

Premium Finance Board

October 28, 2021

MINUTES

At the call of Assistant Attorney General (AAG) Glenn Kaplan, designee of Attorney General Maura Healey, a meeting of the Premium Finance Board, hereby known as the Board, was called to order at 11:02 a.m. through GoToWebinar.

Also present were other Board members, Mary Gallagher, Commissioner of Banks, and Cara Toomey, Counsel to the Commissioner of Insurance at the Division of Insurance (DOI). Cara Toomey is the designee on this Board for the Commissioner of Insurance.

Others present who are staff of the agencies represented on the Board include Heather Bennett, Arwen Thoman, Burt Feinberg, Mary Ellen Thompson, and Gia Kim.

After the call to order, the next item on the agenda was the opportunity for opening statements of the Board members. None of the Board members offered an opening statement.

The third agenda item was the approval of the minutes from the prior meeting held on May 25, 2021 via GoToWebinar. Gia Kim roll-called the Board members on a vote to approve the minutes. AAG Kaplan voted in favor of the motion, as did Cara Toomey and Commissioner Gallagher.

VOTED: to approve the prior Premium Finance Board meeting minutes as distributed to the Board members.

The fourth item on the agenda was discussion of the follow-up communications with the entities in the premium finance business that responded to the Board's initial outreach. Heather Bennett provided a summary of the follow-up communications, which were conducted by a subcommittee consisting of representatives of each of the Board's agencies: Arwen Thoman, Heather Bennett, Burt Feinberg, and Mary Ellen Thompson. The subcommittee spoke with Jason Calianos and IPFS Corporation representatives on June 23, 2021, and AFCO Credit Corporation/AFCO Acceptance Corporation and MAGNA Finance representatives on June 24, 2021. The entities provided follow-up information to their original submission to the Board, shared their perspective on consumer finance contracts, and answered questions on data points that can be readily provided to the Board.

AAG Kaplan pointed out that the Board's original Request for Information was relatively general and produced broad responses from the premium finance companies. AAG Kaplan asked the subcommittee their thoughts on the likelihood that, if the Board were to reach out to the premium finance companies with more specific requests, the companies would be able to produce the documents and information that the Board is seeking.

Heather Bennett confirmed that the subcommittee spoke with three premium finance companies, and the companies indicated that most of the specific data points raised during discussions were available or could be retrieved. Burt Feinberg added that the companies noted that the data points raised by the subcommittee were those that premium finance companies generally have available.

Commissioner Gallagher reiterated that the initial information the Board received was informative but high-level and anecdotal and was not helpful to the Board's task of determining if the rate is nondiscriminatory and equitable. Commissioner Gallagher questioned how the specific data points tie in to determining the Board's task at hand. AAG Kaplan invited the subcommittee to share their thoughts. AAG Kaplan also offered to share his thoughts on why the specific data points are of interest to the Board.

Arwen Thoman responded that the subcommittee's data request was aimed at determining the amount of profit the premium finance companies make through writing consumer premium finance contracts. She went on to indicate that the subcommittee discovered that a significant portion of consumer premium finance contracts finance auto insurance policies, many of which are written through the residual market, where policyholders classically struggle to afford their policies. Burt Feinberg expanded on Arwen Thoman's response, explaining that the data request seeks to determine the amount the companies are charging and the amount that the companies are receiving from actual collections and includes specific data points such as the fee amount, the term, and the monthly payment, among others.

Heather Bennett added that the subcommittee also received anecdotal information about companies that operate in all fifty states. Such companies consider all the markets they operate in and pursue strategies that benefit the company as a whole. Arwen Thoman commented that the percentage of the down payment required

by the finance companies may determine the likelihood of loss for the premium finance companies, and that companies may be competing for business by offering low down payments. She raised that when the data from the companies is collected, the Board may, for example, want to consider the issue of whether the rate and cap should perhaps be tied to the down payment.

AAG Kaplan emphasized the importance of knowing what is going on in the marketplace in order to observe how the rate is interacting with the marketplace. AAG Kaplan explained that, if premium finance companies are charging up to the ceiling, there is an argument worth exploring that the market is either not functioning properly to ensure that rates are held down themselves, or there are potentially other factors that the Board should be looking at to determine why the rates are up to the ceiling.

