

TECHNICAL ADVISORY

TA 338

September 29, 2018

SUBJECT: ISO Introduces a New 2018 Personal Auto Policy

BACKGROUND: The Insurance Services Office (ISO) is introducing a new 2018 edition of their Personal Auto Policy (PAP). The countrywide effective date is filed for September 1, 2018. However, insurers can elect to adopt the new program at a date of their choosing, so agencies should contact their personal auto markets for information and guidance.

MAIN POINTS: As with all ISO filings of this type, the 2018 PAP filing has two main components of interest to agencies: (1) changes to the coverage form itself (PP 00 01); and (2) changes to the endorsement portfolio. The complete ISO filing runs 164 pages. Below is a summary of revisions to the PP 00 01, and to key endorsements.

The last major revision to the ISO PAP was in 2005. The comments below highlight the major differences between the two editions.

IMPORTANT NOTE: The personal auto marketplace today contains some of the most varied coverage forms of most any line of business (LOB) in insurance. Examples:

- (1) Some legacy insurers are "straight-ISO," meaning they generally adopt ISO's forms and rules.
- (2) Other established insurers modify or tweak ISO forms, but their lineage to ISO forms is readily apparent.
- (3) Some proprietary forms are strikingly different from the first two categories, with many terms and conditions dissimilar to ISO.
- (4) Recent entrants to the personal auto market generally fall into the "fintech" or "disruptor" category, where coverage forms are often written in conversational language, with normal underwriting, processing, and claims handling heavily dependent on algorithms, aggregated personal data, and paperless communications.
- (5) Bottom line for independent agents is to READ THE FORMS YOU SELL.
- (6) Here are two excellent, informative articles on the myriad variations in insurance policies in the today's marketplace.

["Is Insurance a Commodity?"](#)

["Is It ISO or Is It Memorex Insurance Company?"](#)

CHANGES TO THE PERSONAL AUTO POLICY – PP 00 01 09 18

1. Newly acquired auto

2018 PAP:

(a) Liability, Medical Payments, and Uninsured Motorists coverage for a “newly acquired auto” which is a replacement auto must be reported within 14 days.

2005 PAP:

(a) A “newly acquired auto” which is a replacement auto did not need to be reported in order to continue the Liability, Medical Payments, and Uninsured Motorists coverage which existed for the auto being replaced.

(b) A “newly acquired auto” which is an additional auto must be reported within 14 days in order to have Liability, Medical Payments, and Uninsured Motorists coverage on the additional auto.

(c) For Collision coverage, a newly acquired auto (replacement or additional) must be reported within 14 days, if Collision coverage is already in force on at least one auto on the policy. If the policy does not have Collision coverage, a newly acquired auto (replacement or additional) must be reported within 4 days.

(d) For Other Than Collision coverage, a newly acquired auto (replacement or additional) must be reported within 14 days, if Other Than Collision coverage is already in force on at least one auto on the policy. If the policy does not have Other Than Collision coverage, a newly acquired auto (replacement or additional) must be reported within 4 days.

Comments – 2018 PAP vs 2005 PAP:

(1) The only difference in the 2018 edition is that a “newly acquired auto” which is a replacement auto must be reported within 14 days for Liability, Medical Payments, and Uninsured Motorists coverage to continue.

(2) No change for in reporting (14 days) for a “newly acquired auto” which is an additional auto for Liability, Medical Payments, and Uninsured Motorists coverage to continue.

(3) No change in reporting (14/4 days) for Collision and Other Than Collision coverage.

2. Public or Livery Conveyance Exclusion – Volunteer or Charitable Purposes

(a) For decades, through various editions of the PAP, there has been an exclusion for the “public or livery conveyance” exposure, applicable to Part A – Liability, Part B – Medical Payments, Part C – Uninsured Motorists, and Part D – Damage to Your Auto. At the same time, there has been an exception for a “share-the-expenses car pool.”

(b) In the new 2018 PAP, a second exception to the “public or livery conveyance” exclusion was added for “volunteer or charitable purposes.”

