



United States
Department of
Agriculture

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Farm and Foreign
Agricultural
Services

TO: All Approved Insurance Providers
All Risk Management Agency Field Offices
All Other Interested Parties

Risk
Management
Agency

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SUBJECT: Guidance Regarding Annual Controlled Business Certification

BACKGROUND:

Section 12005 of the Food, Conservation, and Energy Act of 2008 amends the Federal Crop Insurance Act (Act) by adding a new section 508(a)(10). This section prohibits an individual from receiving compensation for the sale and service of a policy or plan of insurance under the Act if the total compensation to be paid to the individual for policies in which the individual or an immediate family member has a substantial beneficial interest exceeds 30 percent of the total compensation for the sale and service of all policies or plans of insurance under the Act or a lesser percentage, if the respective State has a lower limit for controlled business.

On July 24, 2008, the Risk Management Agency (RMA) issued Informational Memorandum IS-08-007, which alerted approved insurance providers (AIP) to the new provision, and recommended that AIPs notify all affiliates regarding the restrictions on activities arising from this new provision, the fact that it would be enforced beginning with the July 1, 2008 start of the 2009 reinsurance year, the need to refrain from activities that would violate this provision, and the requirement to certify at the end of the reinsurance year.

RMA has provided the procedures below to facilitate implementation of the controlled business provision requirement.

ACTION:

1. In accordance with Amendment No. 1 to the Standard Reinsurance Agreement (SRA), the certification forms are to be in a format approved by RMA.



The Risk Management Agency Administers
And Oversees All Programs Authorized Under
The Federal Crop Insurance Corporation

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2. The “Individual Controlled Business Certification” form used by the AIPs, must at a minimum, include the following:

- a. The statement “To cover the _____ reinsurance year, beginning July 1, _____ and ended June 30, _____.” (*AIP will insert the appropriate dates for the appropriate reinsurance year—e.g. “To cover the 2009 reinsurance year, beginning July 1, 2008 and ended June 30, 2009.”*)
- b. A statement that the individual understands that all individuals (including subagents) who receive compensation (including any salary, commission, profit sharing, bonus, or any other direct or indirect benefit) for the sale of policies or plans of insurance reinsured by FCIC are required to complete this certification.
- c. A reprinting of the “Definition of Immediate Family” contained in section 508(a)(10)(A) of the Federal Crop Insurance Act which is:

(A) DEFINITION OF IMMEDIATE FAMILY.- In this paragraph, the term ‘immediate family’ means an individual’s father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, the spouse of the foregoing, and the individual’s spouse.

- d. A statement that the individual must certify to one of the following statements:
 1. I did not receive compensation (including any salary, commission, profit sharing, bonus, or any other direct or indirect benefit), for the sale or service of policies or plans of insurance reinsured by FCIC for which I or an immediate family member (as defined in c. above) have a substantial beneficial interest.
 2. I did receive compensation (including any salary, commission, profit sharing, bonus, or any other direct or indirect benefit), for the sale or service of policies or plans of insurance reinsured by FCIC for which I or an immediate family member (as defined in c. above) have a substantial beneficial interest.
- e. A statement that if the individual certified to subsection d.2. above, they must certify to one of the following statements:
 1. The total amount of compensation (including any salary, commission, profit sharing, bonus, or any other direct or indirect benefit) I received in the applicable reinsurance year for the sale or service of policies or plans of insurance reinsured by FCIC for which I or an immediate family member (as defined in subsection c. above) have a substantial beneficial interest, does not exceed 30 percent of the total compensation I have received for the sale or service of all FCIC policies or plans of insurance nor exceed any applicable State specific limitation.

2. The total amount of compensation (including any salary commission, profit sharing, bonus, or any other direct or indirect benefit) I received in the applicable reinsurance year for the sale or service of policies or plans of insurance reinsured by FCIC for which I or an immediate family member (as defined in c. above) have a substantial beneficial interest, does exceed 30 percent of the total compensation I have received for the sale or service of all FCIC policies or plans of insurance nor exceed any applicable State specific limitation.

f. A place for the individual to sign and date the certification.

g. Identifying information such as the social security number to allow the AIP to identify the individual making the certification.

h. The individuals title or position.

i. Name of the individual.

j. The RMA-approved Non-discrimination Statement.

k. The RMA-approved Privacy Act Statement.

3. If an AIP is collecting all of the Individual Controlled Business Certification forms they must provide RMA a letter certifying that they have collected all forms from the individuals required to submit forms.

4. If an affiliate is responsible for collecting the individual certifications on behalf of the AIP, RMA will require the collection of the "Affiliate Controlled Business Certification" form. The AIP is not required to obtain a copy of the individual certification forms if they have received the affiliate certification form for those individuals. The affiliate must retain the individual certification forms for which they are certifying receipt.

