

Commonwealth Automobile Reinsurers

Rules of Operation

Rule 3 - Obligations of Members

- A. Every Member shall be bound by the Plan of Operation and all Rules adopted pursuant to it.
- B. 1. Each Member agrees to pay assessments levied against it for losses or expenses or any combination thereof incurred under policies issued through CAR by a Servicing Carrier; to pay assessments levied against it for the operating expenses of CAR; to pay penalties levied against it under the Rules adopted by the Governing Committee; and to submit in a timely and accurate fashion all statistics, records and accountings required by CAR.
2. Each Member, in recognition of the absolute necessity for timely payments of balances owed CAR in order for the Plan to remain solvent as respects balances due to Members from CAR, shall pay late payment fees at the prime rate as established by the Federal Reserve Bank of Boston compounded monthly for late payment of any assessment or late payment fees levied in accordance with the Plan or Rules of Operation. Each Member shall also compensate CAR for all damages and expenses incurred by CAR as a result of the failure of any Member to pay any balance owed CAR pursuant to the provisions of Rule 3 or 11, which balance remains unpaid as of the tenth calendar day following the invoice due date, written notice of the default having been mailed by certified mail to the company by CAR on or after the first business day following the invoice due date. Damages and expenses as used herein shall include but not be limited to CAR's attorney's fees incurred directly or indirectly with the collection of the balance due, all costs of borrowing incurred as a result of the nonpayment, the cost of all staff time 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.
3. Any Member shall be entitled to appeal to the Governing Committee any assessment, or late payment fees, damages or expenses which were levied in accordance with the Plan or Rules of Operation. However, the Member will be required to pay the amount billed by CAR before such appeals will be considered. If the Governing Committee rules in favor of the Member, a proper adjustment, including interest at the prime rate and any damages and expenses assessed, will be made by CAR to the Member's account. Before exercising any other right of appeal provided pursuant to M.G.L., Chapter 175, Section 113H, the Plan or Rules of Operation of CAR, the Member shall pay all amounts owed to CAR

With respect to Members which have failed to pay assessments, late payment fees or compensatory damages or expenses within forty-five (45) calendar days of the postmark date of the overdue payment notice, a report will be submitted to the Division of Insurance setting forth the fact of such nonpayment for its consideration and, if it deems appropriate, action.

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- C. When a Member is merged or consolidated into another insurer, or another insurer has reinsured a Member's entire motor vehicle insurance business in Massachusetts, such Member and its successor in interest or such other insurer shall be liable for such Member's obligations hereunder.

In the event a Member effects a transfer which results solely in the transfer of its obligations for issuing Massachusetts private passenger motor vehicle insurance policies or bonds to another Member for subsequent policy years, then upon said transfer the transferring Member shall be relieved of any future obligations which would have otherwise arisen as a consequence of the business transferred. Beginning with the policy year in which the transfer takes place, the participation obligations of the Member receiving the transfer shall be determined as specified in Rule 11, B, 1, provided however that the pre-credit "1989-PR" ratio, the minimum allowable exposures from subsection 11, B, 1, b, (2), and the lagged voluntary agent market share from subsection 11, B, 1, b, (3), of the transferring Member shall be added to the corresponding ratio, exposures, and market share of the Member receiving the transfer. For the five (5) policy years subsequent to the year in which such a transfer of obligations is made, only 15% of the private passenger motor vehicle insurance policies or bonds transferred shall be eligible for cession to CAR.

If the transfer of coverages described herein involves a transfer of Exclusive Representative Producers which will either cause or increase Exclusive Representative Producer oversubscription for the Member to which the coverages have been transferred, then the number of Exclusive Representative Producers of the transferring Member that either causes or increases the oversubscription shall be reassigned to other Member companies in accordance with CAR's then approved procedure for such reassignment.

Voluntary agents, Representative Producers or Exclusive Representative Producers who, as of the effective date of transfer, had been authorized to bind Massachusetts private passenger motor vehicle insurance coverages with the transferring Member shall not be subject to contract modification or cancellation of the authority to bind such coverages by the Member to which said obligations have been transferred for a period of five (5) years following said transfer; provided however, that nothing set forth herein shall prohibit the cancellation of an Exclusive Representative Producer pursuant to the provisions of Rule 14 subject to approval by CAR and, where applicable, the Commissioner; and provided further that a representative producer may be canceled for causes approved by the Commissioner.

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- D. A Member may terminate its membership in CAR as of the close of CAR's fiscal year upon the surrendering of its license to write motor vehicle insurance policies or bonds in Massachusetts. Terminations of membership shall not discharge or otherwise affect liabilities of the Member incurred prior to the termination of membership or in any way affect the Member's obligation to make payments pursuant to the provisions of CAR Rule 11 - ASSESSMENTS AND PARTICIPATION, and the Member shall be charged or credited in due course with its proper share of all premium, losses and expenses allocable to it under the Rules of Operation.
- E. If any Member is declared insolvent by a court of competent jurisdiction, its membership in CAR shall terminate as of the date it is declared insolvent, but it shall be liable to CAR for all obligations incurred under the Plan or these Rules prior to the date it is declared insolvent. CAR shall compute the amount of such obligations in accordance with these Rules and shall be entitled to offset any liabilities of the Member to CAR against any liabilities of CAR to the Member.
- Any unsatisfied net liability of an insolvent Member shall be assumed by and apportioned among the remaining Members of CAR in the same manner in which underwriting results are apportioned by CAR. CAR shall have all rights allowed by law on behalf of the remaining Members against the estate or funds of such insolvent Member for sums due CAR.
- F. No judgment against CAR shall create any direct liability against the individual Members.
- G. There shall be an annual meeting of the Members of CAR, which shall be held within seventy-five days of the end of the fiscal year at such time and place as is determined by the Governing Committee and specified in the notice of meeting.
- H. Special meetings of the Members of CAR shall be called at any time by the Governing Committee upon the written request of eight members of the Governing Committee.
- I. Written notice of any such meeting of the Members of CAR shall be mailed to each Member at least ten days before the date fixed for such meeting stating the purpose of the meeting.
- J. Minutes of all such meetings of the Members of CAR shall be sent to all Members, the Governing Committee, agent associations, and the Commissioner.

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Rule 3A - Obligations of Inactive Members

An Inactive Member shall receive those CAR distributions which are required by Article X of the Plan of Operation or which otherwise emanate from the Massachusetts Division of Insurance. Inactive Members will not be furnished with other CAR Bulletins and will not be assigned reporting numbers. Inactive Members must abide by the Plan of Operation and Rules of Operation of CAR. No Member may become an Inactive Member as defined in these Rules until such time as it has fulfilled all obligations set forth in CAR Rule 11 - ASSESSMENTS AND PARTICIPATION. At such time as an Inactive Member issues a motor vehicle insurance policy or bond in Massachusetts, it must request that a reporting number be assigned to it and at that time, it must fully assume the obligations of a Member.