Comments – 2018 PAP vs 2005 PAP:

(1) The applicability of the “public or livery conveyance” exclusion is frequently debated where an insured is involved in transporting people or goods on a voluntary basis. Many community groups depend on volunteers to provide transportation services to the elderly or infirmed for trips to the doctor, or deliver meals, etc. According to Meals on Wheels America, there are more than 5,000 community-based programs, with more than 2 million staff and volunteers across the country, that are dedicated to addressing senior isolation and hunger.

(2) In addition, countless parents and teachers transport kids to sports events, field trips, deliver Girl Scout cookies, and so forth.

(3) By adding a specific exception to the public or livery conveyance exclusion for volunteer or charitable purposes, ISO has done a very good deed for community volunteers everywhere.

3. Public or Livery Conveyance Exclusion – Transportation Network Services

(a) A more recent activity called “ride sharing” has also caused considerable debate about the applicability of the public or livery conveyance exclusion. In ride sharing, an insured uses his own auto to transport passengers for a fee, which for all practical purposes is a taxi exposure. The two best-known ride sharing services are Uber and Lyft, which are generically referred to as “Transportation Network Companies.” (TNC.)

(b) During the time a passenger is being transported by the insured, there is virtually no doubt that the public livery or conveyance exclusion applies.

(c) One main point of contention about the exclusion is whether or not it applied at all times, or only when a passenger was being transported, and/or during other times.

(d) In 2015, ISO introduced the PP 23 40 10 15 Public or Livery Conveyance Exclusion Endorsement to clarify the scope of the public or livery conveyance exclusion to ride sharing activities. The endorsement also contained a definition of “Transportation Network Companies.”

(e) The 2018 PAP incorporated the provisions of the PP 23 40 10 15 into the new PP 00 01 09 18, and the endorsement was withdrawn by the 2018 PAP filing.

Comments – 2018 PAP vs 2005 PAP:

(1) Migrating the provisions of the PP 23 40 10 15 into the PP 00 01 09 18 resulted in no coverage changes.

(2) The public or livery conveyance exclusion is revised to address the ride sharing exposure. New language is underlined:

We do not provide coverage for any "insured":

For that "insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This includes but is not limited to any period of time a vehicle is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

(3) The exclusion applies during the times when the insured is “logged into” the TNC’s app, whether or not a passenger is aboard. This is generally the time frame where the insurance available from the TNC would apply to cover the driver.

(4) Said another way, the only time the PAP would apply is when the driver’s TNC app is turned off.

4. Personal Vehicle Sharing (aka Car Sharing) Program Exclusion

(a) “Personal vehicle sharing programs” are often confused with “ride sharing programs,” but they are distinctly different. In personal vehicle sharing programs, vehicle owners rent their own autos to third parties for a short period of time (called a “micro-rental”), using platforms and apps such as Getaround, Turo, etc. The websites of most personal vehicle sharing companies have banner headlines such as, “Share your car – make \$10,000 a year!”

(b) In ride sharing programs (discussed in **3.** above), companies such as Uber and Lyft have mobile platforms and apps through which vehicle owners connect with passengers, and transport their passengers much like a taxi.

(c) There are also “commercial vehicle sharing programs” such as Zipcar, Hertz 24/7, Enterprise CarShare, and many others, which offer “micro-rentals” in segments less than the traditional daily rental available from rental car companies.

(d) Ride sharing and vehicle sharing are just two types of innovative developments in recent years that are part of the so-called “sharing (or “shared”) economy,” also known as the “gig economy.” A well-known example in another segment of the “sharing economy” is Airbnb.

(e) From an Old School standpoint, these “sharing” arrangements are simply new and different forms of “renting,” and thus present exposures to insurers that are not contemplated by unendorsed personal auto or homeowners insurance.

Comments – 2018 PAP vs 2005 PAP:

(1) In 2013, when the personal vehicle sharing program began to gain traction, ISO developed a PAP exclusionary endorsement to preclude coverage for the exposure under the vehicle owner’s policy. The endorsement was the PP 23 16 10 13 Personal Vehicle Sharing Program Exclusion Endorsement, which would be attached to the PAP (PP 00 01 01 05).

(2) In the 2018 PAP, the provisions in the PP 23 16 10 13 are incorporated into the PP 00 01 09 18. Therefore, in the 2018 ISO filing, the PP 23 16 10 13 is withdrawn.

