



United States
Department of
Agriculture

Risk
Management
Agency

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BULLETIN NO: MGR-05-019

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

FROM: James Callan /s/ James Callan 10/31/2005
Acting Administrator

SUBJECT: Guidance Regarding Conflicts of Interest During Loss Adjustment

BACKGROUND:

The 2005 Standard Reinsurance Agreement (SRA) contains revised conflict of interest provisions for Approved Insurance Providers (AIPs) and their employees and affiliates. These provisions adopt various recommendations by the Office of Inspector General (OIG) resulting from its audits and investigations, and from U.S. Attorney prosecutions, which identified changes in the administration and design of the crop insurance program required to more effectively deter, detect and prosecute fraud and abuse among the various participants in the crop insurance program.

The conflict of interest provisions in the new SRA and a subsequent Informational Memorandum issued to AIPs from the Risk Management Agency (RMA) on March 9, 2005, raised implementation questions from AIPs, their contract sales agents, and loss adjusters regarding RMA's expectations and intended enforcement of the SRA. This Bulletin provides clarification and guidance to AIPs on allowable and prohibited interaction among sales agents, policyholders, and loss adjusters during the loss adjustment process. This bulletin also supersedes the Informational Memorandum dated March 9, 2005. Guidance on other SRA conflict of interest provisions, such as conflict of interest disclosure requirements, will be provided by RMA to AIPs at a later date.

ACTION:

As defined by the 2005 SRA, the following procedure is applicable:

1. General requirement. Each AIP must train its sales agents and loss adjusters in conflict of interest provisions of the SRA, including specifics regarding loss adjustment activities reserved exclusively for loss adjusters under the SRA and related procedures. Each AIP is to ensure it has adequate controls that prevent a sales agent, agency, sales supervisor, or policyholder from improperly influencing a loss determination by a loss adjuster.



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2. Simplified Claims. Procedures for handling simplified claims are contained in Manager's Bulletins. Under a simplified claims process, sales agents perform certain tasks that otherwise are reserved for loss adjusters in accordance with procedures established by RMA.

3. Loss Adjusters. The duties and responsibilities of loss adjusters and AIP personnel assigned to evaluate, verify and review claims are specified in the Loss Adjustment Manual Standards Handbook (LAM) issued by RMA for the respective crop year. These activities are reserved exclusively for loss adjusters and AIP personnel assigned to supervise, review, verify, and evaluate claims, and as such, sales agents are specifically prohibited from performing these duties.

4. Sales Agent, Agency and Sales Supervisor. (For purposes of this section, these terms are referred to as "agent".) The agent may perform a facilitation role in the receipt and transfer of the notice of loss, and in advising and counseling policyholders of their rights, responsibilities and duties under the policy. This facilitation role may occur at any time, including before, during and after the period of time when the loss adjuster performs their exclusive duties to independently verify and validate loss information during the loss adjustment process. However, the SRA specifically prohibits sales agents, agency employees, sales supervisors, or any relative (defined in the SRA) of its sales agent, agency employee or sales supervisor from being involved in loss adjustment activities in a county or adjoining county where sales functions are performed. The prohibited activities specifically cited in the SRA, Section F.4., Conflict of Interest, are:

a. "The supervision, control, or adjustment of a claim;" This prohibition is specifically focused to allow loss adjusters to independently perform their verification and validation duties as set forth in Part I, Section 8, of the LAM in order to independently determine the loss. Agents are prohibited from being involved in the loss adjuster's determination of the loss, including the loss adjusters' (and Company reviewers') sole responsibility and role for verification and validation of loss information with independent third parties. Verification and validation means the loss adjuster (and Company reviewer) must actually contact the third party that provided the information, confirm the accuracy of the loss information, and document the measures used in verification. However, this prohibition is not intended to preempt at any time the duty and responsibility of the agent to provide guidance and advice to the policyholder on his/her policy options, duties, rights and responsibilities under the policy. AIPs solely supervise and control the loss adjustment process for a claim determination, and are directly responsible for all loss adjustment oversight.

b. "Obtaining sales or production records for the purposes of loss adjustment on behalf of the policyholder (other than simply collecting information directly from the policyholder and providing it to the Company);" Activities that an agent may perform under this section include the following:

- Receive a notice of loss from the policyholder and transfer it to the Company;
- Provide a copy of the AIPs official file folder, as applicable, to the loss adjuster;
- In addition to the specific requirements in the SRA, provide the loss adjuster with any information provided from the policyholder related to the loss. If the policyholder gives certain information to the agent that normally is obtained by the loss adjuster (settlement sheets, weight slips, maps, etc.), the agent may provide such information to the loss adjuster. However; the loss adjuster is directly responsible for the verification and validation of the information from the third party source of such information, just the same as the loss adjuster is to do if the information was provided by the insured;
- Facilitate the loss adjuster's gathering of information directly from other parties. For example, the agent may call the grain elevator to confirm the loss adjuster's identification and authority to collect needed information, or facilitate getting aflatoxin test information from the producer to the loss adjuster; and
- Assist the loss adjuster to locate the policyholder or vice versa.

