

## **IS-14-003**

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Date

February 18, 2014

To

All Approved Insurance Providers

All Risk Management Agency Field Offices

All Other Interested Parties

From

Heather Manzano, Acting Deputy Administrator for Insurance Services /s/ Heather Manzano

Subject

Rebating Prohibition

## **Background**

Section 508(a)(9) of the Federal Crop Insurance Act (Act) states:

**(9) PREMIUM ADJUSTMENTS.—**

(A) PROHIBITION.—Except as provided in subparagraph (B), no person shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, either as an inducement to procure insurance or after insurance has been procured, any rebate, discount, abatement, credit, or reduction of the premium named in an insurance policy or any other valuable consideration or inducement not specified in the policy.

(B) EXCEPTIONS.—Subparagraph (A) does not apply with respect to—

- (i) a payment authorized under subsection (b)(5)(B);
- (ii) a performance-based discount authorized under subsection (d)(3); or

(iii) a patronage dividend, or similar payment, that is paid—

(I) by an entity that was approved by the Corporation to make such payments for the 2005, 2006, or 2007 reinsurance year, in accordance with subsection (b)(5)(B) as in effect on the day before the date of enactment of this paragraph; and

(II) in a manner consistent with the payment plan approved in accordance with that subsection for the entity by the Corporation for the applicable reinsurance year.

Section 508(a)(9) of the Act became effective with enactment of the Food, Conservation, and Security Act of 2008, also known as the 2008 Farm Bill. Prior to enactment of this legislation, there was no federal statute that addressed the practice of rebating in the Federal crop insurance program.

The Risk Management Agency (RMA) has received questions regarding what constitutes a rebate, and whether or not rebates, benefits, or valuable considerations allowed by State rebating laws are violations of section 508(a)(9) of the Act. Section 508(a)(9)(A) of the Act is an absolute prohibition on rebating, with the only exceptions authorized under section 508(a)(9)(B).

Section 506(l) of the Act preempts State law that is in conflict with the Act. Specifically, section 506(l) states:

CONTRACTS.—The Corporation may enter into and carry out contracts or agreements, and issue regulations, necessary in the conduct of its business, as determined by the Board. State and local laws or rules shall not apply to contracts, agreements, or regulations of the Corporation or the parties thereto to the extent that such contracts, agreements, or regulations provide that such laws or rules shall not apply, or to the extent that such laws or rules are inconsistent with such contracts, agreements, or regulations.

Section IV.(o)(1) of the Standard Reinsurance Agreement (SRA) further states:

In accordance with section 506(l) of the Act (7 U.S.C. § 1506(l)), the provisions of this Agreement that are inconsistent with provisions of State or local law will supersede such law to the extent of the inconsistency.

Therefore, RMA does not recognize any exceptions to rebating that would otherwise be allowed by State law. The rebating prohibition applies if a federally reinsured Multiple Peril Crop Insurance (MPCI) policy is sold by an agent to an insured.

Section II.(a)(5) of the SRA incorporates the Act's rebating prohibition and states:

A Company and its affiliates are prohibited from providing a rebate except as authorized in section 508(a)(9)(B) of the Act (7 U.S.C. § 1508(a)(9)(B)).

## **Action**

All approved insurance providers must advise agents and affiliates of the Act's rebating prohibition for rebating practices, the SRA's rebating prohibition, and the sanctions for violating the rebating prohibition. This prohibition includes anything that would be considered valuable consideration or inducement to procure or retain insurance. Promotional and marketing items or activities of minimal value that are provided to all persons in the normal course of business, including calendars, pens, and meals, are not regarded a valuable consideration or inducement to procure or retain insurance.

### **DISPOSAL DATE:**

This memorandum will remain in effect unless modified or rescinded by statute