5. Custom Furnishings or Equipment Exclusion

(a) Part D – Coverage for Damage to Your Auto applies for direct and accidental loss to the auto, “including its equipment.” While the term “equipment” is not defined in the PAP, various types of equipment are addressed in certain exclusions in Part D, such as specific categories of electronic equipment (excluded unless “permanently installed”), cooking and related equipment in trailers, camper bodies, or motor homes (excluded), and various types of “custom furnishings or equipment” in or upon a pickup or van (excluded). Coverage can be added by endorsement.

(b) In 2009, ISO released mandatory endorsement PP 13 06 01 09 Custom Equipment Exclusion Endorsement, which was attached to the 2005 PAP (PP 00 01 01 05). The exclusion applied for loss to *any "custom equipment" in or upon your covered auto or any non-owned auto*. Note that the term "custom equipment" replaced the term "custom furnishings or equipment." The categories of property subject to the exclusion were expanded from four to nine. But the list is not all-inclusive. The introductory wording says that "Custom equipment *includes but is not limited to* the nine categories of property listed.

(c) The PP 13 06 01 09 exempts the following property from the exclusion:

1. *Original manufacturer equipment, furnishings or parts; or*
2. *Any replacement of original manufacturer equipment, furnishings or parts with other equipment, furnishings or parts of like kind and quality.*

(d) The endorsement also provides for one other exception to the exclusion:

*This exclusion **(10.)** does not apply to the first \$1,500 of "custom equipment" in or upon "your covered auto" or any "non-owned auto".*

(e) In the 2018 PAP, the provisions of the PP 13 06 01 09 were included in the PAP, and the endorsement was withdrawn.

Comments – 2018 PAP vs 2005 PAP:

(1) The 2005 exclusion for "custom furnishings or equipment" applied to property in or upon a *pickup or van*. The 2018 PAP "custom equipment" exclusion applies to such equipment *"in or upon your covered auto or any non-owned auto"*.

(2) However, OEM equipment (original equipment manufacturer), or replacement of OEM equipment is exempt from the "custom furnishings" exclusion.

6. Racing Exclusion

(a) The revision to the racing exclusion adds additional activities which will now be within the exclusion, resulting in a reduction in coverage.

(b) The ISO filing cites the fact that *some motor club organizations arrange for educational or "skill development" sessions on race tracks, which generally provide licensed drivers with the opportunity to practice and master the art of performance driving, and may also prepare these drivers for competitive events.*

Comments – 2018 PAP vs 2005 PAP:

(1) The changes to the racing exclusion can best be illustrated with this markup of the 2018 exclusion, with the new language underlined:

B. We do not provide Liability Coverage for the ownership, maintenance or use of:

4. Any vehicle, located inside a facility designed for racing, for the purpose of:

a. Participating or competing in; or

b. Practicing or preparing for;

any prearranged or organized:

(1) Racing or speed contest; or

(2) Driver skill training or driver skill event.

(2) It will be interesting to see if any litigation arises over the intent and scope of the exclusionary provision for "*Driver skill training or driver skill event.*" For example, a few manufacturers of high-end sports cars, as well as some sports car racing organizations, do indeed provide driving schools that offer driver skill training. Two of the best-known national groups are the SCCA (Sports Car Club of America), and NASA (National Auto Sport Association), as well as the Porsche Sport Driving School, all offer programs for obtaining a racing license. It seems likely that the revised racing exclusion in the 2018 PAP is meant to apply to these *driver training or events*.

(3) Conversely, some sports car manufacturers, as well as other sports car groups, have special events designed for people who want to experience driving a high-performance sports car on a closed track. The Porsche Driving Experience, and organizations such as Racing Adventures, provide the opportunity for the adrenaline rush of a lifetime. The websites of both these organizations promote their Corporate or Group Programs, which offer participants half or full-day programs that include classroom orientation to performance driving, as well as a few laps around the track with an instructor in the passenger seat. These one-off experiences with high-performance cars at a racing facility might successfully be argued to be outside the exclusion.

