

SERFF Tracking Number: ARKS-125836629 State: Arkansas  
Filing Company: NCCI State Tracking Number: # 2039018 \$100  
Company Tracking Number:  
TOI: 16.0 Workers Compensation Sub-TOI: 16.0000 WC Sub-TOI Combinations  
Product Name: n/a  
Project Name/Number: /

## Filing at a Glance

Company: NCCI

Product Name: n/a

TOI: 16.0 Workers Compensation

Sub-TOI: 16.0000 WC Sub-TOI Combinations

Filing Type: Rule

SERFF Tr Num: ARKS-125836629 State: Arkansas

SERFF Status: Closed

Co Tr Num:

Co Status:

Author:

Date Submitted: 09/29/2008

State Tr Num: # 2039018 \$100

State Status: Fees received

Reviewer(s): Betty Montesi, Carol Stiffler

Disposition Date: 09/29/2008

Disposition Status: Approved

Effective Date (New): 10/01/2008

Effective Date (Renewal):

Effective Date Requested (New):

Effective Date Requested (Renewal):

State Filing Description:

## General Information

Project Name:

Project Number:

Reference Organization:

Reference Title:

Filing Status Changed: 09/29/2008

State Status Changed: 09/29/2008

Corresponding Filing Tracking Number:

Filing Description:

Status of Filing in Domicile:

Domicile Status Comments:

Reference Number:

Advisory Org. Circular:

Deemer Date:

## Company and Contact

### Filing Contact Information

NA NA,

NA

NA, AR 00000

NA@NA.com

(123) 555-4567 [Phone]

### Filing Company Information

SERFF Tracking Number: ARKS-125836629

State: Arkansas

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Sub-TOI: 16.0000 WC Sub-TOI Combinations

Product Name: n/a

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NCCI  
901 Peninsula Corporate Circle  
Boca Raton, FL 33487  
(561) 893-3186 ext. [Phone]

CoCode:  
Group Code:  
Group Name:  
FEIN Number: 65-0439698

State of Domicile: Florida  
Company Type:  
State ID Number:

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SERFF Tracking Number: ARKS-125836629

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Product Name: n/a

Project Name/Number: /

## Filing Fees

Fee Required? No

Retaliatory? No

Fee Explanation:

Per Company: No

SERFF Tracking Number: ARKS-125836629

State: Arkansas

Filing Company: NCCI

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Product Name: n/a

Project Name/Number: /

## Correspondence Summary

### Dispositions

Status	Created By	Created On	Date Submitted
Approved	Carol Stiffler	09/29/2008	09/29/2008

SERFF Tracking Number: ARKS-125836629

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Product Name: n/a

Project Name/Number: /

## Disposition

Disposition Date: 09/29/2008

Effective Date (New): 10/01/2008

Effective Date (Renewal):

Status: Approved

Comment:

Rate data does NOT apply to filing.

SERFF Tracking Number: ARKS-125836629

State: Arkansas

Filing Company: NCCI

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Company Tracking Number:

TOI: 16.0 Workers Compensation

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Product Name: n/a

Project Name/Number: /

<b>Item Type</b>	<b>Item Name</b>	<b>Item Status</b>	<b>Public Access</b>
<b>Supporting Document</b>	Uniform Transmittal Document-Property & Casualty	Approved	No
<b>Supporting Document</b>	NAIC Loss Cost Filing Document for Workers' Compensation	Approved	No
<b>Supporting Document</b>	NAIC loss cost data entry document	Approved	No
<b>Supporting Document</b>	ARKS-125836629		No

*SERFF Tracking Number:* ARKS-125836629

*State:* Arkansas

*Filing Company:* NCCI

*State Tracking Number:* # 2039018 \$100

*Company Tracking Number:*

*TOI:* 16.0 Workers Compensation

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*Product Name:* n/a

*Project Name/Number:* /

## **Rate Information**

Rate data does NOT apply to filing.

SERFF Tracking Number: ARKS-125836629

State: Arkansas

Filing Company: NCCI

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TOI: 16.0 Workers Compensation

Sub-TOI: 16.0000 WC Sub-TOI Combinations

Product Name: n/a

Project Name/Number: /

## Supporting Document Schedules

### Review Status:

**Satisfied -Name:** ARKS-125836629

09/29/2008

### Comments:

### Attachments:

ARKS-125836629.pdf

ARKS-125836629-1.pdf

ARKS-125836629-2.pdf



National Council on Compensation Insurance, Inc.

ARKS-125836629

rec'd 100.00

CK 2039018

AR PC-06-018324

CS

Terri Robinson  
State Relations Executive  
Regulatory Service Division

February 27, 2006

Approved until withdrawn  
or revoked

OCT 01 2008

Arkansas Insurance Department  
By: CKS

Honorable Julie Benafield Bowman  
Commissioner of Insurance  
Arkansas Insurance Department  
1200 West Third Street  
Little Rock, Arkansas 72201

Re: **Item RM-W-8029 - Rule 4-D-Voluntary Coverage Assistance Program (VCAP Service) and Related Amendments to Rule 4-A-WCIP**

Dear Commissioner Bowman:

In accordance with the applicable statutes and regulations of your jurisdiction, I am filing for your consideration and approval the above-captioned item. This item is to be effective July 1, 2006, applicable only to new assigned risk applications.

The purpose of this item is to establish a voluntary coverage assistance program through NCCI's **VCAP<sup>®</sup> Service** as a supplemental program to NCCI's Workers Compensation Insurance Plan.

The residual market (market of last resort) is intended to provide insurance for employers that are statutorily required to obtain workers compensation and employers liability coverage, but are unable to secure coverage in the voluntary market. As part of NCCI's strategic vision of maintaining and depopulating the residual market, **VCAP<sup>®</sup> Service** redirects opportunities for employers' coverage to voluntary market insurers, which generally provide coverage at a lower cost. **VCAP<sup>®</sup> Service** provides an additional source for producers and employers to secure voluntary workers compensation coverage prior to entering the residual market for coverage.

The attached filing memorandum explains the purpose, background, proposal, impact, and implementation of this change.

NCCI, Inc. is making this filing in its capacity as Plan Administrator pursuant to the authority of Arkansas and in reference by the members and subscribers of the National Council on Compensation Insurance, Inc. who are now writing or will write workers compensation insurance in Arkansas.. If you have any questions or need further information, please contact me.

Respectfully submitted,

Terri Robinson  
State Relations Executive

TR:ah

RECEIVED

MAR 01 2006

PROPERTY AND CASUALTY DIVISION  
ARKANSAS INSURANCE DEPARTMENT



**Carol Stiffler**

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**From:** Terri\_Robinson@NCCI.COM  
**Sent:** Friday, September 26, 2008 12:32 PM  
**To:** Carol Stiffler  
**Cc:** Jennifer\_Stane@NCCI.COM; Suzanne\_Peterson@ncci.com  
**Subject:** Re: VCAP filing---RM-W-8029

How about 10/1/09? It may be a little after that til we get all parties on board, but it won't hurt anything to have it effective. It will allow existing carrier participants to just activate their existing criteria for the state of Arkansas if they choose to.

Great news! Have a nice weekend!

-----"Carol Stiffler" <Carol.Stiffler@arkansas.gov> wrote: -----

To: <terri\_robinson@ncci.com>, <Jennifer\_Stane@NCCI.COM>, <Suzanne\_Peterson@ncci.com>  
From: "Carol Stiffler" <Carol.Stiffler@arkansas.gov>  
Date: 09/26/2008 12:09PM  
Subject: VCAP filing---RM-W-8029

I am approving the VCAP filing. Can you give me an effective date that you want?

Carol Stiffler

Arkansas Insurance Dept.

Property & Casualty Division

1200 W. 3rd St .

Little Rock , AR 72201-1904

501-371-2807

501-371-2748 (FAX)

carol.stiffler@arkansas.gov

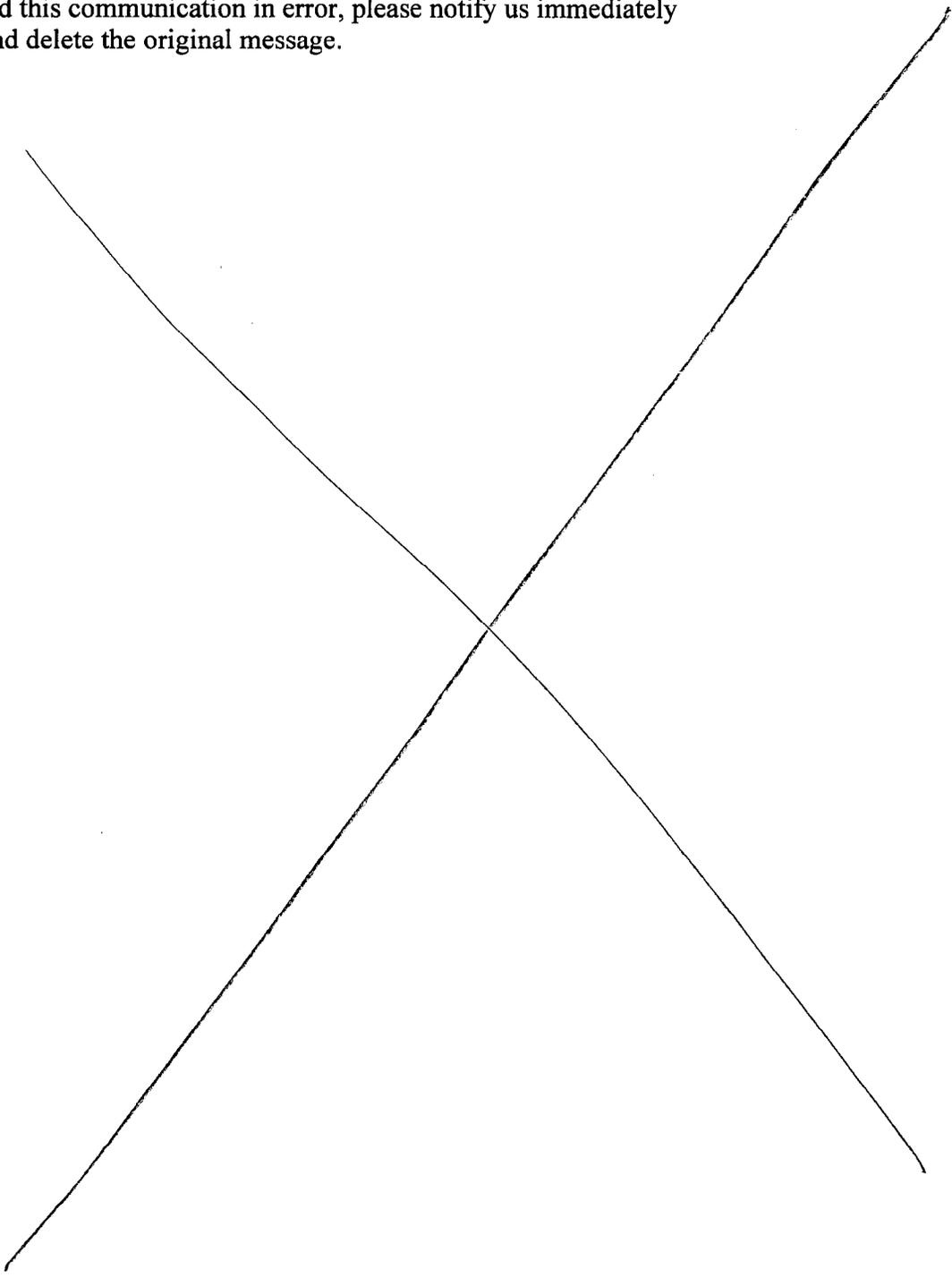
The information contained in this e-mail message is intended only for

9/29/2008

2



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## FILING MEMORANDUM

### ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP<sup>®</sup> SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP

#### PURPOSE

The purpose of this item is to establish a voluntary coverage assistance program through NCCI's **VCAP<sup>®</sup> Service** as a supplemental program to NCCI's Workers Compensation Insurance Plan. **VCAP<sup>®</sup> Service** will appear as residual market Rule 4-D in NCCI's *Basic Manual for Workers Compensation and Employers Liability Insurance*.

