⁰

⁸ We note that the Actuarial Committee plan provides for scheduled monitoring of the effects of the periodic reductions, thus enabling CAR to revise the Rule should the size of the residual market increase. Because CAR is required to review the credit program annually, we decline to comment on the merits of proposals that are presented as part of a long range plan.

⁹ They are: A. Calculation of the Initial Quota Share; B. Assignment of Applications; C. Quota Share Adjustment; D. Assignment Period; E. Credit Programs; F. Distribution Restrictions; and G. Accruing, Buying, Selling or Transferring Credits.

¹⁰ Although CAR presents its proposed amendment as revised credit factors to take effect as of April 1, 2019, it is intended as an initial step in a five-year plan to reduce credit factors annually until such time as they are no longer available in a significant number of currently credit eligible cells. Recognizing that, if approved, the amendment

This year, CAR's proposed amendment to Rule 29, framed as changes to credit programs effective on April 1, 2019, is the initial component in a sequence of similar changes to take effect annually in the following four years, with the caveat that CAR will annually evaluate data to ensure that the reduction has not had unintended consequences. Our decision is based on our consideration of the proposal for 2019; we take no position on its merits as the first step in a multi-year program.¹¹

No person speaking at or submitting comments for the record before or after the January 24 hearing disagreed that, since the implementation of a competitive market in April, 2008, the overall size of the MAIP has declined on a statewide percentage basis, from 4.3 percent at the end of 2007 to 1.25 percent in 2018.¹² The quota share credit system was recognized as an element that has been remarkably successful at controlling the overall size of the residual market in the Division's 2016 decision on proposed changes to CAR Rule 29, and we have no reason to alter that conclusion.¹³ Nevertheless, opinion differs widely on the role that credit eligibility plays in CAR member decisions to write business voluntarily in cells that offer credit; Mapfre, at one end of the spectrum, states that it does not take credit factors into account while others, such as PRAC and Liberty Mutual, state that they do. Similarly, while there is consensus that an increase in the residual market is undesirable, opinions differ on the effect of the proposed amendment to Rule 29 on that potential occurrence. Mapfre and Arbella view competition itself as sufficient to control the size of the residual market. Other CAR members disagree, and express concern that the changes to the current credit factors embodied in CAR's proposed Rule 29 would reduce the incentives for insurers to write that business voluntarily and be likely to increase the amount of business assigned through the residual market.¹⁴

On this record, consensus that credit availability functions to control the size of the MAIP is not matched by parallel agreement about its effect on company decisions to underwrite voluntarily risks in credit eligible cells. Oral and written statements acknowledge that companies make those decisions in accord with their particular business models; votes at both the Actuarial

could affect the size of the MAIP, CAR proposes to monitor data to determine whether the reduced value of credits affects the proportion of risks in the MAIP and to take any necessary corrective measures. Because CAR reviews credit plans annually, we express no opinion on the merits of proposed rule changes that anticipate future actions to achieve a particular result.

¹¹ We acknowledge comments on the relevance of the credit program to insurer business planning. Multi-year proposals that must be evaluated each year in light of current data present an inherent degree of uncertainty.

¹² These values, drawn from Arbella's statements, were not contested by any other person at the hearing; PRAC also cited 1.25 percent as the overall size of the MAIP in 2018.

¹³ Division of Insurance Docket No. C2016-01, Decision dated May 31, 2016.

¹⁴ Several speakers at the hearing expressed the concept that Rule 29 should be amended because of a "changing marketplace," although, with the exception of the shift to a competitive market, the nature of those changes and their potential utility in achieving the goals of the credit system is uncertain.

Committee and the Governing Committee demonstrate that common ground is limited and that there is reluctance to revise a functioning system.¹⁵ Nor is there a consistent vision of the effect of reducing the amount of credits in cells on the size of the residual market.¹⁶ On this record, we are not persuaded that the proposed changes to Rule 29.E would not adversely affect the size of the MAIP.

Second, the MAIP exists for the salutary purpose of providing mandatory motor vehicle insurance to operators who cannot obtain such coverage in the voluntary market; within the MAIP the credit system is expected to calibrate credits to enhance the prospects that no classification or territory will be disproportionately represented in it. The statutory principle that no class or territory should be disproportionately represented in the MAIP creates a standard for evaluating the credit system; the statute, however, does not define “disproportionate” or establish a methodology for measuring it. The 2016 Decision on Rule 29 cited statements from PRAC and the Attorney General that MAIP participation is disproportionate if the percentage of MAIP participants is significantly higher than the statewide average.¹⁷ It also acknowledged PRAC’s observation that it is beyond the ability of credits to make all classes and territories equally represented in the MAIP, and that such equality is not the goal of the credit system.¹⁸ Nevertheless, credit systems are expected to be structured with the twin objectives of controlling the absolute size of the residual market and ensuring that no class or territory is disproportionately represented in that market. Commentary on the proposed amendment to Rule 29 E offers no indication of how it might be expected to affect representation of any class or territory in the residual market.

For several years, particular concerns have been expressed about eleven communities in which the percentage of risks written in the MAIP has consistently been twice or more the

¹⁵ The Actuarial Committee voted 4 to 3 to send the proposed amendment to the Governing Committee, which approved it by a vote of 6 to 4.