(4) One additional "racing experience" that ironically is not excluded is the perennial (and very dangerous) "street racing." Note that exclusion B.4. applies to the *ownership, maintenance or use of any vehicle located inside a facility designed for racing.*

7. Flying Car Exclusion

(a) This is the shortest exclusion in the 2018 PAP, and perhaps in the history of insurance: "*Any vehicle which is designed or can be used for flight.*"

(b) The first successful flight of a flying car was by the Taylor Aerocar in 1949. It was certified for production in 1956, but due to limited interest, only six models were ever built. Most are in museums, but one is still operational today. It was once owned by actor Bob Cummings, and is in the Kissimmee Air Museum in Florida. At their website, it is one of ten vintage aircraft listed as "Operational."

(c) While modern technology has made a flying car a reality, there remain myriad challenges to widespread production and use, including regulations, cost, safety, insurance, etc.

Comments – 2018 PAP vs 2005 PAP:

(1) The 2005 PAP made no reference to "flying cars."

(2) One noteworthy observation by some insurance experts is that the scope of the exclusion applies not just to these vehicles *in flight*, but to those *designed or can be used* for flight. These types of vehicles are frequently described as "roadable aircraft," and the "roadable" exposure falls within the scope of the exclusion. This potentially

poses a significant coverage gap for an insured who is allowed to drive a friend's flying car for one quick trip around the block.

(3) Somewhere, Chester Gould (creator of the comic strip "Dick Tracy") is smiling.

8. Other Insurance Provision

(a) The Other Insurance provision in Part A – Liability establishes the framework for determining the primary/excess relationship between the PAP and other applicable liability insurance. For non-owned autos, the PAP is "excess over any other collectible insurance."

(b) In the filing, ISO reports that the excess provision for non-owned autos in the PAP has on occasion caused confusion where a personal umbrella was also applicable to a loss.

(c) Therefore, additional language was added to the Other Insurance provision for clarification.

Comments – 2018 PAP vs 2005 PAP:

(1) Below is the revised Other Insurance provision, with the new language underlined:
If there is other applicable liability insurance, we will pay only our share of the loss. Our share is the proportion that our limit of liability bears to the total of all applicable limits. However, any insurance we provide for a vehicle you do not own, including any vehicle while used as a temporary substitute for "your covered auto", shall be excess over any other collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this Policy.

9. Transportation Expenses Coverage

(1) Part D – Coverage for Damage to Your Auto applies for *direct and accidental loss to "your covered auto or any "non-owned auto," including its equipment, if caused by collision or other than collision.*

(2) In addition, certain indirect or consequential losses which result from a covered direct loss are also covered, under the Transportation Expenses provision.

(3) As a result of a market study, ISO concluded that the costs of various components of the Transportation Expenses exposure have increased since the last revision of the PAP in 2005. As a result, the limits of coverage in the basic amount included in the unendorsed PAP were increased.

Comments – 2018 PAP vs 2005 PAP:

(1) The daily expense limit was increased from \$20 to \$30.

(2) The maximum limit was increased from \$600 to \$900.

(3) Higher limits of \$40/\$1,200 or \$50/\$1,500 or \$75/\$2,250 are available under Rule 23 of the ISO Manual, using endorsement PP 03 02 09 18 Optional Limits Transportation Expense Coverage.

10. Duties After Accident or Loss

(1) Part E - Duties After Accident or Loss sets forth a number of requirements that any person seeking coverage must comply with. The duty to submit to “recorded statements” was added to the 2018 PAP.

Comments – 2018 PAP vs 2005 PAP:

(1) Below is the revised Duties After Accident or Loss provision, with the new language underlined:

B. A person seeking any coverage must:

- 1. Cooperate with us in the investigation, settlement or defense of any claim or suit.*
- 2. Promptly send us copies of any notices or legal papers received in connection with the accident or loss.*
- 3. Submit, as often as we reasonably require:*
 - a. To physical exams by physicians we select. We will pay for these exams.*
 - b. To examination under oath and subscribe the same.*
 - c. To recorded statements.*

11. Supplementary Payments

(a) Part A – Liability coverage includes 5 categories of Supplementary Payments that can be paid on behalf of an insured for such expenses as cost of bail bonds, premiums on appeal bonds, accrued interest on judgments, a stipend for loss of earnings due to attendance at hearings, etc., and other reasonable expenses incurred by the insured at the request of the insurer.

Comments – 2018 PAP vs 2005 PAP:

- (a)** The 2005 PAP provides for \$200 for loss of earnings due to attendance at hearings.
(b) The 2018 PAP increases this amount to \$250.