The residual market (market of last resort) is intended to provide insurance for employers that are statutorily required to obtain workers compensation and employers liability coverage, but are unable to secure coverage in the voluntary market. As part of NCCI's strategic vision of maintaining and depopulating the residual market, **VCAP<sup>®</sup> Service** redirects opportunities for employers' coverage to voluntary market insurers, which generally provide coverage at a lower cost. **VCAP<sup>®</sup> Service** provides an additional source for producers and employers to secure voluntary workers compensation coverage prior to entering the residual market for coverage.

#### BACKGROUND

Employers and producers often have limited access to voluntary coverage providers that may be willing to write voluntary workers compensation coverage.

**VCAP<sup>®</sup> Service** applies to all employers seeking coverage through the residual market in which NCCI is the Plan Administrator, and is offered through NCCI's Residual Market Application Processing System (**RMAPS<sup>®</sup> Service**). Through this free, Internet-based application, voluntary coverage providers will have the opportunity to evaluate potential employers that submit applications through the residual market.

To participate in NCCI's **VCAP<sup>®</sup> Service**, voluntary coverage providers must meet the following eligibility requirements:

1. Participate in the Plan as a Pool participant or as a residual market assigned carrier
2. Be licensed to write workers compensation and employers liability insurance in the state
3. Have a minimum of a B+ financial rating as published by A.M. Best
4. Agree to **VCAP<sup>®</sup> Service** contractual arrangements and/or procedures established by NCCI and/or the Plan Administrator

All assigned risk applications (electronic, phone-in, or mail-in) submitted to NCCI as Plan Administrator are processed through **VCAP<sup>®</sup> Service** to determine if they match the preselected criteria specified by a participating voluntary coverage provider. Producers and employers submitting applications will receive a real-time electronic notification if a voluntary coverage provider is interested in providing coverage.

Participating voluntary coverage providers establish underwriting criteria in NCCI's **VCAP<sup>®</sup> Service**. Then, **VCAP<sup>®</sup> Service** will notify the voluntary coverage providers when an applicant matches their preselected criteria for coverage. Voluntary coverage providers will then be given the option to either extend or decline an offer of voluntary coverage upon further underwriting review. NCCI will provide copies of the ACORD<sup>®</sup> 130, reported applicant history, and the residual market premium calculation to assist the voluntary coverage provider in deciding whether to offer coverage.

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FILING MEMORANDUM

**ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP<sup>®</sup> SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP**

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Any application being considered for voluntary coverage will be temporarily suspended from further assigned risk processing. This includes manual processing, research, and/or assignment to a Workers Compensation Insurance Plan (WCIP) assigned carrier. There is no impact to the employer's established effective date during this time.

The producer and/or employer and the voluntary coverage provider work together to negotiate a reasonable offer of voluntary coverage. Producers and employers are required to accept any reasonable offer of voluntary coverage or the employer becomes ineligible for coverage in the WCIP. The first voluntary coverage provider to receive acceptance of an offer from the producer or employer will confirm coverage and issue the policy. Once accepted, the effective date is determined based on the date the policy would have been effective in the residual market in accordance with NCCI's **Basic Manual** Rule 4-A-3-d.

Producers cannot be notified of a specific voluntary coverage provider's interest until the time of application. However, NCCI will advise the producer upon application submission that there may be a match and provide further explanation of the **VCAP<sup>®</sup> Service**.

Producers are not required to be under contract or licensed with the voluntary coverage provider, but they can use the first policy period to develop a business relationship. Agreements between the producer and the voluntary coverage provider are exclusively between the two parties, do not include NCCI, and are not part of the filed and approved WCIP. The commission rate is negotiated directly between the producer and voluntary coverage provider, and should be based on generally accepted business practices for the payment of commissions in the voluntary market. Upon renewal, the voluntary coverage provider may renew or nonrenew the policy. If nonrenewed, the risk can submit a new application with the same or alternate producer to reapply for coverage through the WCIP.

Employers that are not offered coverage in the voluntary market will continue through the residual market via NCCI's **RMAPS<sup>®</sup> Service**.

**PILOT PROGRAM**

*David Pearson*  
NCCI has conducted a pilot program for **VCAP<sup>®</sup> Service** in six states. This program has been successful in providing opportunities for voluntary coverage to employers. A typical month showed the following results in our pilot states of AL, CT, DC, IL, NH, and VT:

- Approximately 3,000 applications worth more than \$12 million in premium are processed and run through **VCAP<sup>®</sup> Service**
- 743 or 25% of these applications are matched to a voluntary coverage provider for additional review
- 120 or 16% of the matched applications receive an offer for voluntary coverage or 4% of the total applications
- These policies represent almost \$500,000 in assigned risk premium removed from the residual market
- The savings was 15.5% or \$635 per policy to the employer (results vary by state)

During the pilot period from July 2004 to July 2005, a total of \$4,274,439 of premium was removed from the residual market in the pilot states.

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## FILING MEMORANDUM

### ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP<sup>®</sup> SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP

#### PROPOSAL

It is proposed that a voluntary coverage assistance program through NCCI's **VCAP<sup>®</sup> Service**, as contained in the attached exhibits, be adopted. The following is a summary of each of the exhibits included in this item filing package:

- **Exhibits 1–3** detail the changes to NCCI's **Basic Manual** for **VCAP<sup>®</sup> Service**
- **Exhibits 4–5** detail the changes to NCCI's **Basic Manual** Rule 4-A-Workers Compensation Insurance Plan (WCIP)
- **Exhibits 6–7** detail the changes to NCCI's **Basic Manual** for the Arizona Workers Compensation Assigned Risk Plan
- **Exhibits 8–9** detail the changes to NCCI's **Basic Manual** for the New Mexico Workers Compensation Assigned Risk Pool
- **Exhibits 10–11** detail the changes to NCCI's **Basic Manual** for the Oregon Workers Compensation Insurance Plan
- **Exhibits 12–13** detail the changes to NCCI's **Basic Manual** for the Virginia Workers Compensation Insurance Plan
- **Exhibit 14** details the changes to NCCI's **Assigned Risk Supplement to the Basic Manual for Workers Compensation and Employers Liability Insurance** which must be filed in the state of Kansas and is for informational purposes only in all other NCCI Plan Administered states

In Georgia, it is proposed that **Basic Manual** Rule 4-D be adopted and, upon approval of this item, the Georgia **Basic Manual** Miscellaneous Rule for **VCAP<sup>®</sup> Service** be withdrawn.

#### IMPACT

The establishment of **VCAP<sup>®</sup> Service** is estimated to help over 3,000 employers per year, valued at \$15 million in annual residual market premium, find voluntary workers compensation coverage. Assuming no growth in the residual market and based on the 2004 combined ratio of 116.5%, the projected industry savings is expected to be \$12.8 million over five years, with a 4% depopulation rate.

NCCI's **VCAP<sup>®</sup> Service** offers a number of benefits to users and the workers compensation system, including without limitation:

- Slowing the repopulation of the residual market and potentially reducing operating losses for the industry
- Providing producers and employers with expanded access to voluntary market insurance
- Expanding voluntary coverage providers' base of potential insureds that meet their specified underwriting criteria
- Delivering real-time electronic notification of potential applicants to the producers and to participating voluntary coverage providers with matching criteria

#### IMPLEMENTATION

It is proposed that the attached exhibits be implemented:

The enclosed materials are copyrighted materials of the National Council on Compensation Insurance, Inc. ("NCCI"). The use of these materials may be governed by a separate contractual agreement between NCCI and its licensees such as an affiliation agreement between you and NCCI. Unless permitted by NCCI, you may not copy, create derivative works (by way of example, create or supplement your own works, databases, software, publications, manuals, or other materials), display, perform, or use the materials, in whole or in part, in any media. Such actions taken by you, or by your direction, may be in violation of federal copyright and other commercial laws. NCCI does not permit or acquiesce such use of its materials. In the event such use is contemplated or desired, please contact NCCI's Legal Department for permission.

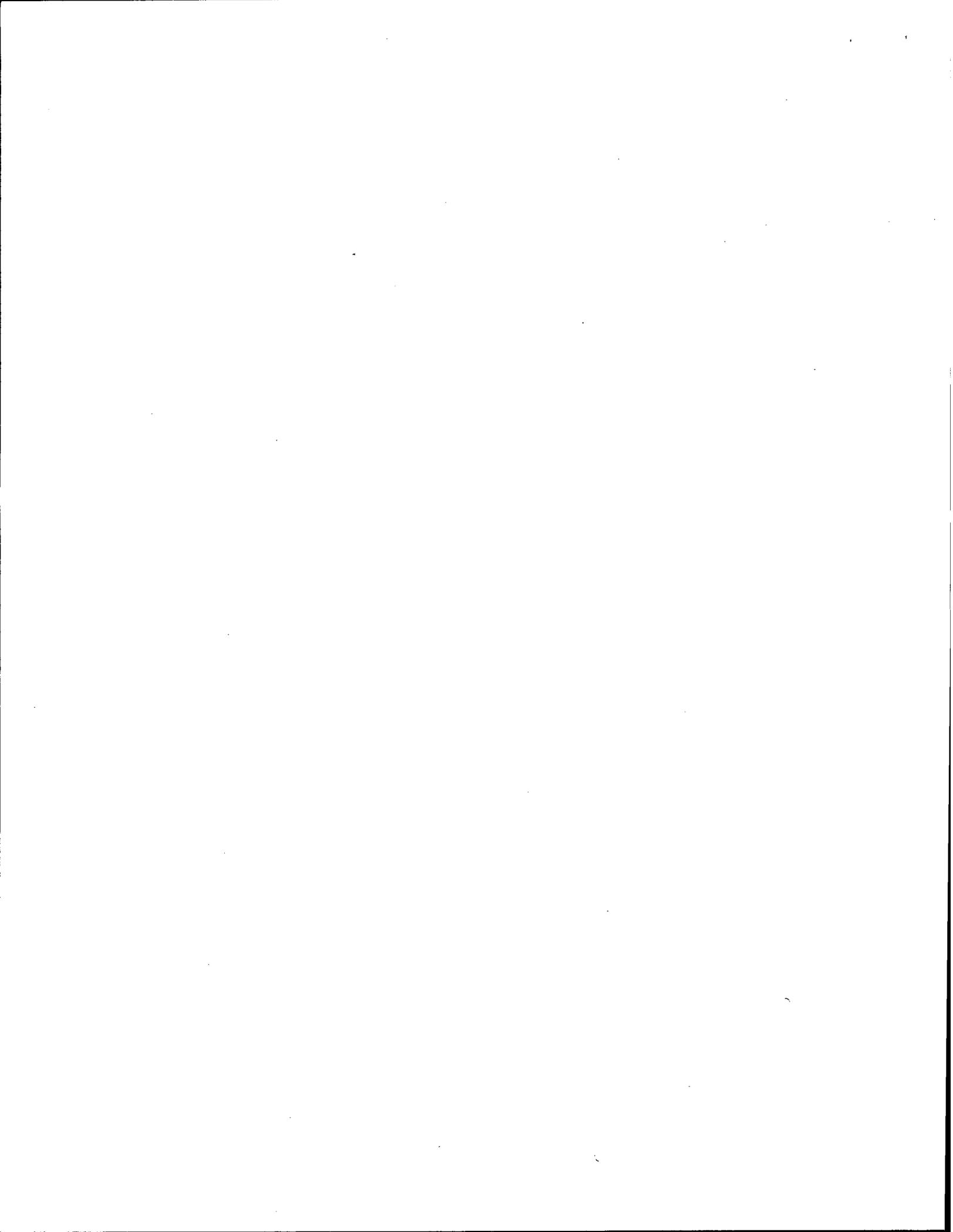
FILING MEMORANDUM

**ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP®  
SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP**

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- In all states, except Virginia, effective 12:01 a.m. on July 1, 2006, applicable only to new assigned risk applications
- In Virginia, effective only for new assigned risk applications submitted effective on and after 12:01 a.m. on July 1, 2006

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**ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP<sup>®</sup> SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP**

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**EXHIBIT 1  
BASIC MANUAL—2001 EDITION  
RULE 4 - WORKERS COMPENSATION INSURANCE PLAN RULES****D. Voluntary Coverage Assistance Program (VCAP<sup>®</sup> Service)****1. Introduction**

NCCI's **VCAP<sup>®</sup> Service** operates as a supplemental program for all employers applying for assigned risk coverage through the Workers Compensation Insurance Plan (WCIP or Plan). The WCIP is administered by NCCI as Plan Administrator, as defined in NCCI's **Basic Manual for Workers Compensation and Employers Liability Insurance** Rule 4-A-2-p. It is designed to provide an additional source for producers and employers to secure workers compensation coverage in the voluntary market and will operate in conjunction with NCCI's Residual Market Application Processing System (**RMAPS<sup>®</sup> Service**).

