Published Rebating Violations and Sanctions

Background

Rebating is strictly prohibited by the Federal Crop Insurance Act (Act) and the Standard Reinsurance Agreement (SRA), with limited exceptions authorized by the Act. The Risk Management Agency (RMA) takes the rebating prohibition seriously and enforces it stringently. RMA has released numerous guidance documents regarding rebating which are listed below under “References”. This FAQ summarizes the rebating prohibition guidance and provides examples so that approved insurance providers (AIPs), agents, and insureds understand how broad the prohibition extends.

Section 508(a)(9) of the 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.

(C) PUBLICATION OF VIOLATIONS. –

(i) PUBLICATION REQUIRED. – Subject to clause(ii), the Corporation shall publish in a timely manner on the website of the Risk Management Agency information regarding each violation of this paragraph, including any sanctions imposed in response to the violation, in sufficient detail so that the information may serve as effective guidance to the approved insurance providers, agents, and producers.
(ii) PROTECTION OF PRIVACY. – In providing information under clause (i) regarding violations of this paragraph, the Corporation shall redact the identity of the persons and entities committing the violations in order to protect the privacy of those persons and entities.

References

Additional information on RMA's rebating enforcement efforts:

1. Violations and Sanctions web page
2. Rebating Prohibition
3. Private Product Sales
4. Enforcement Initiative, Federal letter, State letter
5. "Anti-Rebating Certification Statement" in the Document and Supplemental Standards Handbook

It is not possible or practical to attempt to list every possible rebating scenario, but as a general rule, if you are offering an insured or prospective insured something that you are not offering to everybody else, including all existing insureds as well as prospective insureds, regardless of whether they have or are seeking Federal crop insurance, it is likely a rebate.

Under "EXCEPTIONS" in section 508(a)(9) of the Act it references subsections (b)(5)(B) and (d)(3). What do they allow?

A: Subsection (b)(5)(B) states:
(B) PAYMENT OF CATASTROPHIC RISK PROTECTION FEE ON BEHALF OF PRODUCERS.—

(i) PAYMENT AUTHORIZED.—If State law permits a licensing fee to be paid by an insurance provider to a cooperative association or trade association and rebated to a producer through the payment of catastrophic risk protection administrative fees, a cooperative association or trade association located in that State may pay, on behalf of a member of the association in that State or a contiguous State who consents to be insured under such an arrangement, all or a portion of the administrative fee required by this paragraph for catastrophic risk protection.
(ii) SELECTION OF PROVIDER.—Nothing in this sub- paragraph limits the option of a producer to select the licensed insurance agent or other approved insurance provider from whom the producer will purchase a policy or plan of insurance or to refuse coverage for which a payment is offered to be made under clause (i).
(iii) DELIVERY OF INSURANCE.—Catastrophic risk protection coverage for which a payment is made under clause (i) shall be delivered by a licensed insurance agent or other approved insurance provider.
(iv) ADDITIONAL COVERAGE ENCOURAGED.—A cooperative association or trade association, and any approved insurance provider with whom a licensing fee is made, shall encourage producer members to purchase appropriate levels of coverage in order to meet the risk management needs of the member producers.

Subsection (d)(3) states:
(3) PERFORMANCE-BASED DISCOUNT.—The Corporation may provide a performance based premium discount for a producer of an agricultural commodity who has good insurance or production experience relative to other producers of that agricultural commodity in the same area, as determined by the Corporation.

NOTE: Regarding subsection (d)(3), there are currently no “Performance-Based Discounts” authorized.

Who is authorized to provide a patronage dividend referenced in section 508(a)(9)(B)(iii) of the Act?

While rebating was not addressed by statute prior to the 2008 Farm Bill, section 508(b)(5)(B) of the Act authorized an approved insurance provider (AIP) to make a licensing fee or other payment to a “cooperative association” or “trade association,” which could, in turn, be rebated to a producer with CAT coverage or buy-up

coverage. The following cooperatives are “grandfathered” by this section of the Act and approved in only the listed states.

Cooperative	Approved States
California Grape and Tree Fruit League	California
Nisei Farmers League	California
Allied Grape Growers	California
Paramount Citrus Exchange of CA	California
Livingston Farmers Association	California
Minturn Huller Cooperative, Inc.	California
Cortez Growers Association	California
Northern Merced Hulling Association	California
Westside Hulling Association	California
Salida Hulling Association, Inc.	California
North State Hulling Cooperative, Inc.	California
ArborOne, ACA (formerly Pee Dee Farm Credit)	South Carolina
Farm Credit of Florida, ACA	Florida
Farm Credit of Central Florida, ACA	Florida
AgSouth Farm Credit, ACA	Georgia, South Carolina
Sunrise Cooperative	Ohio, Michigan

The above listed cooperatives may pay patronage dividends to all members who reside in the approved state, even when membership has grown through acquisitions and mergers. However, the above listed cooperatives may not pay a patronage dividend to any member who resides outside of the approved states. No other cooperative association or trade association is authorized to pay a patronage dividend based upon insurance policy sales except those listed above.