With respect to determining whether the rate is equitable, AAG Kaplan highlighted examining the affordability and the range of profitability. AAG Kaplan emphasized that the Board needs additional information to determine the factors that are most telling and identify next steps on obtaining that information. Commissioner Gallagher added that it is important to know the premium finance companies' expenses, as, if the companies have an overhead cost, the Board may not get a true sense of their profitability.

Commissioner Gallagher then questioned how the affordability or profitability intersects with demographics, and how this data may assist the Board with determining whether the rate is nondiscriminatory and equitable. AAG Kaplan asked the subcommittee if they had any thoughts in response to the Commissioner's inquiry.

Burt Feinberg proposed requesting granular data from the premium finance companies in order to receive specific information regarding the policyholders. Burt Feinberg pointed out that if the policies are in the residual market, the policyholders are likely residing in higher premium areas, areas with higher percentages of minority populations, and areas with lower incomes.

AAG Kaplan agreed that perhaps the Board should ask the premium finance companies for more granular data to get further information about the policyholders, such as the driver class and territory. Arwen Thoman noted that the premium finance companies indicated that it may be difficult for them to identify the

territory, as company agents may not input additional information beyond the policy number, policy type, effective date, carrier name, and premium. Arwen Thoman stated that the companies may, however, be able to provide contract-level data identifying borrowers' zip codes.

AAG Kaplan asked the subcommittee whether, if the Board receives contract-level data containing individual policyholder information, it would be possible to approach CAR to help identify which policies are residual market policies. Mary Ellen Thompson stated that CAR does not have this information. AAG Kaplan suggested that perhaps the data can be processed in a way to discern which policies are from the residual market.

Arwen Thoman recounted that, from Mary Ellen's information from CAR, about 18-33% of policies are premium financed. From June 2020 to 2021, 2,563 out of 14,000 assignments were financed, and from June 2019 to 2020, 7,363 out of 23,114 assignments (33 percent) were financed. Arwen Thoman commented that information on the number of premium finance contracts being written would provide the Board with a good sense of whether they are primarily residual market policies. Commissioner Gallagher stated that the most recently available Annual Call Report reflected 35,000 commercial contracts and 20,000 consumer contracts.

AAG Kaplan returned to the Commissioner's point that the Board should take into account the expense issues to determine profitability. AAG Kaplan raised the idea of asking the premium finance companies for more expense-related information or possibly asking the companies to provide a breakdown by policy type. Heather Bennett commented that one of the companies with whom the subcommittee spoke stated that profitability is on a branch level, and it may not be possible to break down the information. Burt Feinberg remarked that the expenses must be allocated in some manner in order for the information to be broken out by policy type.

AAG Kaplan then suggested the possibility of requesting more granular contract-by-contract data that would provide more information about the individual policyholders. Commissioner Gallagher questioned whether requesting granular contract-level data may be overly burdensome and raised the possible concern of receiving an overwhelming amount of data. Commissioner Gallagher commented whether requesting zip codes

would be sufficient, from which the Board may overlay census information. Commissioner Gallagher noted that if the vast majority of contracts are located in gateway cities, that could be telling for the Board.

AAG Kaplan noted that the Commissioner raised a fair point, but that having some data for individual policies may allow the Board to glean the zip code, an indication of whether the policy was in the residual market, and an indication of whether the policy was an auto policy, and from there, the Board may discern a pattern. AAG Kaplan expressed concern with making assumptions and noted that the Board may not need a large volume of data beyond the pertinent data points.

Arwen Thoman and Burt Feinberg pointed out that it may be more complicated for the premium finance companies to build these reports aggregated by zip code or policy type as opposed to simply transferring straightforward contract data. AAG Kaplan suggested that the subcommittee check in with the companies to learn which production methods would be more or less difficult. Arwen Thoman confirmed that the subcommittee can follow up with the companies.

AAG Kaplan raised that it would be helpful to check in with the companies to also address any of their concerns that are apart from the logistics of the data pull. Arwen Thoman commented that AAG Kaplan raised an interesting point. Arwen Thoman wondered whether the companies would have any confidentiality concerns surrounding the data request and what type of protections there are, if any, for guarding company information. AAG Kaplan asked if the other Board members had any thoughts on the matter.