**VCAP<sup>®</sup> Service** promotes depopulation of the residual market by redirecting opportunities for employers' coverage to voluntary market insurers, which generally provide coverage at a lower cost.

**2. Definitions****a. Application Submission Methods**

The methods approved by the Plan Administrator, in which good faith eligible employers may submit completed ACORD<sup>®</sup> 130 and 133 applications for coverage through the WCIP, are as follows:

- Online—Through [ncci.com](http://ncci.com) and NCCI's **RMAPS<sup>®</sup> Online Application Service**
- Mail—The U.S. Postal Service or private overnight delivery service
- Telephone—By contacting the Plan Administrator

**b. Criteria**

Underwriting specifications designated by a participating voluntary coverage provider to identify the types of employers processed through NCCI's **VCAP<sup>®</sup> Service** for underwriting evaluation and potential placement in the voluntary market.

**c. Employer**

Any business organization or enterprise that is required by state law, regulation, and/or rule to maintain workers compensation insurance in this state or state(s). The term includes any business organization or enterprise that is or was affiliated at any time as a result of common management or common ownership.

**d. NCCI's RMAPS<sup>®</sup> Service**

Automated application processing system for residual market applications submitted under NCCI's Workers Compensation Insurance Plan.

**e. NCCI's VCAP<sup>®</sup> Service**

A free Internet-based application designed to provide an additional source for producers and employers to secure workers compensation insurance in the voluntary market.



**ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP<sup>®</sup> SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP**

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**EXHIBIT 1 (CONT'D)  
BASIC MANUAL—2001 EDITION  
RULE 4 - WORKERS COMPENSATION INSURANCE PLAN RULES****f. National Workers Compensation Reinsurance Pool or National Pool**

A contractual arrangement among participating insurers that serves as a reinsurance facility for workers compensation insurance in a number of states and that is administered by the National Council on Compensation Insurance, Inc

**g. Producer**

A licensed insurance agent, broker, or insurance representative, as defined in the state insurance law, regulation, and/or rule, whose privileges under the WCIP have not been suspended or revoked, designated by the employer or applicant applying under the WCIP to secure and maintain workers compensation and employers liability insurance on behalf of the employer. For purposes of this WCIP and/or **VCAP<sup>®</sup> Service**, the producer is considered to be acting on behalf of the insured or employer applying for coverage under the WCIP and not as an agent of the Plan Administrator or of any assigned carrier for Plan business.

**h. Reasonable Offer of Voluntary Coverage**

Any offer for voluntary coverage where the total estimated annual premium is less than or equal to the assigned risk total estimated annual premium including any applicable assigned risk surcharges and/or pricing programs for all comparable coverages.

Subject to the Plan Administrator's discretion and without limitation, the following are not considered a reasonable offer of voluntary coverage:

- Offer does not provide all of the required coverage (i.e., carrier cannot provide federal coverage or limits of liability)
- A deductible or deposit that is a financial burden to the employer as determined by the producer and/or employer
- Carrier's A.M. Best financial rating status is below that required by the producer and/or employer

**i. VCAP<sup>®</sup> Service User**

An employee or other designated representative of a participating voluntary coverage provider that is authorized to access **VCAP<sup>®</sup> Service** on behalf of the participating voluntary coverage provider.

**j. Workers Compensation Insurance Plan (WCIP or Plan)**

A program established by state insurance regulatory authorities whereby eligible employers unable to secure coverage in the voluntary market may secure workers compensation insurance.

**3. General Explanation****a. Voluntary Coverage Provider Eligibility Requirements**

Voluntary coverage providers must meet the following minimum eligibility requirements to participate in NCCI's **VCAP<sup>®</sup> Service**:

- (1) Participate in the Plan as a Pool participant or as a residual market assigned carrier
- (2) Be licensed to write workers compensation and employers liability insurance in the state in which NCCI's **VCAP<sup>®</sup> Service** has been approved



**ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP<sup>®</sup> SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP**

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**EXHIBIT 1 (CONT'D)**  
**BASIC MANUAL—2001 EDITION**  
**RULE 4 - WORKERS COMPENSATION INSURANCE PLAN RULES**

- (3) Have a minimum of a B+ financial rating as published by A.M. Best
- (4) Agree to **VCAP<sup>®</sup> Service** contractual arrangements and/or procedures established by NCCI and/or the Plan Administrator

**b. Voluntary Coverage Provider Underwriting Criteria**

Voluntary coverage providers participating in NCCI's **VCAP<sup>®</sup> Service** will establish certain underwriting criteria that include:

- (1) Participating companies\*
- (2) Governing state(s)\*
- (3) Governing class code(s)\*
- (4) Estimated premium range\*
- (5) Experience rating modification range
- (6) Excluded zip code(s)
- (7) Business Type (existing, new or all)
- (8) Number of employees
- (9) Include/exclude coverage for:
  - Coal Mine
  - USL&H
  - Professional Employer Organization (PEO) Arrangements
  - Temporary Arrangement
- (10) Banking information (for deposit premium transfer)\*

\* Required Field

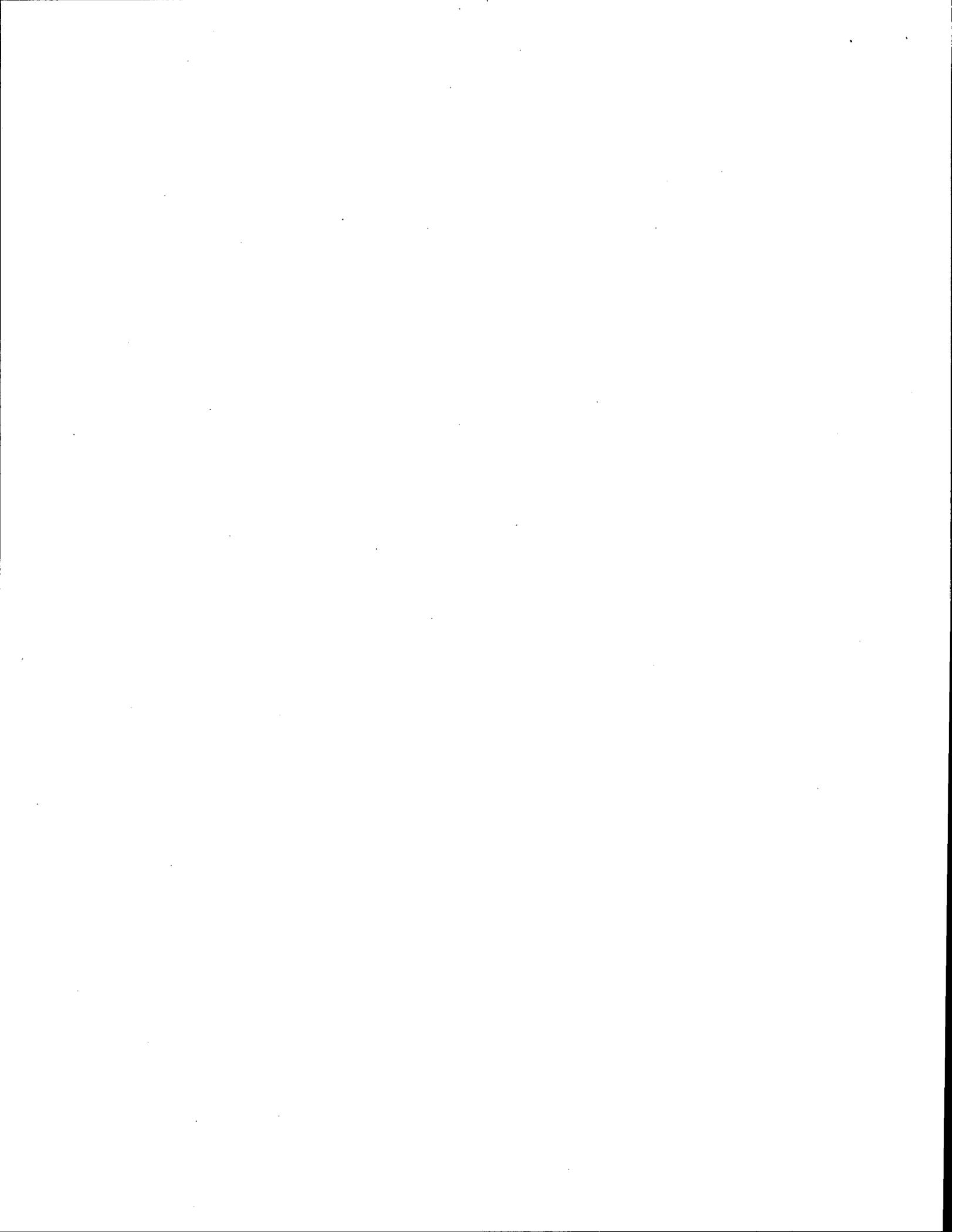
**c. Application Verification**

All assigned risk applications (electronic, phone-in, or mail-in) submitted to NCCI as Plan Administrator are processed through **VCAP<sup>®</sup> Service** to determine if they match any of the preselected criteria specified by a participating voluntary coverage provider.

**d. Procedures**

All assigned risk applications (electronic, phone-in, or mail-in) submitted to NCCI as Plan Administrator are processed through **VCAP<sup>®</sup> Service** to determine if they match the preselected criteria specified by a participating voluntary coverage provider. If an employer matches the preselected criteria specified by a participating voluntary coverage provider, a real-time electronic notification will inform the voluntary coverage provider and the producer and/or employer that the applicant meets the preselected criteria.

- (1) The transactions to develop and accept a voluntary offer will take place directly between the voluntary coverage provider and the producer and/or employer.
- (2) The commission rate is negotiated directly between the producer and voluntary coverage provider. The producer commission should not be less than the amount of the producer fee that would be paid had the policy been written through the residual market. For additional information, refer to the producer fee percentage scales in NCCI's **Assigned Risk Supplement to the Basic Manual for Workers Compensation and Employers Liability**



ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP®  
SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP

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EXHIBIT 1 (CONT'D)  
BASIC MANUAL—2001 EDITION  
RULE 4 - WORKERS COMPENSATION INSURANCE PLAN RULES

**Insurance.** The producer commission should otherwise be based on generally accepted business practices for the payment of commissions in the voluntary market.