However, nothing in the facilitation of such interactions or information gathering permits activities that may allow the agent to influence the loss adjustment process or the loss adjuster and their independent determination of loss.

c. "A loss adjustment determination or verification required to complete a claim or the determination or verification of a cause of loss;" In general, an agent shall not influence or coerce the policyholder or the loss adjuster in the preparation or presentation of information associated with a claim; the determination or verification of facts or information associated with a claim, or the determination of the cause of loss or the amount of a claim, other than to facilitate the loss adjuster's gathering of information from the policyholder and third parties as set forth in "b" above. An agent may not conduct the following activities since they present opportunities for the agent to inappropriately exert influence:

- Ride with the loss adjuster to the field or be present with the loss adjuster during the loss inspection and related processes;
- Accompany the loss adjuster or Company reviewer in their independent verification and validation of claim information from third parties; and
- Offer the use of or allow a loss adjuster to use the agent's or agency's office, computer, or other similar resources to prepare the claim and related documentation. However, the loss adjuster may use the administrative services such as copying and faxing services, and telephone use as necessary to facilitate the loss inspection if such

- services are not available to the loss adjuster. (In the event of a significant or widespread disaster or emergency with extenuating circumstances, RMA may provide additional procedure for handling situations or issues not covered by this paragraph, or requiring alternative steps or processes.)

Prohibited agent contact does not include:

- Social interactions;
- Checking or calling as to the status of a claim, claim payment or facilitating any follow up for appointments or other necessary meetings between the producer and loss adjuster;
- Normal course of business contact on other policies, policy provisions and crop insurance matters not related to a specific open claim (a claim pending insured and loss adjuster signatures); and
- Interaction on a claim after the loss adjuster has filed the appropriate claim documentation with the AIP (the agent shall not engage the loss adjuster directly on a claim dispute).

d. “Verification of yields for the purpose of validating insurance coverage or the guarantee;” The independent verification of prior and current yields in the determination of a loss on a claim is an activity reserved exclusively for the loss adjuster. This includes certain growing season inspections, underwriting reviews and other pre-acceptance inspections performed by the Company for the purposes of determining insurability of the crop or the amount of crop to be insured. Therefore, an agent must not be present during such field inspections or otherwise interact with the loss adjuster, Company reviewer (or similar company representative) during the field verification process of yields. To the extent the completed inspection documentation is in the policyholder file, the agent can and must provide this to the loss adjuster.

e. “After a notice of loss is filed by the policyholder, advising or assisting the policyholder in any manner regarding the preparation of the claim and the determination of the indemnity, including, but not limited to, whether the loss adjuster correctly applied loss adjustment procedures;” Nothing prohibits an agent from consulting with the policyholder to explain the crop insurance policy’s terms and conditions, the insurance business cycle and processes, and the implications of decisions or actions that may be taken by the policyholder under the policy. Neither the SRA nor this Bulletin prohibits such consultation from occurring after a notice of loss is filed by the policyholder, as long as such consultation does not include any opinion, influence or

coercion as to the facts of a claim on policies written by the agent or the determinations of the loss adjuster on that claim. Permitted advice may extend to the implications of a pending or active claim on a first crop/second crop decision by the policyholder, or the implications of other management decisions on insurability or benefits under the policy. Likewise, the agent may assist the policyholder in understanding the loss determination and his or her options for an appeal with the AIP. If the agent suspects that a claim has been adjusted improperly or contains a factual error, the agent may contact the Company's field supervisor or claims manager for review and assistance, but must not discuss the matter directly with the loss adjuster to avoid the potential for or appearance of inappropriately influencing the loss adjustment process. (AIPs are encouraged to develop a process for policyholder questions and service after the loss adjuster completes the loss adjustment process. Generally, this should include a process for seeking clarification or questions to a second level person in the loss adjustment chain such as a loss supervisor or company claims manager, or similar representative.)

f. "Any other function reserved for loss adjusters in the procedures." AIPs must ensure that loss adjustment personnel provide policyholders with complete information on controversial claims and dispute resolution in the event of a disagreement. AIPs shall ensure loss adjusters perform their exclusive duties without inappropriate influence from agents or other similar parties per the terms of the SRA and approved procedures. Agents shall not perform activities that allow them to influence the loss adjustment process or the loss adjuster and their determination of loss.

For any activity related to the insured during the adjustment of the loss not included in this section, the agent should contact the Company to determine whether such activity would constitute a conflict of interest.

5. Powers of Attorney. Powers of Attorney are permitted between employees or sales agents and policyholders. However, a sales agent with a power of attorney shall not perform those tasks in the loss adjustment process on behalf of a policyholder that would place the sales agent or employee in a similarly situated position as those prohibited in section 4. The agent may coordinate with the tenant, or other appropriate person, for the tenant to provide the necessary information to complete the loss inspection. However, in the event the policyholder is not available to sign the claim or related loss documents, the policyholder may execute a separate power of attorney with the tenant or such other appropriate person to sign the claim documents.

DISPOSAL DATE:

This bulletin supersedes Information Memorandum dated March 9, 2005 and will remain in effect until superseded by a change in the applicable SRA or new procedures are established and issued.