Do state rebating laws apply to an agent/agency (agent) who sell federal crop insurance?

While section 506(1) of the Act preempts State law that is in conflict with the Act, it does not prohibit the States from enforcing their rebating statutes on agents who

sell insurance if such laws are not in conflict. RMA and the States work together and share information regarding rebating violations. Given the broad scope of section 508(a)(9) of the Act, it is unlikely that there would be a violation of State rebating laws that would not be a violation of section 508(a)(9). RMA and the States are both enforcing rebating prohibitions.

What are some examples of rebating?

Scenario A
An agent is affiliated with another business, and they provide other goods or services at a lower cost or more favorable contract terms to producers that purchase their insurance policy from them. The same lower cost or contract term is not provided to producers who do not purchase their insurance policy from them.

Examples of these other goods, services, or contracts include, but are not limited to: other insurance; loan rates; commodity bushel price; accounting, financial, grain marketing, or farm management services; land appraisal or loan origination services; seed and inputs sales; and equipment sales and maintenance.

Scenario B
An agent also sells other insurance policies, but you have to purchase your insurance policy from them in order to buy the other policies.

Example: Another agent offers a crop hail policy that costs less than the coverage offered by your insurance agent. In order to purchase the less expensive crop hail policy from the other agent you have to purchase your insurance from them. Reference 3) “Private Product Sales” above is the RMA Managers Bulletin that addresses this prohibition.

Scenario C
Providing gifts to a current or potential insurance customer or their family.

Examples: trips (to anywhere); fishing, hunting, or sporting event outings; equipment or tools; vehicles; club memberships; contributions toward a customer’s debt; customer appreciation dinners; basically, anything exceeding a minimal value. An example of what would not be considered a gift would be 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 as a valuable consideration or inducement to procure or retain insurance.

Scenario D
Purchasing items/services from an insurance customer at a price above market value.

Examples: Paying $5000 for a car with a blue book value of $4000 or paying more than the current selling price for any goods or services.

Scenario E
Structuring a business entity for the purpose of transferring insurance sales revenue back to the insurance customer.

Example: Establishing a Limited Liability Corporation (LLC) or other entity comprised of producer owners, having an owner or another individual become the insurance agent for the LLC members, and the agent write policies for the owners of the LLC. The commissions earned on the policies are then paid to the LLC, and the agent is compensated from part of the commissions. The LLC then dividends the remaining commission income back to the customer members in cash; or buys seed, fertilizer, equipment, etc. for the customer members; or distributes the commission income benefit back to the customer members through some other means.

Scenario F
Providing an insurance customer an investment, ownership, or similar opportunity with the agent/agency.

Example: Selling shares in an agency to insurance customers as an incentive to purchase insurance from the agency. As with Example E, this provides a benefit back to the customer directly related to their purchasing their insurance from the specific agent/agency.

Scenario G
An agent pays all or part of a producer’s premium.

Example: An agent agrees to pay a producer’s premium in exchange for a future indemnity and/or other repayment. A producer has an agreement with their agent to share an indemnity payment received by the producer and the agent agrees to pay the producer’s premium when an indemnity is not received.

Scenario H
A landlord requires a lessee to purchase insurance from a specific agent or agency and the lessee receives a direct or indirect benefit.

Example: A landlord requires the lessee to purchase their insurance from an agent: the agent also sells seed, gives the landlord a discount which is passed down to the lessee; the landlord is given farm management software from the agent which they then provide to the lessee; the agent pays the landlord, and the landlord provides a reduced lease rate to the lessee.

Scenario I
Offering or providing access to financial institutions as an inducement to obtain or retain a policyholder's business.

Example: An agent, agency, AIP, or person associated with an agent, agency, or AIP, offers exclusive financial services or options providing exclusive terms or a method to pay or be credited, either directly or indirectly for the insurance premium in part or full.

Scenario J
Offering or providing discounted brokerage commissions.

Example: A commodity broker associated with an agent, agency, or AIP, offers discounted brokerage fees not offered to all other potential insurance customers.

When do Premium Funding & Refund Arrangements provide a rebate under section 508(a)(9) of the Act?

Q: Does non-exclusivity make a premium funding/refunding arrangement permissible?

A: No. Non-exclusivity does not make an otherwise impermissible premium related arrangement allowable under §508(a)(9). Nonexclusive access may prevent an arrangement from constituting a marketing inducement targeted at specific agencies or producers, but it does not cure the core statutory violation if the structure reduces or removes the producer's premium obligation. If the arrangement pays the producer's premium and guarantees the producer will not have to pay the

premium or reimburses or refunds the producer’s premium it is prohibited, exclusive or not.

Q: Is it a violation if a third party pays or backstops the premium and is repaid only if indemnity comes?

A: Yes. If a third party pays or backstops a policyholder’s premium such an arrangement functions as a premium subsidy outside what FCIA allows.

