

**Bulletin 52**

**VOLUNTARY MARKET ASSISTANCE PROGRAM**

January 22, 1986

This Bulletin is directed to all companies writing property and casualty insurance in the State of Indiana.

The Indiana Department of Insurance recognizes the seriousness of current market conditions as respects commercial liability insurance and is requesting your voluntary cooperation in improving the availability of insurance.

To improve availability and forestall the need for mandatory rules or legislation, I have been working with representatives of the insurance industry, and have authorized the creation of a voluntary market assistance program (VMAP) for commercial liability insurance coverages for residents of this State. The Plan shall not assist in the placement of any workers compensation, employer's liability, pollution liability, or motor vehicle insurance coverage.

I earnestly urge all property/casualty insurers writing liability insurance in Indiana to commit to active participation in this program, and thereby demonstrate the industry's willingness to respond to the present availability problem. In my view, the key to this program will be the willingness of insurers to consider the individual merits of a risk on a case-by-case basis, and refrain from making blanket decisions to decline writing all risks in a certain class.

I hereby request that you indicate your willingness to participate by completing the attached participation agreement and market survey forms, and return them to me by February 14, 1986.

While we believe the application fees to be imposed on each risk will offset much of the operating expenses, the VMAP is in need of start-up funds for printing, mailing and other office expenses. A \$100.00 contribution made payable to the Indiana VMAP is solicited from each company or company group. These funds will be under the control of the VMAP Executive Committee.

It is essential that you demonstrate your support for this program, so please mail your contribution by February 14, 1986, to:

Indiana Market Assistance Program c/o Indiana Basic Property Insurance Underwriting

Harry E. Eakin  
INSURANCE COMMISSIONER

**PARTICIPATION AGREEMENT**

TO: HARRY E. EAKIN, COMMISSIONER

FROM: \_\_\_\_\_  
(Insurance Company)

SUBJECT: Indiana Commercial Liability Voluntary Market Assistance Program

Pursuant to your bulletin of January 22, 1986, the above-named insurance company (check one)

- agrees
- does not agree

to participate in the Indiana Voluntary Market Assistance Program.

In agreeing to participate, the above-named insurance company:

- (1) accepts the Plan of Operation and agrees to be bound by its provisions and to participate therein in accordance with its provisions and rules of practice promulgated therein.
- (2) agrees to seriously consider the individual merits of a particular commercial risk for possible underwriting, if requested to do so by a representative of the Voluntary Market Assistance Program, and if not specifically excluded in its market survey reply.

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## INDIANA VOLUNTARY MARKET ASSISTANCE PLAN

### I. Purpose:

The Indiana Voluntary Market Assistance Plan (VMAP) is a temporary market assistance program only. As such, it will attempt to assist in the placement of commercial liability insurance coverages for residents of Indiana. The Plan shall not assist in the placement of any worker's compensation, employer's liability, pollution liability or motor vehicle insurance coverages.

The Plan is not an insurance company nor is it a carrier capable of assuming risks. The program will not guarantee insurance placement, so, despite the best efforts of the Indiana VMAP, an available market may not be found for some applicants.

### II. Structure:

The Plan consists of the following committees:

#### 1. Executive Committee:

The committee shall consist of representatives of the following groups:

- (1) Domestic Stock Insurance Companies of Indiana
- (2) Domestic Mutual Insurance Companies of Indiana
- (3) Foreign Independent Stock Insurance Companies
- (4) Insurance Institute of Indiana, Inc.
- (5) National Association of Independent Insurers
- (6) Alliance of American Insurers
- (7) American Insurance Association
- (8) National Association of Mutual Insurance Companies
- (9) Independent Insurance Agents of Indiana
- (10) Professional Insurance Agents of Indiana
- (11) Reciprocal Insurance Organization
- (12) Excess and Surplus Lines Agency Organizations
- (13) The Indiana Commissioner of Insurance

The committee shall elect a chairman and vice chairman from among the members.

#### 2. Producers Subcommittee:

This subcommittee shall consist of two members representing the Independent Insurance Agents of Indiana, two members representing the Professional Insurance Agents and two members representing the excess and surplus lines agents.

The subcommittee shall elect a chairman and vice chairman from among the members.