- (3) If an employer meets the preselected criteria of multiple voluntary coverage providers, the application information will be sent to all such voluntary coverage providers.
- (4) The voluntary coverage provider must use sound underwriting judgment when determining whether an offer of voluntary coverage will be made, and may, at its discretion, either extend an offer or decline an offer of voluntary coverage to the employer.
- (5) Applications being considered for voluntary coverage will be temporarily suspended from further **RMAPS® Service** processing. The effective date of coverage will be determined based on the date the policy would have been effective in the residual market in accordance with NCCI's **Basic Manual** Rule 4-A-3-d.
- (6) Voluntary coverage providers will be allotted up to three business days, including the date the match is identified, to review the application and determine whether they want to extend an offer of voluntary coverage. NCCI will provide copies of the ACORD® 130, application history, and the residual market premium calculation to assist the voluntary coverage provider in deciding whether to offer coverage.
- (7) The producer and/or employer and the voluntary coverage provider will work together to negotiate a reasonable offer of voluntary coverage. The producer and/or employer or the voluntary coverage provider may request an additional day to review the application which may be granted at the discretion of the Plan Administrator.
- (8) The first voluntary coverage provider to receive an acceptance of an offer from the producer or employer will confirm coverage and issue the policy.
- (9) The voluntary coverage provider, producer, and employer must agree to all of the terms and conditions of the offer, including the acceptance of the employer's producer. Upon renewal, the voluntary coverage provider may renew or nonrenew the policy. Any agreements between the producer and the voluntary coverage provider are exclusively between the two parties, do not include NCCI, and are not part of NCCI's filed and approved Workers Compensation Insurance Plan (WCIP).
- (10) The producer or employer must accept any reasonable offer of voluntary coverage made by a voluntary coverage provider participating in NCCI's **VCAP® Service**.
- (11) The voluntary coverage provider will confirm a voluntary offer of coverage through NCCI's **VCAP® Service** within one business day of the producer or employer accepting a reasonable offer of voluntary coverage.
- (12) Employers that are not extended an offer of voluntary coverage will be assigned to a residual market assigned carrier through NCCI's **RMAPS® Service**, subject to all terms, conditions and/or eligibility requirements of NCCI's Workers Compensation Insurance Plan.

e. **Deposit Premium**

For the purpose of transferring deposit premium funds between NCCI and a voluntary coverage provider, all voluntary coverage providers wishing to participate in NCCI's **VCAP® Service** must provide banking information—Authorization Agreement for Automatic Processing of ACH Credit/Debit Transactions—to the Plan Administrator.

ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (**VCAP**<sup>®</sup>  
**SERVICE**) AND RELATED AMENDMENTS TO RULE 4-A-WCIP

EXHIBIT 2 - STATE SPECIFIC RULES APPLYING IN GEORGIA  
BASIC MANUAL—2001 EDITION

RULE 4 - D - VOLUNTARY COVERAGE ASSISTANCE PROGRAM (**VCAP**<sup>®</sup> **SERVICE**)

3. GENERAL EXPLANATION

d. Procedures

Change Rule 4–D–3–d as follows:

All assigned risk applications (electronic, phone-in, or mail-in) submitted to NCCI as Plan Administrator are processed through **VCAP**<sup>®</sup> **Service** to determine if they match the preselected criteria specified by a participating voluntary coverage provider. If an employer matches the preselected criteria specified by a participating voluntary coverage provider, a real-time electronic notification will inform the voluntary coverage provider and the producer and/or employer that the applicant meets the preselected criteria.

- (1) The transactions to develop and accept a voluntary offer will take place directly between the voluntary coverage provider and the producer and/or employer.
- (2) The producer commission should be the same as that paid in the voluntary market.
- (3) If an employer meets the preselected criteria of multiple voluntary coverage providers, the application information will be sent to all such voluntary coverage providers.
- (4) The voluntary coverage provider must use sound underwriting judgment when determining whether an offer of voluntary coverage will be made, and may, at its discretion, either extend an offer or decline an offer of voluntary coverage to the employer.
- (5) Applications being considered for voluntary coverage will be temporarily suspended from further **RMAPS**<sup>®</sup> **Service** processing. The effective date of coverage will be determined based on the date the policy would have been effective in the residual market in accordance with NCCI's **Basic Manual** Rule 4-A-3-d.
- (6) Voluntary coverage providers will be allotted up to three business days, including the date the match is identified, to review the application and determine whether they want to extend an offer of voluntary coverage. NCCI will provide copies of the ACORD<sup>®</sup> 130, application history, and the residual market premium calculation to assist the voluntary coverage provider in deciding whether to offer coverage.
- (7) The producer and/or employer and the voluntary coverage provider will work together to negotiate a reasonable offer of voluntary coverage. The producer and/or employer or the voluntary coverage provider may request an additional day to review the application which may be granted at the discretion of the Plan Administrator.
- (8) The first voluntary coverage provider to receive an acceptance of an offer from the producer or employer will confirm coverage and issue the policy.
- (9) The voluntary coverage provider, producer, and employer must agree to all of the terms and conditions of the offer, including the acceptance of the employer's producer. Upon renewal, the voluntary coverage provider may renew or nonrenew the policy. Any agreements between the producer and the voluntary coverage provider are exclusively between the two parties, do not include NCCI, and are not part of NCCI's filed and approved Workers Compensation Insurance Plan (WCIP).
- (10) The producer or employer must accept any reasonable offer of voluntary coverage made by a voluntary coverage provider participating in NCCI's **VCAP**<sup>®</sup> **Service**.
- (11) The voluntary coverage provider will confirm a voluntary offer of coverage through NCCI's **VCAP**<sup>®</sup> **Service** within one business day of the producer or employer accepting a reasonable offer of voluntary coverage.
- (12) Employers that are not extended an offer of voluntary coverage will be assigned to a residual market assigned carrier through NCCI's **RMAPS**<sup>®</sup> **Service**, subject to all terms, conditions and/or eligibility requirements of NCCI's Workers Compensation Insurance Plan.



**ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP<sup>®</sup> SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP**

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**EXHIBIT 3 - STATE SPECIFIC RULES APPLYING IN OREGON  
BASIC MANUAL—2001 EDITION  
RULE 4 - D- VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP<sup>®</sup> SERVICE)  
3. GENERAL EXPLANATION**

**a. Voluntary Coverage Provider Eligibility Requirements**

Change Rule 4–D–3–a as follows:

Voluntary coverage providers must meet the following minimum eligibility requirements to participate in NCCI's **VCAP<sup>®</sup> Service**:

- (1) Participate in the Plan as a Pool participant or as a residual market assigned carrier
- (2) Be licensed to write Workers Compensation Insurance under ORS Chapter 731 or be the State Accident Insurance Fund Corporation
- (3) Be assigned and maintain at a minimum a "B+" rating as published by A.M. Best or be the State Accident Insurance Fund Corporation
- (4) Agree to **VCAP<sup>®</sup> Service** contractual arrangements and/or procedures established by NCCI and/or the Plan Administrator

ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP<sup>®</sup>)  
SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP

EXHIBIT 4 - APPLIES IN: AK, AL, AR, CT, DC, GA, IA, ID, IL, KS, NH, NV, SC, SD, VT  
BASIC MANUAL—2001 EDITION

RULE 4 - A - WORKERS COMPENSATION INSURANCE PLAN (WCIP)  
2. DEFINITIONS

r. Reasonable Offer of Voluntary Coverage

~~Subject to the discretion of the Plan Administrator, any offer for voluntary coverage is generally deemed reasonable when the total estimated annual premium is less than or equal to the assigned risk total estimated annual premium including any applicable assigned risk surcharges and/or pricing programs for all comparable coverages.~~

Any offer for voluntary coverage where the total estimated annual premium is less than or equal to the assigned risk total estimated annual premium including any applicable assigned risk surcharges and/or pricing programs for all comparable coverages.

Subject to the Plan Administrator's discretion and without limitation, the following are not considered a reasonable offer of voluntary coverage:

- Offer does not provide all of the required coverage (i.e., carrier cannot provide federal coverage or limits of liability)
- A deductible or deposit that is a financial burden to the employer as determined by the producer and/or employer
- Carrier's A.M. Best financial rating status is below that required by the producer and/or employer

NOTE: At the time of this filing, Item RM-W-8026—Rule 4—A—Workers Compensation Insurance Plan (WCIP) has not been approved in Alaska or Nevada. When approved, this National Rule will apply in those states.

**ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP®  
SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP****EXHIBIT 5 - APPLIES IN: AK, AL, AR, CT, DC, GA, IA, ID, IL, KS, NH, NV, SC, SC, VT  
BASIC MANUAL—2001 EDITION  
RULE 4 - A - WORKERS COMPENSATION INSURANCE PLAN (WCIP)  
3. ELIGIBILITY AND ASSIGNMENT****b. Good Faith Rules of Eligibility**

Good faith will be presumed in the absence of clear and convincing evidence to the contrary. An employer is not in good faith entitled to insurance if any of the following circumstances exist at the time of application or thereafter, or other evidence exists that such employer is not in good faith entitled to insurance:

- (1) A self-insured employer knows or is aware of pending bankruptcy proceedings, insolvency, cessation of operations, or conditions that would probably result in occupational disease or cumulative injury claims from exposure incurred while the employer was self-insured.
- (2) The employer:
  - Knowingly refuses to meet reasonable health, safety, premium audit, or loss prevention requirements
  - Does not allow any insurer or assigned carrier reasonable access to its records for audit or inspection under the policy
  - Does not comply with any other policy obligations
- (3) The employer has any outstanding workers compensation insurance premium obligation or other monetary policy obligation, (e.g., deductible program) on any previous or other workers compensation insurance, that is not subject to a bona fide premium dispute as defined in Rule 4-A-2-g.
- (4) The employer, its representative, or the producer knowingly fails to comply with Plan procedures, or knowingly makes a material misrepresentation on the application by express statement, omission or otherwise, including, but not limited to, the following:
  - Estimated payroll
  - Offers of workers compensation insurance
  - Nature of business
  - Name of business
  - Management or ownership of business
  - Previous insurance history
  - Avoidance of an experience rating modification
  - An outstanding workers compensation insurance premium obligation or other monetary policy obligation of the employer
  - Noncompliance with any applicable state licensing or registration requirements
- (5) The employer, its representative, or the producer does not accept any reasonable offer of voluntary coverage through NCCI's VCAP® Service.

NOTE: At the time of this filing, Item RM-W-8026—Rule 4—A—Workers Compensation Insurance Plan (WCIP) has not been approved in Alaska or Nevada. When approved, this National Rule will apply in those states.

ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP<sup>®</sup>)  
SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP

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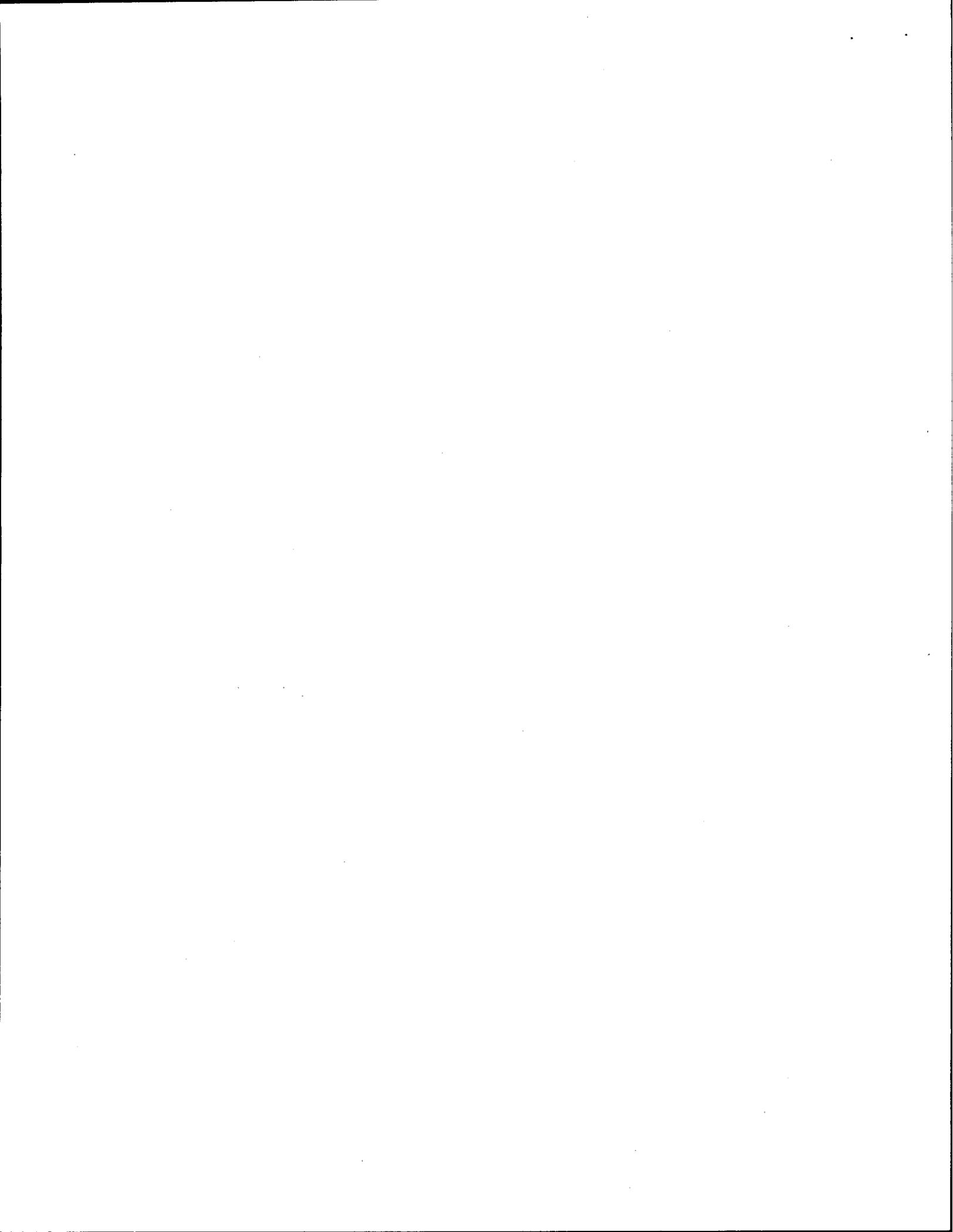
EXHIBIT 6 - STATE SPECIFIC RULES APPLYING IN ARIZONA  
BASIC MANUAL—2001 EDITION  
NCCI'S PLAN OF OPERATION FOR THE ARIZONA WORKERS COMPENSATION ASSIGNED  
RISK PLAN  
SECTION I - AWCARP DEFINITIONS

**Reasonable Offer of Voluntary Coverage**

Any offer for voluntary coverage where the total estimated annual premium is less than or equal to the assigned risk total estimated annual premium including any applicable assigned risk surcharges and/or pricing programs for all comparable coverages.

