

## **COM-16-006**

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Date

November 21, 2016

To

All Approved Insurance Providers

All Risk Management Agency Field Offices

All Other Interested Parties

From

Heather Manzano /s/ Heather Manzano Deputy Administrator for Compliance /s/

Heather Manzano 11/21/2016

Subject

Agent Conflict of Interest Prohibitions

### **Background**

A joint investigation by the Office of Inspector General (OIG) and the Risk Management Agency (RMA), Special Investigation Staff (SIS) found program non-compliance relating to agent involvement with loss adjustment activities. Agents are assisting policyholders with the separation of production between units on claims that were filed on their privately written hail policies. Subsequently, these same production records are used to complete Multiple Peril Crop Insurance (MPCI) claims. This conduct is prohibited, and in violation of section VI of Appendix I to the Standard Reinsurance Agreement (SRA).

This section of Appendix I states in part:

*...any reference to an agent or agents also includes a subagent or subagents.*

*(a) Loss Adjustment*

*(1) The Company and its affiliates shall not permit:*

*(A) Its sales agents, agency employees, or sales supervisors to be involved in loss adjustment activities in a county or adjoining county where the sales agent, agency employee, or sales supervisor performs sales functions (except receipt and transfer to the Company of a notice of loss) on behalf of any AIP*

*(2) Prohibited loss adjustment activities for all individuals referenced in paragraph (1)(A) and (B) include the following:*

*(A) The supervision, control, or adjustment of a claim. The Company is solely responsible for the supervision and control of the loss adjustment process for a loss determination and all loss adjustment oversight. The agent's prohibition in loss adjustment activities is not intended to preempt any duty or obligation of the agent to provide information to the policyholder on his or her policy options, duties, rights, and responsibilities.*

*(B) Obtaining sales or production records for purposes of loss adjustment on behalf of the policyholder (other than simply collecting information directly from the policyholder and providing it to the Company).*

This would include the agent assisting the insured with separating the production between the units and subsequently providing these production records to the loss adjuster to use in completing the claim forms. This is happening on policies in which a Notice of Loss is filed. Should this prohibited conduct by the agents continue, the AIP would be at risk of RMA denying reinsurance on all MPCl policy(s) involved.

## **Action**

RMA directs each approved insurance provider (AIP) to review its procedures regarding agent involvement with loss adjustment activities and to identify and correct any procedures that might otherwise violate the conflict of interest provisions of the SRA by December 31, 2016. Failure of the AIP to take this action will be considered a willful and intentional failure to comply with a requirement of FCIC and may subject the AIP to the sanctions in section 515(h) of the Act (7 U.S.C. § 1515(h)), including disqualification and civil fines.

If there is a private hail or other named peril policy in force and the cause of loss is also covered under the policyholder's MPCl policy, the agent CANNOT assist the adjuster, or assist the policyholder in any way to provide production by unit for use

in completing the MPCl claim forms. In addition, agents are prohibited from riding with the adjuster to the field. With regard to privately written hail or other named peril policies, in the event state law requires agents to go out for loss adjustment purposes, AIPs are reminded that federal law pre-empts state law. Section IV(o)(1) of the SRA 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.*

If Compliance identifies situations where the agent has been involved with loss adjustment in any way (intentional or not) relating to a federally reinsured MPCl policy appropriate action will be taken in accordance with the SRA.

**DISPOSAL DATE:**

Until Rescinded