3. The Commissioner of Insurance shall appoint members to each committee to an initial term of one year. Each member shall automatically succeed to additional terms of one year unless replaced by the Commissioner with written notification to the member and the chairman of each committee. The Commissioner shall immediately appoint replacements if resignations occur.

### III. Plan of Operation:

#### A. Membership:

Each liability insurer admitted to do business in Indiana and every eligible surplus lines insurer shall be solicited by the Indiana Commissioner of Insurance to participate in the Plan. The Commissioner shall maintain a master list of participants agreeing to participate in the Plan. This list shall be forwarded to the Executive Committee and the Producers Subcommittee for use by the Plan. The master list shall be updated annually by the Commissioner.

A participant may terminate its participation in the Indiana VMAP at any time by providing written notice thirty (30) days in advance of such termination to the Commissioner and to the Executive Committee Chairman. New participants may join the Indiana VMAP at any time by submission of a written request to the Commissioner or to the Chairman.

The Commissioner shall annually solicit additional participants, and update the master list.

#### B. Executive Committee:

The Executive Committee is the principal operations committee and will function to receive the initial application from risks that have encountered an availability-related insurance problem.

Information of the initial contact shall be maintained on a standard form which contains the following information:

1. Name, address, telephone number and other risk information.
2. Kind of coverage and limits needed.
3. Name, address, telephone number of the current or most recent insurance agent for the risk.
4. Name and address of current or most recent insurance company. Include information and identify the underwriting office and persons involved, if known. Include reasons for cancellation or non-renewal.
5. Names of other insurers contacted for coverage.
6. Summary of Executive Committee actions.
7. Other information as deemed necessary to document the risks availability problem.

The Executive Committee is empowered to give overall direction to the entire Plan and to the Producers Subcommittee. It shall meet as needed and review the activity of the Producers Subcommittee and all other operations of the Plan. The Executive Committee shall prepare a monthly status report to be submitted to the Commissioner, which shall

show the number of applications received, the disposition of those applications, and the distribution and participation of members to insure equitable participation in the Plan.

The Executive Committee shall have authority to provide technical assistance on those lines of business for which member insurers have agreed to participate. Such assistance may include advising the applicant on where it may engage in loss control or consulting services that will enhance its marketability or reduce future premium costs.

The Executive Committee shall review and authorize any and all letters stating that the Plan is unable to be of assistance. A copy thereof shall be sent to the Commissioner.

C. Producers Subcommittee:

The Producers Subcommittee will process properly executed applications accompanied by appropriate underwriting information and filing fee.

Each application will be reviewed to determine the availability problem and, depending on the nature of the problem, the Subcommittee (or such persons it may appoint or designate) may:

1. Discuss the risk with the applicant's most recent insurer, if any, to determine if the applicant's coverage can be maintained with that insurer.
2. Contact other known available insurance markets, including surplus lines carriers, to determine if any other carrier will accept the applicant.
3. Negotiate an extension of coverages with the most recent carrier or temporary carrier, if possible, to permit time for additional exploration of insurance markets or accumulation of essential underwriting data.
4. If all the above fails, the Chairman will refer the application to the Executive Committee with appropriate comments.

D. Referrals from Producers Subcommittee:

The Executive Committee shall establish a rotation system that permits insurers to quote risks they have agreed to consider writing. The system shall contain the following:

- (1) Referral of the application to the first five participating insurers on the list which the Commissioner has submitted to the Executive Committee (this list shall be maintained in a random order). Subsequent applications will be sent to the next five participants on a rotating basis. All participants may, if the Producers Subcommittee feels it appropriate, be given the application at once.

The Executive Committee shall assure equitable participation in the Plan.

- (2) A participant may provide a quote on the same basis for which it normally provides insurance in the State of Indiana using its approved rates, rules and forms. Each participant will have the right to individually evaluate the risk and develop premiums in accordance with its approved rating plans. Participants will indicate their willingness to quote (or refusal to quote) to the Chairman of the Executive Committee within ten (10) working days of receiving the application.

A reasonable extension may be granted by the Chairman of the Executive Committee.

A participant is expected to quote on at least one out of every five (5) applications received from the Executive Committee. The applicant's producer will be notified of any quotations and the administrative procedure to be followed if the applicant accepts coverage from a participant at the price quoted.