Subject to the Plan Administrator's discretion and without limitation, the following are not considered a reasonable offer of voluntary coverage:

- Offer does not provide all of the required coverage (i.e., carrier cannot provide federal coverage or limits of liability)
- A deductible or deposit that is a financial burden to the employer as determined by the producer and/or employer
- Carrier's A.M. Best financial rating status is below that required by the producer and/or employer



ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP®  
SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP

EXHIBIT 7 - STATE SPECIFIC RULES APPLYING IN ARIZONA  
BASIC MANUAL—2001 EDITION  
NCCI'S PLAN OF OPERATION FOR THE ARIZONA WORKERS COMPENSATION ASSIGNED  
RISK PLAN  
SECTION II - RULES FOR ELIGIBILITY AND ASSIGNMENT

**Good Faith Rules of Eligibility**

Good faith will be presumed in the absence of clear and convincing evidence to the contrary. An employer is not in good faith entitled to insurance if any of the following circumstances exist at the time of application or thereafter, or other evidence exists that such employer is not in good faith entitled to insurance:

- a. At the time of application, a self-insured employer is aware of pending bankruptcy proceedings, insolvency, cessation of operations, or conditions that would probably result in occupational disease or cumulative injury claims from exposure incurred while the employer was self-insured.
- b. The employer, while insurance is in force, knowingly refuses to meet reasonable health, safety or loss control requirements; does not allow reasonable access to the insurer for audit or inspection under the policy; or does not comply with any other policy obligations.
- c. The employer has an outstanding workers compensation insurance premium obligation or other monetary policy obligation on previous insurance that is not subject to a bona fide dispute.
- d. The employer, its representative, or the producer knowingly fails to comply with Plan of Operation procedures; or knowingly makes a material misrepresentation on the application by omission or otherwise, including, but not limited to, the following: estimated payroll, offers of workers compensation insurance, nature of business, name or ownership of business, previous insurance history, or an outstanding workers compensation insurance premium obligation or other monetary policy obligation of the employer.
- e. The employer, its representative, or the producer does not accept any reasonable offer of voluntary coverage through NCCI's VCAP® Service



ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP<sup>®</sup>)  
SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP

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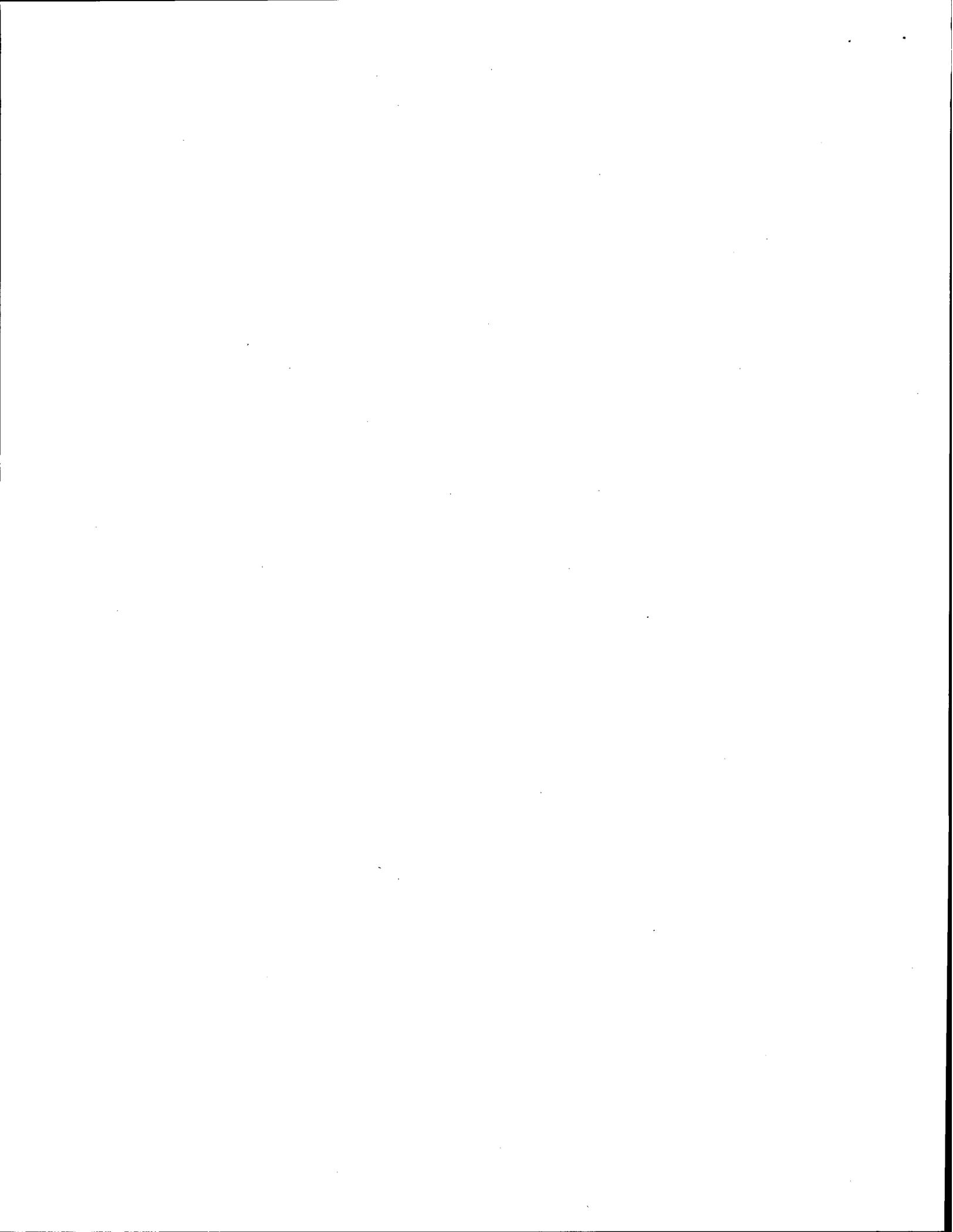
EXHIBIT 8 - STATE SPECIFIC RULES APPLYING IN NEW MEXICO  
BASIC MANUAL—2001 EDITION  
NEW MEXICO WORKERS COMPENSATION ASSIGNED RISK POOL - RULES OF OPERATION  
SECTION I - DEFINITIONS

**Reasonable Offer of Voluntary Coverage**

Any offer for voluntary coverage where the total estimated annual premium is less than or equal to the assigned risk total estimated annual premium including any applicable assigned risk surcharges and/or pricing programs for all comparable coverages.

Subject to the Plan Administrator's discretion and without limitation, the following are not considered a reasonable offer of voluntary coverage:

- Offer does not provide all of the required coverage (i.e., carrier cannot provide federal coverage or limits of liability)
- A deductible or deposit that is a financial burden to the employer as determined by the producer and/or employer
- Carrier's A.M. Best financial rating status is below that required by the producer and/or employer



ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP®  
SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP

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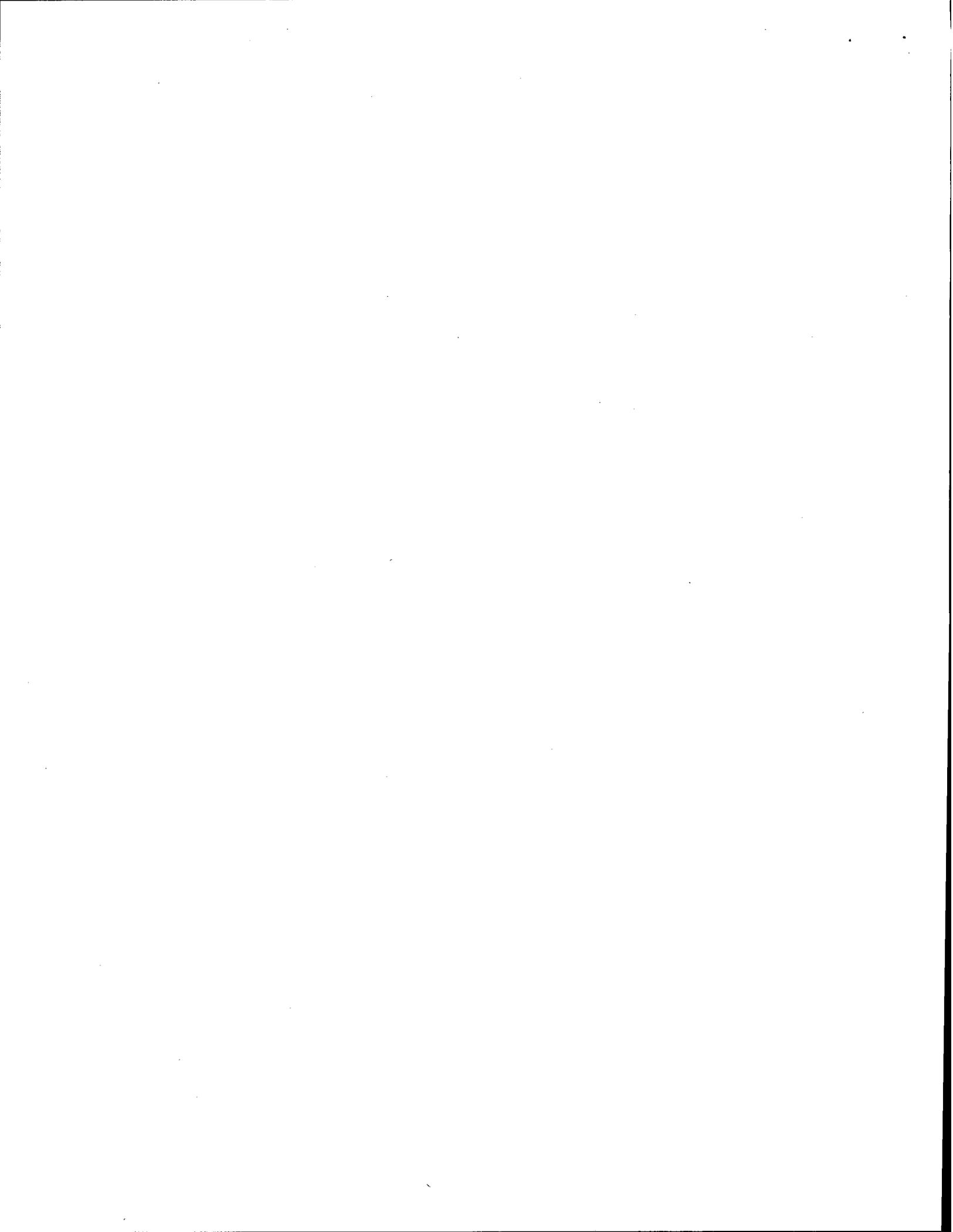
EXHIBIT 9 - STATE SPECIFIC RULES APPLYING IN NEW MEXICO  
BASIC MANUAL—2001 EDITION