NEW ENDORSEMENTS

Replacement Cost (PP 33 10 09 18)

(a) A policy providing both Collision and Other Than Collision coverages may be extended to provide coverage to a specified auto on a replacement cost basis with no deduction for depreciation. Some insurers already offer this option, which is heavily promoted in TV ads as “New Car Replacement” coverage.

(b) Replacement cost only applies to a total loss which occurs within 24 months of ownership, and with an odometer reading of less than 24,000 miles.

(c) If the “same or equivalent” model new car is not available, the endorsement describes the basis of payment for a “similar” vehicle.

(d) Rule 34 of the ISO Personal Vehicle Manual is applicable.

Key Replacement and Related Services (PP 33 27 09 18)

- (a)** Coverage is provided for expenses incurred by a named insured, resident spouse or resident relative for services necessary to obtain access to a specified auto if key(s) or key fob(s) of such auto are lost or stolen.
- (b)** Coverage also applies to the cost to replace and program keys or key fobs if such items are lost or stolen.
- (c)** No deductible applies.
- (d)** Rule 36 of the ISO Personal Vehicle Manual is applicable.

Child Restraint System (PP 33 30 09 18)

- (a)** This coverage is available only if Collision and Other Than Collision coverages are afforded to at least one vehicle insured under the policy.
- (b)** Child Restraint System Coverage provides for the cost to replace a child restraint system as a result of direct or accidental loss to an insured vehicle, such as a "your covered auto" or a "non-owned auto."
- (c)** The child restraint system must be owned by a named insured, resident spouse or resident relative, and inside an insured vehicle (a "your covered auto" or a "non-owned auto") at the time of loss.
- (d)** Coverage limit options are \$400 or \$800.
- (e)** No deductible applies.
- (f)** Rule 37 of the ISO Personal Vehicle Manual is applicable.

Pet Injury Coverage (PP 33 31 09 18)

- (a)** This coverage is available only if Collision and Other Than Collision coverages are afforded to at least one vehicle insured under the policy.
- (b)** Pet Injury Coverage provides for veterinary expenses or services incurred as a result of bodily injury of your pet (cat or dog only), or expenses such as cremation or disposal incurred as a result of death of your pet.
- (c)** The pet must be inside an insured vehicle (a "your covered auto" or a "non-owned auto") at the time of loss, and owned by a named insured, resident spouse or resident relative.
- (d)** Coverage limits available are \$500, \$1,000, or \$2,000.
- (e)** No deductible applies.
- (f)** Rule 38 of the ISO Personal Vehicle Manual is applicable.

Full Safety Glass (PP 33 05 09 18)

- (a)** This coverage is available only for vehicles to which Other Than Collision coverage is afforded. Full Safety Glass Coverage provides for the cost of repairing or replacing a damaged safety glass of a specified auto.
- (b)** No deductible applies.
- (c)** Rule 35 of the ISO Personal Vehicle Manual is applicable.

Additional Resident of Your Household (PP 33 37 09 18)

- (a)** The Personal Auto Policy may be endorsed to provide coverage for persons who are not family members but are residents of the named insured's household.
- (b)** The definition of "family member" is amended to include a person shown in the Schedule or Declarations as an Additional Resident of Your Household.
- (c)** The named insured is required to notify the insurer within 30 days of a "change in the residency" of the Additional Resident described in the Schedule or Declarations.
- (d)** Rule 39 of the ISO Personal Vehicle Manual is applicable.

Personal Property Coverage (PP 33 42 09 18)

- (a)** Coverage is provided for personal property owned by the named insured and resident spouse, while it is anywhere in the world.
- (b)** Property losses are subject to an overall aggregate. Under Rule 42 of the ISO Personal Vehicle Manual, the available aggregates are either \$5,000 or \$10,000. (Some insurers may offer higher aggregate limits.)
- (c)** Coverage is open perils, with special limits of 20% of the aggregate applying for certain classes of property.
- (d)** Valuation is actual cash value, with a replacement cost option.
- (e)** Coverage is limited to owned personal property, with no option for non-auto liability coverage.
- (f)** Most coverage experts caution that this endorsement is not an adequate substitute for an HO 00 04 (renter's policy).
- (g)** Rule 42 of the ISO Personal Vehicle Manual is applicable.