5. The "Affiliate Controlled Business Certification" used by the AIPs, must at a minimum, include the following:

a. The statement "To cover the _____ reinsurance year, beginning July 1, _____ and ended June 30, _____." (*AIP will insert the appropriate dates for the appropriate reinsurance year—e.g. "To cover the 2009 reinsurance year, beginning July 1, 2008 and ended June 30, 2009."*)

b. The statement that the officer or owner of the affiliate who has signed the form is authorized to sign the form, and has been designated by the AIP to receive all certifications required under section 508(a)(10)(C) of the Act. The name of the AIP is to be specified.

- c. The following statements: "I hereby certify that one of the following is accurate:
 - i. All individuals (including subagents), who received, directly or indirectly, any compensation through the affiliate for the service or sale of any eligible crop insurance contract in the above referenced reinsurance year, have submitted certifications and all individuals certified that the total amount of compensation they received did not exceed the amount allowed under section 508(a)(10)(B) of the Act; OR
 - ii. One or more individuals are not in compliance with the requirements of section 508(a)(10) of the Act because:
 - A. The individual did not submit an "Individual Controlled Business Certification";
 - B. The individual certified the total amount of compensation exceeded the amount allowed under section 508(a)(10)(B) of the Act; or
 - C. The affiliate has discovered the individual incorrectly certified to being in compliance with the compensation limitation under section 508(a)(10)(B) of the Act.
- d. A statement that if the affiliate certified to subsection c.ii above, the affiliate must provide the AIP a list of individuals who are not in compliance, separated into each of the three categories specified in subsection c:
- e. The name of the affiliate.
- f. A place for the officer or owner to sign and date certification.
- g. The officer or owners title or position.
- h.. The RMA-approved Non-discrimination Statement.
- i. The RMA-approved Privacy Act Statement.

6. AIPs must ensure that all individuals, including subagents, receiving compensation (including any salary commission, profit sharing, bonus, or any other direct or indirect benefit) for the sales and service of FCIC policies or plans of insurance through the AIP or any AIP affiliated entity have timely access to the certification form and have had a reasonable opportunity to complete and return the form to the AIP prior to 90 days following the annual settlement date for the reinsurance year. All certifications are to be retained by the AIP or its affiliate and not sent to RMA.

7. If the compensation involves salary, it should be treated no differently than commission and the percentage of compensation received from policies the individual or immediate family have a substantial beneficial interest should be determined by:

- a. Dividing the dollars of salary by the total amount of premium written by the individual;
- b. Multiplying the result of subsection a. by the amount of total premium from policies in which the individual and any immediate family member did have a substantial beneficial interest; and
- c. Dividing the results of subsection b. above by the total premium written by the individual

8. An individual subject to the certification requirement must submit an annual certification to each AIP with which he or she has an affiliation or from which he or she has received compensation; however, certification concerns the aggregate of all direct and indirect compensation from all AIPs with which the individual may have an affiliation. So, for example, an agent may write FCIC policies for three AIPs but have family members with substantial beneficial interests in policies written with only one of the AIPs. Such an agent would be required to answer affirmatively to Item 2.d.2 in the above Individual Controlled Business Certification form requirement to all three AIPs.

9. Within 120 days following the annual settlement date for the reinsurance year, AIPs must notify RMA, from among all individuals who have received compensation (including any commission, profit sharing, bonus, or any other direct or indirect benefit) for the sales and service of an FCIC policy or plan of insurance, any specific individuals who either:

- a. Have not certified to the AIP by properly completing and returning a signed form to the AIP for the reinsurance year; or
- b. Have answered affirmatively to Item 2.d.2 of the above Individual Controlled Business Certification form.

This notification must be directed to RMA as follows:

Director, RMA/Reinsurance Services Division
1400 Independence Ave. SW
Room 6741-S, Stop 0804
Washington, DC 20250-0804

10. AIPs may use electronic versions of the certification forms that incorporate either a digital signature or an authentication system to properly identify the submitter. Electronic records of signed or authenticated certification forms must be retained by the respective AIP and be available for inspection.

11. If the amount of compensation to which the individual is entitled under its contract with the Company or affiliate would result in the agent receiving more than 30 percent from immediate family policies, the individual is in violation. An individual cannot: (1) pay back an amount necessary to be compliant; (2) defer payments to determine whether they will violate the provision; or (3) take any other action to adjust the individuals compensation owed under the contract with the Company or affiliate.

12. An individual in violation of section 508(a) (10) of the Act will be subject to disqualification and civil fines under the procedures implementing section 515(h) of the Act and any other procedures approved by RMA implementing section 515(h). The gravity of the violation of the individual will determine whether a sanction is imposed and if so, the type and amount. For example, an agent whose book has been running below 30 percent but suddenly is over 30 percent because of a notification that an insured transferred to another agent after the cancellation date would not receive the same sanction as an agent whose book is significantly above the 30 percent threshold or who false certifies.

13. If an AIP began collecting certifications using procedures that differ from those above they are to notify the Reinsurance Services Division.

DISPOSAL:

This Bulletin will remain in effect until incorporated into FCIC regulations or procedures.