NEW MEXICO WORKERS COMPENSATION ASSIGNED RISK POOL - RULES OF OPERATION  
SECTION II - RULES FOR ELIGIBILITY AND ASSIGNMENT

1. Good Faith Rules of Eligibility

Good faith will be presumed in the absence of clear and convincing evidence to the contrary. An employer is not in good faith entitled to insurance if any of the following circumstances exist at the time of application or thereafter, or other evidence exists that such employer is not in good faith entitled to insurance:

- a. At the time of application, a self-insured employer is aware of pending bankruptcy proceedings, insolvency, cessation of operations, or conditions that would probably result in occupational disease or cumulative injury claims from exposure incurred while the employer was self-insured.
- b. The employer, while insurance is in force, knowingly refuses to meet reasonable health, safety or loss control requirements; does not allow reasonable access to the insurer for audit or inspection under the policy; or does not comply with any other policy obligations.
- c. The employer has an outstanding workers compensation insurance premium obligation or other monetary policy obligation on previous insurance that is not subject to a bona fide dispute.
- d. The employer, its representative, or the producer knowingly fails to comply with these procedures; or knowingly makes a material misrepresentation on the application by omission or otherwise, including, but not limited to, the following: estimated payroll, offers of workers compensation insurance, nature of business, name or ownership of business, previous insurance history, or an outstanding workers compensation insurance premium obligation or other monetary policy obligation of the employer.
- e. The employer, its representative, or the producer does not accept any reasonable offer of voluntary coverage through NCCI's VCAP® Service



ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP<sup>®</sup>)  
SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP

EXHIBIT 10 - STATE SPECIFIC RULES APPLYING IN OREGON  
BASIC MANUAL—2001 EDITION  
OREGON WORKERS COMPENSATION INSURANCE PLAN  
SECTION 2. DEFINITIONS FOR THE WORKERS COMPENSATION INSURANCE PLAN  
836-043-0005

t. Reasonable Offer of Voluntary Coverage

~~Subject to the discretion of the Plan Administrator, any offer for voluntary coverage is generally deemed reasonable when the total estimated annual premium is less than or equal to the assigned risk total estimated annual premium, including any applicable assigned risk surcharges and/or pricing programs for all comparable coverages.~~

Any offer for voluntary coverage where the total estimated annual premium is less than or equal to the assigned risk total estimated annual premium including any applicable assigned risk surcharges and/or pricing programs for all comparable coverages.

Subject to the Plan Administrator's discretion and without limitation, the following are not considered a reasonable offer of voluntary coverage:

- Offer does not provide all of the required coverage (i.e., carrier cannot provide federal coverage or limits of liability)
- A deductible or deposit that is a financial burden to the employer as determined by the producer and/or employer
- Carrier's A.M. Best financial rating status is below that required by the producer and/or employer



ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP®  
SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP

EXHIBIT 11 - STATE SPECIFIC RULES APPLYING IN OREGON  
BASIC MANUAL—2001 EDITION  
OREGON WORKERS COMPENSATION INSURANCE PLAN  
SECTION 6. RIGHT TO APPLY 836-0043-0024

c. Good Faith Rules of Eligibility

Good faith will be presumed in the absence of clear and convincing evidence to the contrary. An employer is not in good faith entitled to insurance if any of the following circumstances exist at the time of application or thereafter, or other evidence exists that such employer is not in good faith entitled to insurance:

- (1) A self-insured employer knows and is aware of pending bankruptcy proceedings, insolvency, cessation of operations or conditions that will probably result in occupational disease or cumulative injury claims from exposures incurred while the employer was self-insured
- (2) The employer,
  - Knowingly refuses to meet reasonable health, safety, premium audit, or loss prevention requirements
  - Does not allow the any insurer or servicing carrier reasonable access to its records for audit or inspection under the policy
  - Does not comply with any other policy obligations
- (3) The employer has an outstanding workers compensation insurance premium obligation or other monetary policy obligation (e.g., deductible program) on any previous or other workers compensation insurance that is not subject to a bona fide premium dispute as defined in 836-043-0070
- (4) The employer, its representative, or the producer knowingly fails to comply with Plan procedures, or knowingly makes a material misrepresentation on the application by express statement, omission or otherwise, including but not limited to the following:
  - Estimated payroll
  - Offers of workers compensation insurance
  - Nature of business
  - Name of business
  - Management or ownership of business
  - Previous insurance history
  - Avoidance of an experience rating modification
  - An outstanding workers compensation insurance premium obligation or other monetary policy obligation of the employer
  - Noncompliance with any applicable state licensing or registration requirements
- (5) The employer, its representative, or the producer does not accept any reasonable offer of voluntary coverage through NCCI's VCAP® Service

ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP®  
SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP

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EXHIBIT 12 - STATE SPECIFIC RULES APPLYING IN VIRGINIA  
BASIC MANUAL—2001 EDITION  
VIRGINIA WORKERS COMPENSATION INSURANCE PLAN  
SECTION I - WCIP DEFINITIONS

**Reasonable Offer of Voluntary Coverage**

Any offer for voluntary coverage where the total estimated annual premium is less than or equal to the assigned-risk total estimated annual premium including any applicable assigned risk surcharges and/or pricing programs for all comparable coverages.

Subject to the Plan Administrator's discretion and without limitation, the following are not considered a reasonable offer of voluntary coverage:

- Offer does not provide all of the required coverage (i.e., carrier cannot provide federal coverage or limits of liability)
- A deductible or deposit that is a financial burden to the employer as determined by the producer and/or employer
- Carrier's A.M. Best financial rating status is below that required by the producer and/or employer

ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP<sup>®</sup> SERVICE) AND RELATED AMENDMENT TO RULE 4-A-WCIP

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EXHIBIT 13 – STATE SPECIFIC RULES APPLYING IN VIRGINIA  
BASIC MANUAL—2001 EDITION  
VIRGINIA WORKERS COMPENSATION INSURANCE PLAN  
SECTION II – RULES FOR ELIGIBILITY AND ASSIGNMENT

**Good Faith Rules of Eligibility**

Good faith will be presumed in the absence of clear and convincing evidence to the contrary. An employer is not in good faith entitled to insurance if any of the following circumstances exist at the time of application or thereafter, or other evidence exists that such employer is not in good faith entitled to insurance:

- a. At the time of application, a self-insured employer is aware of pending bankruptcy proceedings, insolvency, cessation of operations, or conditions that would probably result in occupational disease or cumulative injury claims from exposure incurred while the employer was self-insured.
- b. The employer, while insurance is in force, knowingly refuses to meet reasonable health, safety or loss control requirements; does not allow reasonable access to the insurer for audit or inspection under the policy; or does not comply with any other policy obligations.
- c. The employer has an outstanding workers compensation insurance premium obligation or other monetary policy obligation on previous insurance that is not subject to a bona fide dispute as defined in the definition of Premium in Dispute.
- d. The employer, its representative, or the producer knowingly fails to comply with Plan procedures; or knowingly makes a material misrepresentation on the application by omission or otherwise, including, but not limited to, the following: estimated payroll, offers of workers compensation insurance, nature of business, name or ownership of business, previous insurance history, or an outstanding workers compensation insurance premium obligation or other monetary policy obligation of the employer.
- e. The employer, its representative, or the producer does not accept any reasonable offer of voluntary coverage through NCCI's VCAP<sup>®</sup> Service.

ITEM RM-W-8029—RULE 4-D-VOLUNTARY COVERAGE ASSISTANCE PROGRAM (VCAP<sup>®</sup> SERVICE) AND RELATED AMENDMENTS TO RULE 4-A-WCIP

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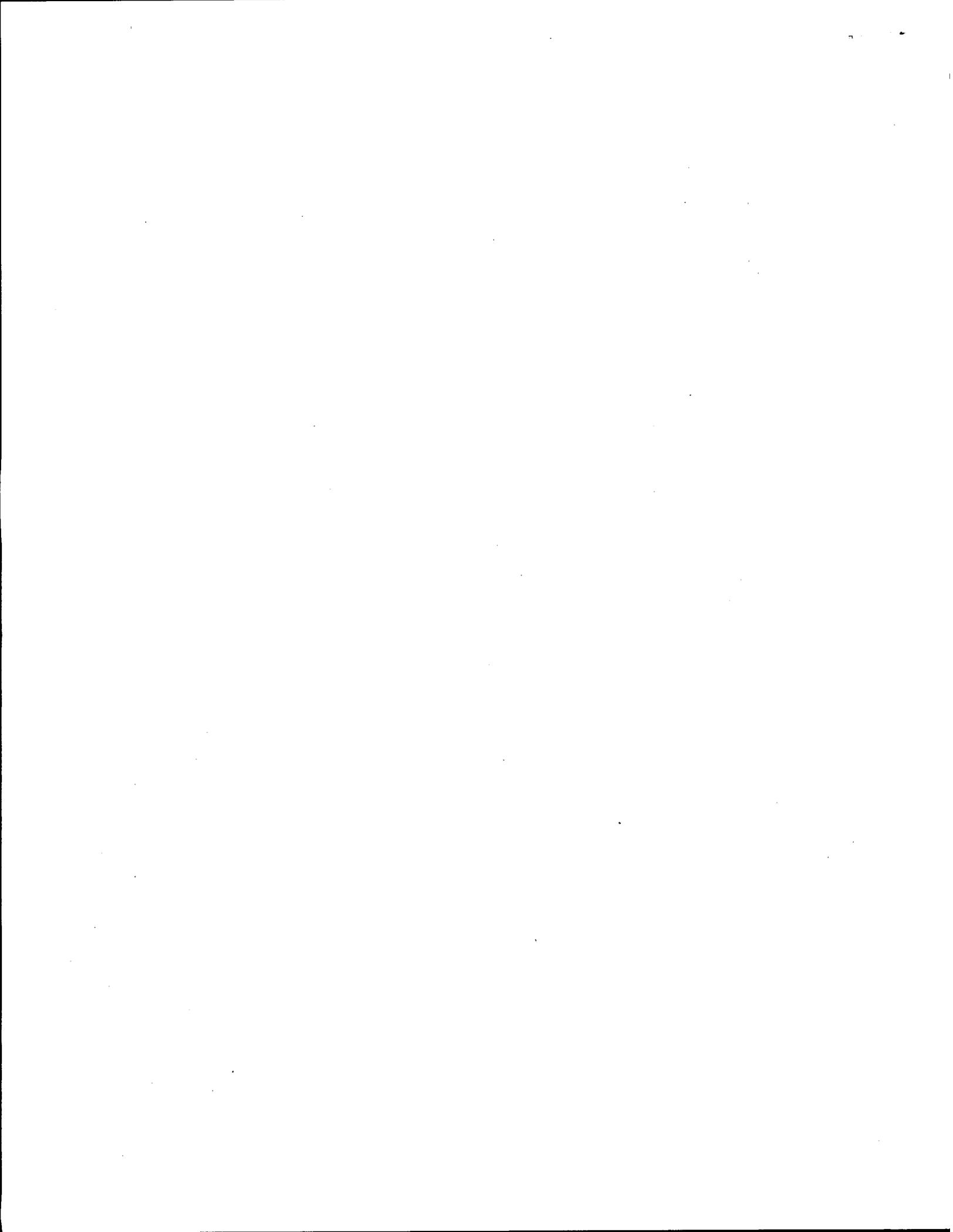
EXHIBIT 14  
ASSIGNED RISK SUPPLEMENT—2006 EDITION  
SECTION 1 - B - ADMINISTRATIVE PROCEDURES  
8. DEPOPULATION PROGRAMS

c. **NCCI's VCAP<sup>®</sup> Service**

The residual market (market of last resort) is intended to provide insurance for employers that are statutorily required to obtain workers compensation and employers liability coverage, but are unable to secure coverage in the voluntary market. As part of NCCI's strategic vision of maintaining and depopulating the residual market, **VCAP<sup>®</sup> Service** redirects opportunities for employers' coverage to voluntary market insurers, which generally provide coverage at a lower cost. **VCAP<sup>®</sup> Service** provides an additional source for producers and employers to secure voluntary workers compensation coverage prior to entering the residual market for coverage.