Commissioner Gallagher responded that she discussed with her team on whether the Division of Banks (DOB) may solicit the information, as the DOB is the regulatory authority for the licenses. Commissioner Gallagher clarified that the statute requires that the Board act on its own, as opposed to having the DOB collect the data on behalf of the Board. Commissioner Gallagher advocated that any data collected by the Board must be aggregated in a way that prevents any potential confidentiality risks.

Burt Feinberg suggested utilizing internal codes for personal information to conceal the identities of the policyholder. Cara Toomey agreed with Burt Feinberg's suggestion and recalled that, for public records, the Division of Insurance redacts policy information. Cara Toomey emphasized that the Board should be clear

about what information should not be included in the data request, such as policy number. AAG Kaplan noted that while the name of the policyholder must be protected, it may be helpful to receive policy number data should the Board cross-check the companies' data with other data sources.

AAG Kaplan pointed out that the Board should think about the benefit of certain pieces of information and whether there is still concern if those particular pieces are not tied to the policyholder's name or other identifying details. Arwen Thoman raised an additional concern that, from the perspective of the premium finance companies, providing information to the Board may give an advantage to the companies' competitors. Arwen Thoman wondered whether there is a process from the Board that can shield the companies' information from their competitors.

AAG Kaplan returned to Cara Toomey's observation about public records and commented that there are several public records exemptions that can apply to data records. AAG Kaplan noted that should the DOB request the information, the DOB has statutory authority to determine the extent to which there is public interest and decide the level of restriction. AAG Kaplan explained that if the data is provided as confidential business information, there is an exemption that would prevent access to the data beyond the Board.

AAG Kaplan suggested that the DOB can use its statutory authority under M.G.L. c. 255C sec. 6 to acquire the information. AAG Kaplan added that the Office of the Attorney General (AGO) also has statutory authority to request the data, but that there lacks the additional language permitting the AGO to share the information with the DOB without court approval. AAG Kaplan then offered two alternatives for obtaining the data for the Board: all three agencies request the same information under their individual authorities, or the Board can issue a subpoena. AAG Kaplan indicated that the Board could issue the data request under latent authority or look to the regulations indicating the circumstances in which the Board may issue subpoenas. AAG Kaplan invite the other Board members to share their thoughts.

Cara Toomey remarked that it may make sense to follow up with the premium finance companies and request the data voluntarily as a first step. Commissioner Gallagher agreed with Cara Toomey's voluntary

approach and also noted that while the Board does not want to be burdensome, the Board does have a task at hand. AAG Kaplan also pointed out that the voluntary approach does not limit the Board's other options.

AAG Kaplan asked the subcommittee to contact the premium finance companies and request their feedback on the Board's data request. Heather Bennett confirmed that the subcommittee will reach back out to the companies for the data.

Heather Bennett asked whether the request will be contract-level data excluding policy number, or whether to request the dataset previously discussed and add in a request for zip code. AAG Kaplan suggested that the request be for contract-level data and to ask for identifiers, such as zip code, and whether that approach may be preferable to aggregating the data. AAG Kaplan asked Burt Feinberg if he had any thoughts. Burt Feinberg agreed with AAG Kaplan's suggestion.

Cara Toomey asked the subcommittee the length of time the companies would need to pull the data. Burt Feinberg responded that it may take a longer amount of time to provide aggregations as opposed to providing the underlying granular data. Arwen Thoman added that the subcommittee will ask the companies whether it would be simpler for them to produce the data as individual contracts with the policy number and zip code included, as opposed to asking them for aggregated data.

AAG Kaplan moved to the next agenda item of scheduling the next Board meeting. AAG Kaplan stated that the Board will defer to the subcommittee, as the subcommittee will need additional time to schedule calls and follow-up with the premium finance companies.

AAG Kaplan then raised a final administrative item, which was to make a motion that the Board vote to make Gia Kim the Executive Secretary of the Premium Finance Board. Gia Kim roll-called the Board members on the vote, and all Board members voted in favor of the motion.

VOTED: to approve Gia Kim to be the Executive Secretary of the Premium Finance Board.

AAG Kaplan then motioned to adjourn the meeting, and Commissioner Gallagher and Cara Toomey agreed.

VOTED: to adjourn at 12:03pm.