- (3) Under this Plan, an applicant will not be eligible to reapply to the Plan for the same coverage for the same risk if the insurer under this Plan previously cancelled for nonpayment of premium.

E. Market Unavailability:

The Plan is constituted to assist in resolving market availability problems or to determine that a non-availability of coverage does exist for those risks desiring insurance coverage not otherwise available in voluntary insurance markets.

F. Application Referral:

All applications for assistance by the Plan shall be submitted to the Indiana Voluntary Market Assistance Plan, 115 North Pennsylvania Street, Indianapolis, Indiana 46204. The Plan will deposit the application fee in a separate bank account established for the Plan and forward the properly completed application to the Producers Subcommittee.

G. Eligible Risks:

Any Indiana risk meeting the following eligibility requirements is eligible for assistance upon submission of a properly executed application form and documentation of the unavailability problem by a licensed Indiana insurance agent.

Eligibility Requirements

1. Three declinations, at least one from an Excess & Surplus Lines market.
  - (a) The agent must certify that the risk has been presented to all companies for which he is currently licensed and no company has voluntarily consented to write said risk.
2. Risk has not been offered coverage for a premium.
3. Risk has not been previously submitted to Indiana VMAP.
4. Indiana exposures only.

Ineligible coverages include workers compensation, employer's liability, pollution liability and motor vehicle insurance coverages.

Agents have no authority to bind coverage.

H. Forms and Coverages:

Policies offered through the Plan shall provide insurance on forms normally used by participating insurers, subject to such limits and terms that participating insurers are willing to offer.

I. Application Forms:

VMAP and ACCORD applications, and supplemental forms where required, should be completed in their entirety. Incomplete applications will be returned.

Applications must be accompanied by a \$50 non-refundable fee from the submitting agent, made payable to the Indiana VMAP.

J. Commissions:

A. Admitted Market Placements

(1) Agents licensed by accepting insurers.

The rate of commission payable to a submitting agent who is licensed by the accepting insurer shall not be fixed by this Plan of Operation. The commission shall be a matter of individual negotiation between the insurer and its licensed submitting agent.

(2) Agents not licensed by accepting insurers.

(a) Except as provided in subsection (b), the rate of commission payable to a submitting agent who has not been appointed by the insurer accepting an application shall not be fixed by this Plan of Operation. The commission shall be a matter of individual negotiation between the insurer and the submitting agent, provided that in no event shall the commission exceed ten percent of the premium.

(b) A direct writing insurer may elect not to pay the producing agent any commission; in this case, the agent may negotiate a fee with the applicant, not to exceed 10 percent of the premium.

B. Non-Admitted Market Placements

Placements in the non-admitted market must be referred by the submitting agent to a surplus lines agent. Licensed agents or brokers may negotiate a fee with the surplus lines agent.

K. Policy Changes, Endorsements, Renewals:

It is the express and sole purpose of the Plan to assist in the initial placement of coverage for those eligible applicants. The Plan shall have no involvement in the continuing insured/agent/insurer relationships which are performed in the normal course of the insurance market. Any questions, disputes or negotiations concerning subjects such as renewal ownership, renewal commissions, claim servicing, policy servicing, and other such subjects shall be handled by the parties involved in accordance with the applicable laws of the State of Indiana and the commonly accepted business practices of the participating markets.

L. Duration:

The Plan shall initially operate for a period of one year or until January 1, 1987. Thereafter, the Executive Committee shall consult with the Commissioner of Insurance to determine if there is a need for the Plan to continue beyond that date.

M. Fiscal Arrangement:

- A. The Executive Committee shall designate a fiscal agent for the Plan. The fiscal agent is authorized to receive and hold funds submitted to the Plan and to disburse them upon authorization of one other committee member. The funds may be used for the necessary expenses of the Producers Subcommittee, including printing, postage, mailing, telephone and such other expenses incurred by the Plan as the Executive Committee deems appropriate for payment.
- B. The fiscal agent shall maintain books and records of all receipts and disbursements and shall submit a quarterly financial statement to the Executive Committee. The Indiana Commissioner of Insurance or any Executive Committee member shall have access to said books and records during normal business hours.
- C. The fiscal agent shall maintain a bank account under the name of the "Indiana Voluntary Market Assistance Plan." All checks drawn upon the account of the Plan shall bear the signatures of the fiscal agent or such other person duly authorized by the Executive Committee.
- D. It is the policy of the Plan to make its operation self-supporting. If expenses from the Plan's operation exceed income from applications, such additional costs shall be prorated on the broadest possible voluntary basis as determined by the Executive Committee, and appropriate changes in application fees shall be made.