This is one of the clearest forms of a prohibited rebate. If a producer is only required to repay the premium if indemnity occurs, the third party has effectively paid or guaranteed the premium, and the producer faces no real premium risk. This violates §508(a)(9), even if the producer technically “agrees” to pay, because the practical effect is that the producer does not bear the premium obligation.

Q: Does assigning indemnity payments to a funder, paired with premium forgiveness/backstopping, count as someone other than the producer paying the premium?

A: Yes. When indemnity assignments are used as collateral for a premium guarantee or repayment only upon indemnity structure, the third party is effectively paying or fronting the producer's premium obligation.

RMA has historically treated such structures as impermissible premium financing, indirect rebate mechanisms, and inconsistent with the requirement that the producer be the party financially responsible for the premium. The producer cannot lawfully transfer the premium burden to a third party unless authorized by statute (e.g., government subsidies).

Q: Does the “independent financial institution” language in COM-25-003 insulate these arrangements?

A: No. COM-25-003’s reference to independent financial institutions does not override Section 508(a)(9). COM-25-003 was intended to clarify that legitimate, armslength lending (e.g., general operating loans) is permissible if it does not function as a premium rebate.

Q: What must an AIP do if it becomes aware that agents/producers are participating in these non-exclusive refunding arrangements?

A: Under the FCIA, SRA, and compliance obligations, an AIP must take corrective action when it has reason to believe a prohibited rebate arrangement exists. This typically includes:

- investigating the arrangement,
- instructing the producer, agent or entity to cease any prohibited activity,
- notifying RMA if required, and
- implementing internal controls to mitigate exposure.

If the AIP does nothing, it risks possible sanctions, administrative and civil liability, and potential denial of reinsurance for affected policies. Even if the agency disputes the legal interpretation, the AIP must act to avoid non-compliance.

What if a lending institution or cooperative has a patronage program or provides their members a dividend. Is this a rebate?

Lending institutions may offer a patronage dividend program calculated based upon loan interest paid or other product purchases. Cooperatives may provide their members a dividend calculated based upon the business they conducted with the cooperative. If crop or livestock premium is not part of the calculation to determine the dividend a producer receives, it is not a rebate. If crop or livestock premium is included in the calculation, it is a rebate. A producer participating in a dividend program should be eligible and receive the same amount regardless of whether they purchased their crop or livestock insurance from the entity providing the dividend. The only exceptions are the “grandfathered” cooperatives listed above.

What is the "Anti-Rebating Certification Statement"?

Reference 5) above contains guidance on the Anti-Rebating Certification Statement. The following certification statements are included on a form executed by the insured and their crop insurance agent.

Applicant/Insured Statement
--I certify, for the crop year indicated, that I have not directly or indirectly received, accepted, or been paid, offered, promised, or given any benefit, including money, goods, or services for which payment is usually made, rebate, discount, abatement, credit, or reduction of premium, or any other valuable consideration, as an inducement to procure insurance or in exchange for purchasing this insurance policy after it has been procured. I understand that this prohibition does not include payment of administrative fees, performance based discounts, and any other payment approved by FCIC that are authorized under sections 508(a)(9)(B) and 508(d)(3) of the Federal Crop Insurance Act (Act) (7 U.S.C. §§ 1508(a)(9)(B) and 1508(d)(3)). I understand that a false certification or failure to completely and accurately report any information on this form may subject me, and any person with a substantial beneficial interest in me, to sanctions, including but not limited to, criminal and civil penalties and administrative sanctions in accordance with section 515(h) of the Act (7 U.S.C. §1515(h)) and all other applicable federal statutes.

Agent Statement
--I certify, for the crop year indicated, that I have neither offered nor promised, directly or indirectly, any benefit, including money, goods, or services for which payment is usually made, rebate, discount, credit, reduction of premium, or any other valuable consideration to this person either as an inducement to procure insurance or in exchange for obtaining insurance after it has been procured. I understand that this prohibition does not include payment of administrative fees, performance based discounts, and any other payment approved by FCIC that are authorized under sections 508(a)(9)(B) and 508(d)(3) of the Federal Crop Insurance Act (Act) (7 U.S.C. §§ 1508(a)(9)(B) and 1508(d)(3)). I understand that a false certification or failure to completely and accurately report any violation may subject me, and all agencies/companies I represent, to sanctions, including but not limited, to criminal and civil penalties and administrative sanctions in accordance with section 515(h) of the Act (7 USC §1515(h)) and all other applicable federal statutes.

Every insurance customer and agent is certifying that they have not received or given a rebate. If you are unsure whether the rebating prohibition applies to your situation, contact your AIP.

What are the potential sanctions against agents and producers involved in rebating?

As stated in the Anti-Rebating Certification Statement executed by the producer and agent, both are subject to sanctions including criminal and civil penalties and administrative sanctions in accordance with Section 515(h) of the Federal Crop Insurance Act (FCIA) Laws and Regulations and all other applicable federal statutes. Sanctions include civil fines and disqualification for up to 5 years.