IMPORTANT CHANGES TO ENDORSEMENTS

Named Non-Owner Coverage (PP 03 22 09 18)

- (a)** A new coverage option is being made available for physical damage (Collision and Other Than Collision) to non-owned autos.
- (b)** Under the 2005 edition, the only coverage options were Liability, Medical Payments, and Uninsured/Underinsured Motorists. In the 2018 edition, insureds are able to purchase physical damage coverage for borrowed or rented autos.
- (c)** However, neither the 2005 nor the 2018 edition of the endorsement will provide physical damage coverage on owned autos, including newly acquired autos.
- (d)** The limits available for physical damage coverage are: \$20,000 or \$40,000 or \$60,000 or \$80,000.

(e) For insureds with an auto furnished or available for regular use, there is an option to remove that exclusion. This is especially important for insureds that own no auto, but are provided with a company car.

(f) Rule 31 of the ISO Personal Vehicle Manual is applicable.

Trust Endorsement (PP 13 03 09 18)

(a) This endorsement has been substantially revised in order to accommodate the various ways Trusts can be set up. Detailed information about the Trust, Trustee, and Grantor can be added to the Schedule, as needed. In addition, specific terms and conditions were added or revised.

(b) Experts recommend that the insurance for a Trust be arranged in coordination with an authorized representative of the Trust, as well as the insurance underwriter.

(c) Rule 3.E. of the ISO Personal Vehicle Manual is applicable.

Auto Loan/Lease Coverage (PP 03 35 09 18)

(a) Two revisions were made to this endorsement, often called "gap coverage." Both are reductions in coverage.

(b) In the previous edition of this endorsement, one category of items that is included in the balance of the auto loan that is not compensable under gap coverage is "*overdue lease/loan payments at the time of loss.*" In the 2018 edition, "*deferred payments*" is added to that list.

(c) A new provision was added which specifies that coverage under the endorsement is "*excess over any other collectible source, including coverage purchased from the lessor or any financial institution.*"

(d) Rule 30 of the ISO Personal Vehicle Manual is applicable.

Joint Ownership Coverage (PP 03 34 09 18)

(a) ISO advises that this endorsement was revised in order to address some of the present trends in joint vehicle ownership and different household arrangements, including situations involving joint ownership, such as grandparents purchasing cars for grandchildren, parents purchasing cars for children who live part time in their household following a divorce and related custody arrangements, and a parent and child jointly owning a car but maintaining separate residences.

(b) In addition, autos that are jointly owned (as described in **(a)** above) may now be added to a Personal Auto Policy that also insures autos owned by individuals and/or resident spouses. In the previous edition of the endorsement, jointly owned autos (other than those jointly owned by resident spouses) were to be insured on a separate policy.

(c) The new endorsement also replaces the term "husband and wife" with "spouses."

(d) The Coverage, Limits, and Premium sections of the 2005 edition are deleted, as the same information is shown on the Declarations page.

(e) The Schedule now includes sections for:

- (i) Name of Joint Owner(s);
- (ii) Name and Address of Joint Owner(s) If A Nonresident Relative; and
- (iii) Description of Jointly Owned Vehicle(s).
- (f) Rule 3.B. of the ISO Personal Vehicle Manual is applicable.

Suspension of Insurance (PP 02 01 09 18)

- (a) The current 2005 edition of the endorsement can be used to suspend Liability, Medical Payments, Uninsured Motorists, and/or Collision coverage(s).
- (b) The 2018 edition adds Other Than Collision to the list of coverages which can be suspended.
- (c) Most experts recommend extreme caution when using this endorsement.
- (d) Rule 85 of the ISO Personal Vehicle Manual is applicable, and advises that the endorsement cannot be used to suspend coverage for:
 - (i) The minimum required insurance coverages for a motor vehicle which is registered in the state; or
 - (ii) Risks for which a financial responsibility filing is in effect.

NECESSARY ACTION: Circulate this Technical Advisory to all appropriate staff.

Please note that this Technical Advisory is intended to be educational and is not legal advice upon which you should rely. Please seek any legal opinion you may need from a qualified attorney.