N. Indemnification:

- (a) Any person or member made or threatened to be made a party to an action, suit, or proceeding, because such person or member served on a committee of the Plan or was an officer or employee of the Plan, shall be indemnified by the Plan against all judgments, fines, amounts paid in settlement, reasonable costs and expenses including attorneys' fees and any other liability that may be incurred as a result of such action, or threatened action, suit, or proceeding. Such indemnification shall not be provided in relation to matters as to which such person or member shall be adjudged in such action, suit, or proceeding to be liable by reason of breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance or reckless disregard of the responsibilities in the performance of such person or member's ties or obligations to the Plan. With respect to any criminal actions or proceedings, indemnification shall only be provided when such person or member had reasonable cause to believe that his or its conduct was lawful. Such indemnification shall be provided whether or not such person or member is a member 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 Plan. Such indemnification shall not be exclusive to other rights such person or member may have and shall extend to the

successors, heirs, executors or administrators of such person or member. In the event of settlement or other termination of a matter before final adjudication, indemnification shall be provided only if the Executive Committee is advised by independent counsel that the person or member to be indemnified did not in counsel's opinion commit such breach of duty.

- (b) In each instance in which a question of indemnification arises, entitlement thereto, pursuant to the conditions set forth in subsection (a) of this section, shall be determined by the Executive Committee which shall also determine the time and manner of payment of such indemnification; provided, however, that a person or member 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 the subsection (a) of this section, shall be entitled to indemnification as authorized in such subsection. Nothing herein shall be deemed to bind a person or member who or which the Executive Committee has determined not to be entitled to indemnification, or to preclude such person or member from asserting the right to such indemnification by legal proceedings. 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.

MARKET AVAILABILITY SURVEY  
GENERAL LIABILITY

Company \_\_\_\_\_

Completed By \_\_\_\_\_ Date \_\_\_\_\_

Class/Coverage	Premises/ Operations (Y or N)	Products (Y or N)	Currently Writing? (Y or N)	Will Consider VMAP Requests? (Y or N)	Underwriting Comments*
1. Day Care Centers	_____	_____	_____	_____	_____
2. Nursing Homes	_____	_____	_____	_____	_____
3. Asbestos Removal or Installation	_____	_____	_____	_____	_____
4. Special Events	_____	_____	_____	_____	_____
5. Recreational Risks	_____	_____	_____	_____	_____
6. Liquor Liability	_____	_____	_____	_____	_____
a. Bars & Taverns	_____	_____	_____	_____	_____
b. Restaurants	_____	_____	_____	_____	_____
c. Motels & Hotels	_____	_____	_____	_____	_____
7. Contractors Liability	_____	_____	_____	_____	_____
8. Manufacturing	_____	_____	_____	_____	_____
a. Small	_____	_____	_____	_____	_____
b. Medium Size	_____	_____	_____	_____	_____
9. Oil & Gas Related Operations	_____	_____	_____	_____	_____
10. Municipal Liability	_____	_____	_____	_____	_____
a. All Coverages & Operations	_____	_____	_____	_____	_____
b. Selective Cover- ages Available	_____	_____	_____	_____	_____
11. Commercial Umbrella	_____	_____	_____	_____	_____
12. Directors & Officers	_____	_____	_____	_____	_____
13. Professional E&O	_____	_____	_____	_____	_____
a. Accountants	_____	_____	_____	_____	_____
b. Real Estate	_____	_____	_____	_____	_____
c. Other (specify)	_____	_____	_____	_____	_____
14. Other Std. Classes & Coverages	_____	_____	_____	_____	_____

\* Use reverse side, if necessary.

Requests for consideration from the Voluntary Market Assistance Program should be directed to the following person:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_