**VCAP<sup>®</sup> Service** applies to all employers seeking coverage through the residual market in which NCCI is the Plan Administrator, and is offered through NCCI's Residual Market Application Processing System (**RMAPS<sup>®</sup> Service**). Through this free, Internet-based application, voluntary coverage providers will have the opportunity to evaluate potential employers that submit applications through the residual market.

All assigned risk applications (electronic, phone-in, or mail-in) submitted to NCCI as Plan Administrator are processed through **VCAP<sup>®</sup> Service** to determine if they match the preselected criteria specified by a participating voluntary coverage provider. Producers and employers submitting applications will receive a real-time electronic notification if a voluntary coverage provider is interested in providing coverage. Any application being considered for voluntary coverage will be temporarily suspended from further assigned risk processing. This includes manual processing, research, and/or assignment to a Workers Compensation Insurance Plan (WCIP) assigned carrier. There is no impact to the employer's established effective date during this time.



Opinion No. 2008-099

August 1, 2008

The Honorable Julie Benafield Bowman  
Insurance Commissioner  
Arkansas Insurance Department  
1200 West Third Street  
Little Rock, Arkansas 72201-1904

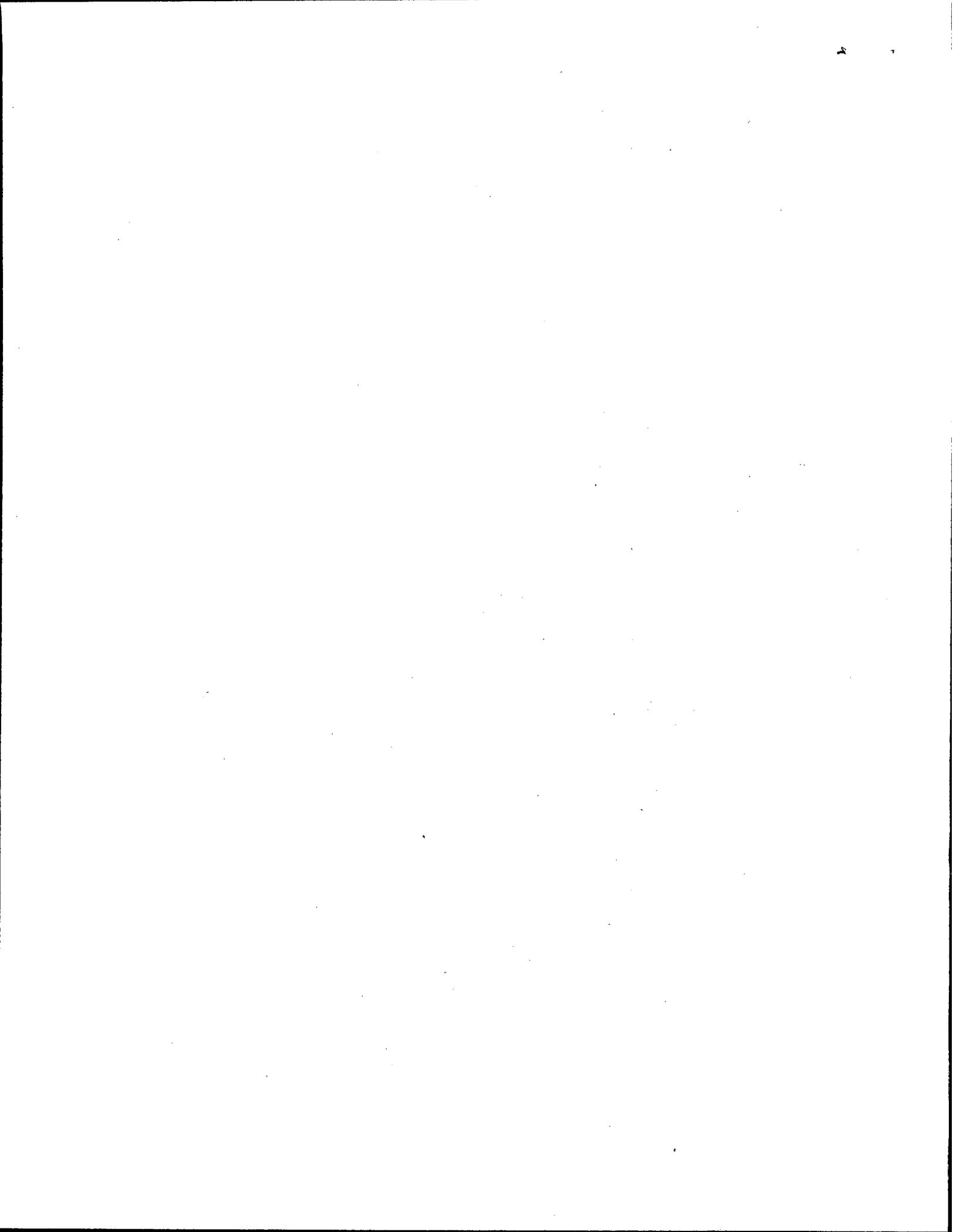
Dear Commissioner Bowman:

I am writing in response to your request for an opinion on an issue concerning the Arkansas Freedom of Information Act ("FOIA"), A.C.A. §§ 25-19-101 – 109 (Repl. 2002 and Supp. 2007). As background for your question, you note that the State of Arkansas is required to provide the "Arkansas Workers' Compensation Plan" ("the Plan") pursuant to A.C.A. § 23-67-301 *et seq.* (Repl. 2001 and Supp. 2007).<sup>1</sup> You further report in this regard:

Pursuant to Ark. Code Ann. § 23-67-304(e), I have delegated the operation of the Plan to the National Council on Compensation Insurance ("NCCI"). In its capacity as the administrator of the Plan the NCCI has, with my approval, adopted a Voluntary Coverage Assistance Program ("VCAP"). The VCAP program is a free, internet-based service which assists insurance agents/brokers and employers applying for coverage through the voluntary market. VCAP attempts to achieve this objective by notifying workers' compensation insurers participating in VCAP when a Plan insured/employer matches its general pre-selected underwriting criteria for coverage. The servicing agent/broker for the employer/insured is subsequently notified that a participating

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<sup>1</sup> The purpose of the Plan according to A.C.A. § 23-67-302 (Repl. 2001) is to "provide for the establishment of a mandatory workers' compensation insurance plan to assure coverage for employers who are in good faith entitled, but unable to procure, workers' compensation insurance in this state...."



workers' compensation insurer is interested in providing voluntary coverage, whereupon a "reasonable offer of voluntary coverage" is determined. Depopulating the Plan is the ultimate goal of the VCAP program, and it also benefits employers because rates are generally more competitive in the voluntary market.

Your specific question in this regard pertains to the FOIA's so-called "competitive advantage" exemption under A.C.A. § 25-19-105(b)(9)(A), and is prompted by an opinion issued by one of my predecessors. Attorney General Opinion 94-015 addressed the question of whether the names, addresses, and expiration dates of all the insureds in the Plan could be released in response to an FOIA request in light of the "competitive advantage" exemption. As you point out, it was concluded that the exemption "in all likelihood applies ... to prevent disclosure of the requested documents." *Id.* at 1.

You have requested my opinion as to the possible application of this opinion to the VCAP program. You have expressed your belief as custodian of Plan records that "the VCAP program and its purpose to depopulate the residual market by redirecting employers' coverage to voluntary market insurers does not require the disclosure of records which are exempt pursuant to the 'competitive advantage' exemption." You specifically note in this regard that "the employer's producer of record under the Plan is the only producer who receives notice of a participating provider's interest in offering coverage."<sup>2</sup>

## RESPONSE

It is my opinion based upon the information provided that the VCAP program does not run afoul of the FOIA's competitive advantage exemption, which applies in relevant part to "[f]iles that if disclosed, would give advantage to competitors or bidders...." A.C.A. 25-19-105(b)(9)(A) (Supp. 2007).<sup>3</sup>

<sup>2</sup> It is my understanding that the "employer's producer of record" is the employer's insurance agent/broker.

<sup>3</sup> I am addressing your question under the assumption that the FOIA is implicated with respect to the VCAP program. I note in this regard that you have made no reference to any request for records pursuant to the FOIA, suggesting that the program as described in your correspondence involves the release of records, or information contained therein, on an on-going basis without the explicit invocation of that act. While one ordinarily might question the FOIA's applicability in the absence of an explicit request for records, I believe it may reasonably be concluded that the act applies in a case such as this involving a public agency's ongoing public disclosure of records that appear to fall within the definition of "public records," to wit: "writings ... or data compilations in any medium, required by law to be kept or otherwise kept, and



As you have noted, the 1994 Attorney General Opinion involved a request for the names, addresses, and expiration dates of all the insureds in the Plan. It was concluded that the release of a "customer list" of this nature would "arm a competitor with valuable information concerning those customers." Op. Att'y Gen. 94-015 at 2. Accordingly, it was determined that the information was shielded by subsection 25-19-105(b)(9)(A), following federal precedent construing the federal FOIA's exemption for "commercial or financial information," 5 U.S.C. § 552(b)(4). *Id.*

As noted by two recognized commentators on the FOIA, the Arkansas Supreme Court has since said that "the exemption [under subsection 25-19-105(b)(9)(A)] may be invoked for the benefit of the person who has provided commercial or financial information if it can be shown that public disclosure is likely to cause substantial harm to his competitive position." Watkins and Peltz, THE ARKANSAS FREEDOM OF INFORMATION ACT (4<sup>th</sup> ed. m & m Press 2004) at 160-61 and accompanying footnotes (citing *Arkansas Dep't of Fin. & Admin. v. Pharmacy Assocs.*, 333 Ark. 451, 458, 970 S.W.2d 217 (1998), and noting that "[p]rior to the *Pharmacy Associates* case, the Attorney General had followed the federal precedent on this point. *E.g.*, Ark. Op. Att'y Gen. Nos. 97-071, 94-015, 93-254, 87-473.") The Arkansas Supreme Court has further observed that subsection 25-19-105(b)(9)(A) was "clearly intended to prevent competitors from obtaining information about others seeking the same type of work or furnishing material to the state." *Arkansas Highway & Transp. Dep't v. Hope Brick Works, Inc.*, 294 Ark. 490, 496, 744 S.W.2d 711 (1988). With regard to the required showing of "substantial competitive harm," the above commentators have noted that:

... the Attorney General has long taken the position that conclusory or generalized allegations will not suffice. Rather, "specific factual or evidentiary material must be presented." [Quoting Op. Att'y Gen. 97-071.] Moreover, the fact the submitter has labeled particular documents as "confidential" is not dispositive. According to the Attorney General, the custodian of the records must determine their status in light of the "unique characteristics" of each submitter, [citations omitted] and a *per se* determination that the exemption

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which constitute a record of the performance or lack of performance of official functions which are or should be carried out by a public official or employee...." A.C.A. § 25-19-103(5)(A) (Supp. 2007).



covers all records furnished by a business entity or all records of a particular type is impermissible.

Watkins and Peltz, THE ARKANSAS FREEDOM OF INFORMATION ACT, *supra* at 162 (footnotes omitted).

You have determined, presumably under this standard, that no competitive harm will result under the VCAP program as a consequence of matching insureds/employers with the underwriting criteria of workers' compensation insurers participating in the program. As the custodian of the records, you of course are the one who must make the factual determination as to whether release of any records would arm a competitor with valuable information such that substantial competitive injury would result to the one submitting the records. *See, e.g.,* Op. Att'y Gen. 2005-238. I will nevertheless note that the information provided in your request for my opinion appears to support your conclusion. The VCAP program as described in your request does not require the disclosure of any records similar to those at issue in the 1994 Attorney General Opinion. There is no suggestion that records containing information analogous to a customer list would be disclosed as a consequence of the program. Nor have you presented any other facts indicating that substantial competitive injury might result from the release of any records that have been submitted pursuant to the program.