¹⁶ The Actuarial Committee proposal to monitor the residual market on a quarterly basis to assess the effect of reduced credits on it presents its own difficulties. It does not clarify whether it would propose to rescind the reduction if two quarters of data showed an increase in MAIP policies or evaluate only after a year. Ultimately, the size of the MAIP depends on actions by individual CAR members relating to their overall business plans; attributing changes to a single event, reduced credits, may be challenging.

¹⁷ Ms. Gold, speaking at the hearing in 2016, considered that MAIP participation of twice the statewide average should be considered disproportionate, but agreed that disproportionality is not defined by meeting a single ratio.

¹⁸ A comparison of the percentage of MAIP participants in a particular territory to the statewide average, by itself, offers no insight into the reasons for the differences. A more comprehensive understanding of the factors that affect MAIP placement might contribute to a discussion of that question.

statewide average.¹⁹ Documents and comments in the record show that CAR and its members remain cognizant that these communities, commonly referred to as the “DOI Territories,” have a higher presence in the residual market than the remainder of the state. Mapfre observed that, statewide, 98.6 of 100 [private passenger] auto policies are written in the voluntary market; Arbella noted that 96.6 of policies in the DOI Territories were written in that market. Arbella offered documentation comparing the number of MAIP exposures in the DOI Territories in 2014 to those in 2018, and the concurrent increase in voluntary exposures; although the absolute number of MAIP exposures has gone down, Arbella did not compare the percentage of MAIP exposures in either year to the statewide average.

PRAC submitted a comparison for the year beginning in September, 2017 through August, 2018, showing a statewide average rate of participation in the MAIP at 1.25 percent, and calculating the amount by which the likelihood of assignment to the MAIP in each of the DOI Territories exceeded that value.²⁰ It also provided a chart to the CAR Governing Committee that similarly analyzed data for each of the three years 2016-2018; those data show continuing differences in the likelihood that risks in the eleven territories, compared to statewide insureds, will be assigned to the MAIP. Data compiled by CAR for the Actuarial Committee in September, 2018, confirmed that the residual market share in the DOI Territories declined over six years, from March 2012 through March, 2018, from 8.9 percent to 3.5 percent but that, expressed as a ratio of the statewide average, the group moved from 3.2 to a low of 2.6 and, from 2016 through 2018, has remained constant at 2.7 percent.²¹ The data indicate that the current credit system has had limited effect on the distribution of MAIP risks in the DOI Territories.

Outside of general references to the effect of competition, no statements in this record specify how the proposed Rule 29 E amendment might reduce disproportionate representation in the MAIP. To expect reduced credits to encourage carriers to write more business in those DOI Territories voluntarily appears, on its face, counterintuitive. Replicating the success of the current credit system at reducing the overall size of the MAIP, with respect to disparate representation in it, will require additional analysis and careful consideration of adjustments to the credit system as a means to achieve that goal. We remain unpersuaded that the proposed

¹⁹ These are not the territories required under M.G.L. c. 175E, §4. The “DOI Territories” referred to in this record are the communities of Chelsea (16), Hyde Park (20), Dorchester (21), Roxbury (22), East Boston/Charlestown (26), Holyoke (40), Lowell (41), Springfield (42), Lynn (43), Lawrence (44), and Brockton (45).

²⁰ Those values range from 1.76 to 5.64.

²¹ The residual market share of the eleven communities dropped from 8.9 in 2012 to 3.7 percent in 2015. It dropped to 3.4 percent in 2016, rose to 3.7 percent in 2017, and declined again to 3.5 percent in 2018.

amendment to Rule 29.E will affect the disparities between the percentage of MAIP risks in the DOI Territories and the statewide percentage.²²

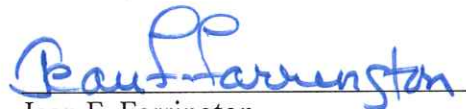
Conclusion

For the above reasons, pursuant to the Commissioner's authority under Article X of the CAR Plan of Operation, the proposed amendments to Rule 29 E that CAR submitted November 26, 2018 are hereby disapproved. Consistent with this decision, the factors shown on page 7 of CAR's proposal remain in effect.

April 3, 2019



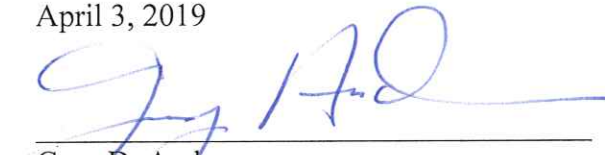
Kristina A. Gasson
Presiding Officer



Jean F. Farrington
Presiding Officer

Affirmed:

April 3, 2019



Gary D. Anderson
Commissioner of Insurance

²² A third concern is the extent to which discussions of and statements addressing the proposed changes to Rule 29 E focus on the distribution of residual market losses associated with credit eligible and MAIP assigned business. Rule 29 G offers CAR members varied options for satisfying their shares, allowing them to accrue excess credits and to sell, transfer or buy excess credits to or from other members. That insurers 1) consider those options in developing their business plans and 2) do not take a uniform approach to employing them to satisfy their residual market obligations is not surprising. The purpose of the quota share and credit systems is to allocate fairly the costs of risk that is likely to be insured through the residual market. No party has demonstrated that a problem exists or how changes to Rule 29 E would affect it.