



United States
Department of
Agriculture

Risk
Management
Agency

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BULLETIN NO: MGR-04-011

TO: All Reinsured Companies
All Risk Management Agency Field Offices
All other Interested Parties

FROM: Ross J. Davidson, Jr. /s/ *Ross J. Davidson, Jr.* 10/6/04
Administrator

SUBJECT: Recovery of Funds Involving Policyholder Concealment,
Misrepresentation or Fraud

BACKGROUND:

On January 15, 1988, the Federal Crop Insurance Corporation (FCIC) issued Bulletin Number MGR-001 (MGR-001), Recovery of Amounts Improperly Disbursed. Under MGR-001, reinsured companies were not required to reimburse any funds provided by FCIC for reinsurance in cases involving concealment, misrepresentation or fraud by a producer, provided certain conditions were met and the company made a reasonable effort to recover the funds. Recovery of the overpaid indemnity or understated premium is the responsibility of the company since the debt arises from a contract between the reinsured company and its policyholder. MGR-001 is being revised in response to an Office of Inspector General audit recommendation and to conform to provisions of the Debt Collection Act.

This bulletin supersedes MGR-001. It more clearly specifies the conditions to qualify for relief, the reasonable efforts to collect the debt, and provides procedures for termination of the debt collection process. Relief under the bulletin is provided outside the scope of the Standard Reinsurance Agreement (SRA), which requires that such repayments be made regardless of whether the amount is collected from the producer. If relief under this bulletin is denied, repayment must be made in accordance with the SRA. Nothing in this bulletin amends, revises, changes, or otherwise affects any provision in the SRA or the rights and responsibilities of the parties thereto. If the reinsured company disagrees with any determination it must request reconsideration in accordance with 7 C.F.R. § 400.169(c).



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

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ACTION:

A reinsured company that has evidence that an indemnity was paid as a result of concealment, misrepresentation or fraud by a policyholder may submit a request to the Reinsurance Services Division (RSD) asking that it not be required to immediately repay to FCIC the overpaid amount. The following conditions must be met for relief to be granted.

1. The producer must have concealed or misrepresented a material fact or committed fraud;
2. The reinsured company, its agents and employees must not have been involved in, or must not have known or should have known about, the concealment, misrepresentation or fraud; and
3. The reinsured company, its agents and employees followed FCIC-approved policies and procedures.

The request for relief be in writing and include documentary evidence that all three of the above stated conditions have been met. If the reinsured company fails to provide sufficient evidence that all three of the above conditions have been met, the request for relief will be denied. If the request for relief is approved, FCIC will not require reimbursement of any funds until such time as they are recovered by the reinsured company from the producer, provided all other requirements in this bulletin have been met. Failure to comply with all requirements herein will result in a revocation of the approval, and the reinsured company will be required to repay the amounts on the next monthly accounting report.

If the request is granted, the reinsured company is required to comply with the following:

A. Collection of Amounts in Excess of Federal Restitution: When the approved request involves a producer who is convicted of fraud, and the court orders a judgment of criminal restitution which is not sufficient for full recovery of the amount owed, the reinsured company must make reasonable effort to collect any amount which exceeds criminal restitution provided the court order does not consider the restitution to be payment in full.

B. Collection of Overpaid Indemnities: If the approved request does not involve a producer who has been convicted of fraud, the reinsured company must make reasonable effort to collect the entire amount of the overpaid indemnity.

C. Reasonable Effort: Within 30 days of approval of the request for relief, the reinsured company must issue a demand letter that identifies the producer's responsibilities and rights. The letter must state:

1. The amount and a full explanation of the debt;
2. That litigation or other collection efforts, including referral to FCIC for administrative offset, may be initiated if the producer does not pay the entire debt;

3. The identity of a reinsured company contact; and
4. That the producer may request reconsideration from the reinsured company within 30 days of the date of the letter and that a review does not negate the producer's right to arbitration. (Exception: Reconsideration rights are not available to the producer if they were previously provided or if legal action has already been taken.)

After the demand letter is issued, the reinsured company shall take all available collection action that the company would take to collect a similar debt owed to it under another line of insurance. If all reasonable collection efforts fail, the reinsured company should proceed in accordance with paragraph E.

Any funds recovered by the reinsured company must be reported on the next monthly accounting report as a reduction in the amount of the loss. If the reinsured company enters into a written payment agreement with the producer or settles the debt for an amount less than was due, FCIC will consider the entire debt collected and the reinsured company must reimburse FCIC on the next monthly accounting report. A copy of the written payment agreement or settlement agreement must be immediately provided to RSD.

D. Status Report: Within 120 days of approval of the request for relief, the reinsured company must provide RSD with a written report of the collection status that states, as applicable:

1. The debt has been collected and will be reflected on the next monthly accounting report;
2. Collection of the debt is ongoing;
3. All collection action has been taken; or
4. The debt is not collectible (must contain full explanation and supporting documentation).

After the initial report, semi-annual status reports must be provided to RSD until the reinsured company collects the debt, submits a request for termination of the debt collection process in accordance with paragraph D or the debt is transferred to FCIC for collection. The minimum collection period is one year from the date RSD approved the request for relief. Any debt not collected within two years from the date RSD approved the request for relief will be transferred to FCIC.

- D. Request for Termination of the Debt Collection Process: If the reinsured company determines the debt is not collectible at any time after the minimum collection period, it may submit a request to RSD for termination of the debt collection process. In accordance with the requirements of the Debt Collection Improvement Act, FCIC will initiate further debt collection action at that time to collect that portion of the debt that is owed to FCIC. FCIC does not have the authority to collect that portion that may be owed to the reinsured company. After termination of the debt collection process, the reinsured company has no authority to write off or compromise the debt that is referred to FCIC.

A request to terminate the debt collection process must include:

1. Documents that provide evidence the reinsured company made every reasonable effort to collect the debt; which at a minimum will include proof that reconsideration rights were given to the producer, all demand/debt letters and responses from the producer, and a copy of the reinsured company's normal debt collection procedure for other lines of insurance;
2. The reasons the debt is not collectible, including documents that support the reinsured company's position (For example: the producer's debt was discharged in bankruptcy or the costs of recovery would exceed the amounts to be recovered); and
3. A report that provides factual evidence of the producer's financial status (The report should include the results of an investigation into the producer's business activities and assets. Supporting documents must be included with the report).

If RSD approves the request for termination of the debt collection, the reinsured company will not make any further reimbursements to FCIC, file any other status reports, or make any further attempts to collect the debt unless the producer submits additional funds to the reinsured company.

If the report of the financial status of the producer reveals the producer has sufficient assets to satisfy all or a portion of the debt, the request for termination of the debt collection process will be denied. A request for termination of the debt collection process will also be denied if the company fails to provide sufficient evidence. Upon denial of the termination request, FCIC will withdraw its approval of the request for relief under this bulletin and the reinsured company must adjust the next monthly accounting report accordingly. If the reinsured company fails to do so, FCIC will adjust the next monthly accounting report without further notice.

E. Reimbursement of Expenses Associated with Collection: The cost of the reinsured company's efforts to collect overpayments is considered a normal business expense. Therefore, reimbursement of expenses associated with collection is included in the expense reimbursement paid to the company under the SRA. FCIC will not provide any additional reimbursement to compensate the reinsured company for the expenses associated with the collection of improperly disbursed funds. The cost of FCIC's efforts to collect overpayments on policies accepted under the Termination of the Debt Collection Process procedures will be the responsibility of FCIC.

DISPOSAL DATE:

This Bulletin is for the purpose of transmitting information and its disposal date is December 31, 2004.