If there exist material facts outside those contained in your request, then corresponding modification of this opinion may be necessary. It is my opinion based upon the information provided, however, that you have correctly determined that the records to be provided pursuant to the VCAP program do not fall within the exemption under A.C.A. § 25-19-105(b)(9)(A).

Assistant Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL  
Attorney General

DM:EAW/cyh



**Carol Stiffler**

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**From:** Terri\_Robinson@NCCI.COM  
**Sent:** Wednesday, August 13, 2008 9:29 PM  
**To:** Carol Stiffler  
**Cc:** Jennifer\_Stane@NCCI.COM; alison\_herwig@ncci.com; Lewis\_Lancaster@NCCI.COM  
**Subject:** Re: Attorney General's opinion on VCAP

Hi Carol,

It appears that our filing on this program is still pending -- we never withdrew and you never disapproved. I can send you another copy if you need it, but please give it active consideration in light of this ruling. I know the effective date is no longer good, but if you choose to approve it, you can change the effective date in the approval.

Let me know if you have any questions that we need to address.

Thanks!

Terri

-----"Carol Stiffler" <Carol.Stiffler@arkansas.gov> wrote: -----

To: <Jennifer\_Stane@NCCI.COM>, <Suzanne\_Peterson@ncci.com>, <Alison\_Herwig@NCCI.COM>, <Carol.Stiffler@arkansas.gov>, <terri\_robinson@ncci.com>  
From: "Carol Stiffler" <Carol.Stiffler@arkansas.gov>  
Date: 08/06/2008 12:11PM  
Subject: Attorney General's opinion on VCAP

I am faxing you an opinion we just received on whether or not VCAP can be used in AR. Good news?they say it can.

Carol Stiffler

Arkansas Insurance Dept.

Property & Casualty Division

1200 W. 3rd St .

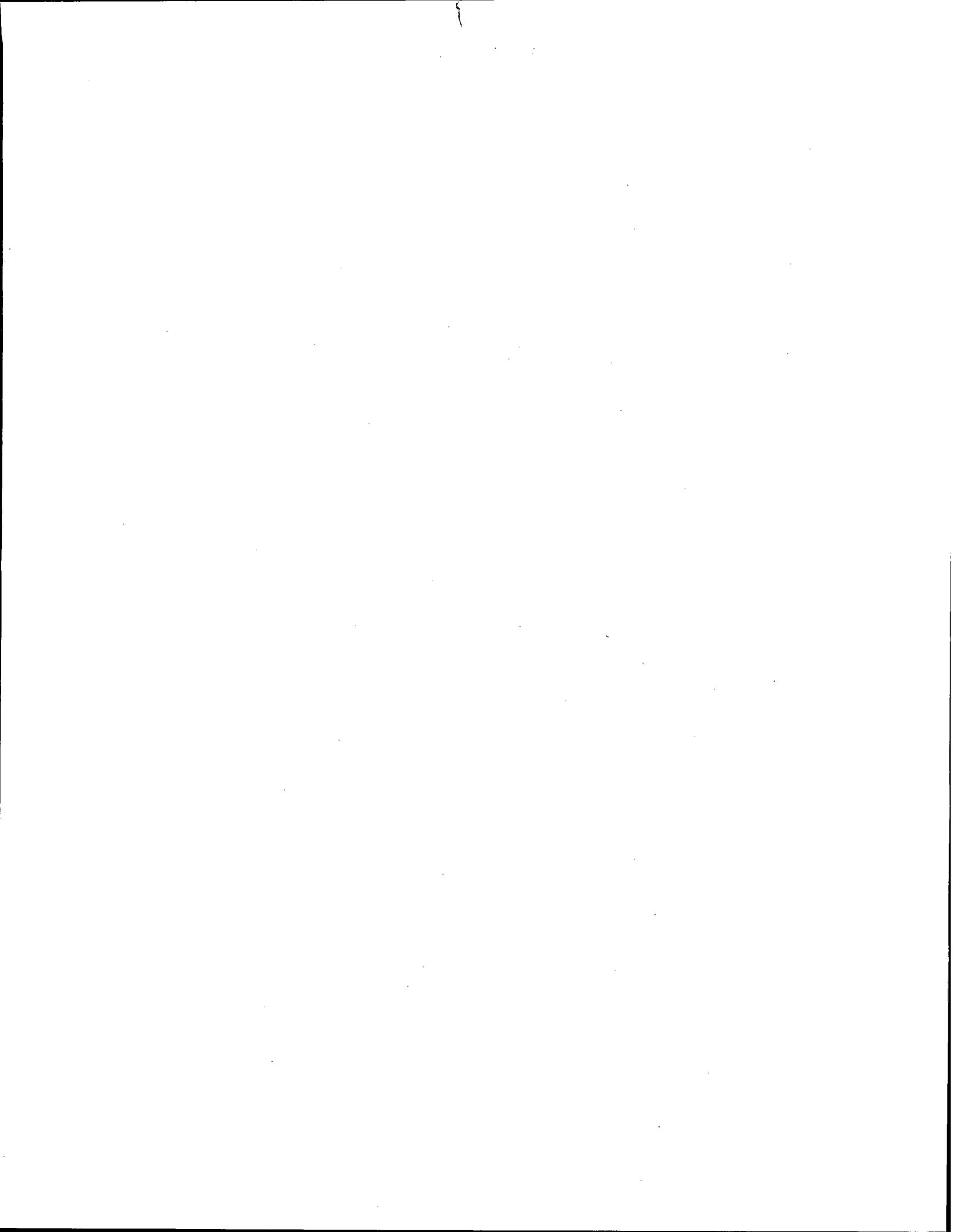
Little Rock , AR 72201-1904

501-371-2807

501-371-2748 (FAX)

carol.stiffler@arkansas.gov

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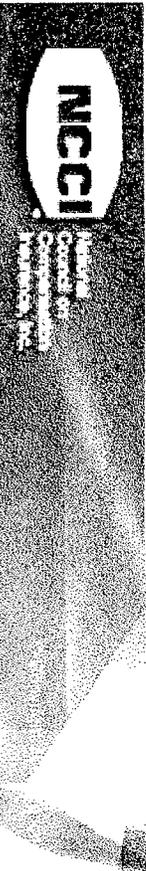


# Pilot Program Activity

VCAP Report - January 1, 2005 to December 31, 2005

	Apps Processed	VCAP Matched	Carriers Offer to Match	Carriers Offers Processed	Carrier Confirmed	Savings							
ST	=	=	%	%	%	AR Prem	Vol Prem	Amount	%	Avg Policy			
AL	1,598	255	16.0%	26.13	10.2%	1.63%	25	95.7%	\$219,326	\$176,526	\$42,800	19.5%	\$1,712.00
CT	8,239	1,958	23.8%	260	13.3%	3.16%	246	94.6%	\$860,086	\$787,570	\$72,516	8.4%	\$294.78
IL	15,990	4,457	27.9%	600	13.5%	3.75%	570	95.0%	\$3,451,922	\$2,868,278	\$583,644	16.9%	\$1,023.94
NH	6,179	1,785	28.9%	380	21.3%	6.15%	373	98.2%	\$827,024	\$720,625	\$106,399	12.9%	\$285.25
VT	2,441	1,077	44.1%	173	16.1%	7.09%	166	96.0%	\$497,266	\$411,149	\$86,117	17.3%	\$518.78
All	34,447	9,532	27.7%	1,439	15.1%	4.18%	1,380	95.9%	\$5,855,625	\$4,964,148	\$891,477	15.2%	\$646.00

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# Arkansas Insurance Department

Mike Huckabee  
Governor



Julie Benafield Bowman  
Commissioner

Opinion No. 94-015

February 24, 1994

Mr. Lee Douglass, Commissioner  
Arkansas Insurance Department  
400 University Tower Building  
1123 South University Avenue  
Little Rock, AR 72204

Dear Mr. Douglass:

This is in response to your request for an opinion regarding the Arkansas Freedom of Information Act ("FOIA"), which is codified at A.C.A. 25-19-101 et seq. You state that you have received an FOIA request for examination and copying of the following records in your possession:

. . . [T]he names, addresses and expiration dates of all of the companies who are in the Arkansas Assigned Risk Pool for purposes of workers' compensation insurance.'

You have questioned whether you can release this information in light of the exemption under A.C.A. 25-19-105(b)(9)(A) (Supp. 1993), which applies to "[f]iles which, if disclosed, would give advantage to competitors or bidders." You state that the documents requested come within the ambit of this provision. According to your correspondence, the documents in question contain the insurance expiration dates of all the employers within the Arkansas Workers' Compensation Insurance Plan, including the expiration dates of non-workers' compensation insurance. You state that this is a very valuable marketing piece of information.

It is my opinion that A.C.A. 25-19-105(b)(9)(A) in all likelihood applies in this instance to prevent disclosure of the requested documents. This office has previously followed the federal test in construing this exemption. See Ops. Att'y Gen. 93-254, 92-220, 92-150, 91-390, and 87-194. The federal courts, in determining whether "commercial or financial information" is "confidential" and thus exempt under the federal FOIA (5 U.S.C. § 552(b)(4)), have required that release of the information would be likely to have either of the following effects: (1) impair the government's ability to obtain necessary information



in the future or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *National Parks & Conservation Ass'n v. Morton*, 615 F.2d 527 (D.C. Cir. 1979). Application of this analysis under the Arkansas FOIA is, I believe, warranted in light of the Arkansas Supreme Court's general holding that exemptions from disclosure under the FOIA are to be narrowly construed. See, e.g., *Young v. Rice*, 308 Ark. 593, 826 S.W.2d 252 (1992).[fn1]

The competitive advantage exemption must, of course, be considered on a case-by-case basis, and the burden rests on the one claiming the exemption. *Id.* With regard to the documents in question, however, I believe that an Arkansas court would in all likelihood conclude that the burden of proving substantial competitive harm can be met with respect to these customer lists so as to preclude their disclosure. See generally *Op. Att'y Gen. 88-065* (concluding that an Arkansas court, consistent with federal case law, would probably find a customer list to be exempt under the FOIA).

Although the term "customer list" is not defined, it may reasonably be concluded that the records sought in this instance in fact constitute such a list, where the documents contain specific information, including names and addresses, premiums, and expirations dates of employers receiving coverage in the Arkansas Workers' Compensation Plan. It is my understanding that this information relates not merely to coverage in the Plan, but also encompasses non-workers' compensation coverage, i.e., because the servicing agent for a company under the Workers' Compensation Plan is typically also writing other insurance lines for that company, and because the workers' compensation expiration date is also the renewal date for other lines, it necessarily follows that disclosure of the requested records would arm a competitor with valuable information concerning those customers. The likely showing of substantial competitive injury is apparent.

It is therefore my opinion that the records in question are in all likelihood exempt from public inspection and copying under the FOIA.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Elisabeth A. Walker.

Sincerely,

WINSTON BRYANT  
Attorney General

WB:cyh



[fn1] The Arkansas Supreme Court's recent holding in *Leathers v. W.S. Compton Co., Inc.*, No. 93-774 (Feb. 14, 1994) does not, in my opinion, compel a departure from this narrow construction of 25-19-105(b)(9)(A). A tobacco wholesaler successfully argued in that case that the release of tax information under A.C.A. 26-18-303(b)(11) (Supp. 1993) (part of the Arkansas Tax Procedure Act) could confer advantage on a competitor, contrary to 26-18-303(b)(11)(Q) which prevents disclosure of information that "would give advantage to competitors or bidders. . . ." The court affirmed the chancellor's ruling that "advantage to competitors" means "any advantage." *Leathers*, No. 93-774, slip op. at 4. The court rejected the Revenue Commissioner's citation to cases interpreting the FOIA and a revenue regulation requiring a showing of "substantial harm to the taxpayer's competitive position." *Id.* at 3-4. The court noted that 26-18-303(g)(2) clearly provides that the FOIA is inapplicable to the release of information under 26-18-303(b)(11). It then focused on the plain language of subsection (b)(11)(Q), concluding that "advantage to competitors" means "'any advantage' as it is simply not otherwise limited." *Id.* at 4.