

DATE: June 4, 2007

TO: All Commissioners, Directors, Superintendents and Administrators

FROM: Director Merle Scheiber, Chair
NAIC Crop Insurance Working Group

SUBJECT: Federal Crop Insurance Corporation (FCIC)-related Benefits Provided by
Cooperative or Trade Associations

The NAIC's Crop Insurance Working Group has been asked by the Risk Management Agency (RMA) staff to assist in educating state insurance regulators about a provision in the Federal Crop Insurance Act (Act) allowing cooperative or trade associations to provide rebates for licensing fees or other payments from approved insurance providers (AIP) to insureds. This memo provides background information about the program and the requirements of the association to obtain written documentation from state insurance regulators as to whether the program is in compliance with, or in violation of, applicable state laws, rules and regulations. Attached with the memo are model documents, developed in conjunction with RMA staff, for you and your staff to use in providing the RMA with the necessary information to allow an association to participate in the program and for guidance in completing the documents.

Background:

Section 508(b)(5)(B) of the Act states in relevant part:

- (i) *If State law permits a licensing fee or other payment to be paid by an insurance provider to a cooperative association or trade association and rebated to a producer [insured] with catastrophic risk protection or additional coverage, 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) *Treatment of Licensing Fees - A licensing fee or other payment made by an insurance provider to the cooperative association or trade association in connection with the issuance of catastrophic risk protection or additional coverage to members of the Cooperative Association or Trade Association shall be subject to the laws regarding rebates in the State in which the fee or other payment is made.*

Under the Act, cooperative or trade associations that have applied to the RMA to participate in this rebate MUST obtain from the insurance regulator in each state in which they wish to offer the rebate a written statement that the association's plan is not in violation of state law(s). Item 27.c. of Appendix II of the RMA's Standard Reinsurance Agreement (SRA) states that an association must: "*for each State listed, provide a letter from the State Insurance Department stating whether the return to the producer [insured] of licensing fees or other payments made by the Company or its affiliates to the cooperative association or trade association is in compliance with the rebating laws of such State.*"

Many of the letters previously received from State regulators have been inadequate to determine whether the State actually considered the payment of the licensing fee or other payment from the AIP to the cooperative or trade association and the subsequent benefits to their members as allowable under the laws of the state. Even in cases where it appears there was approval by the State, it was often unclear what the State actually approved. Therefore, the RMA has determined it is necessary to establish the procedures governing the content of such letters to ensure that the same information is provided to the FCIC and the States and that the State's determination of whether there is or is not a violation of the State's laws is based on that information.

Regulator's Role:

The cooperative or trade association must provide a letter to the FCIC from the State regulatory body covering insurance (e.g. State Insurance Commissioner, etc.) for each State in which a licensing fee or other payment (including commission) is proposed to be provided to a cooperative or trade association and distributed, in whole or in part, to the members of the association. To be accepted by the FCIC as an assurance that the proposed payment program complies with State laws, the letter must contain ALL of the following items:

1. A detailed statement describing the State's understanding of the proposed licensing fee or other payment to be made by the AIP to the cooperative or trade association and the distribution of the resulting benefits to the members of the cooperative or trade association.
2. A recitation or citation to the rebating laws, as well as any other laws of the State considered applicable by the State in conducting its review of the proposed licensing fee or other payment by the AIP to the cooperative or trade association and the distribution of the resulting benefits to the members of the cooperative or trade association.
3. A comprehensive analysis that specifically addresses the proposed licensing fee or other payment and the distribution of the resulting benefits to the members of the cooperative or trade association as such payments relate to the applicable State rebating laws as well as any other applicable state laws.
4. An express statement by the State that the proposed licensing fee or other payment and the distribution of the resulting benefits proposed by the AIP and cooperative or trade association is in conformance with the laws of the State.
5. The letter must be signed by the head of the State regulatory body covering insurance or a designee. In the case of a designee, evidence of the delegation of authority from the head of the State regulatory body covering insurance must also be provided.

In addition, the Act provides that after the first year in which such letter is provided, a new letter from the State must be sought: (i) prior to the cooperative or trade association making any changes in the manner in which the benefits from the licensing fee or other payment are to be distributed to its members; (ii) within 15 days after any changes in the State's rebating laws; or (iii) not later than five years of date of the previous letter from the State if neither (i) or (ii) have occurred within the five year period. The AIP must immediately notify the FCIC that a new letter is being sought and the AIP may not pay any licensing fee or other payment to the cooperative or trade association until the new letter is provided from the State and the FCIC approves such payment under item 27 of Appendix II of the SRA.

DATE:

TO: *{Insert Cooperative or Trade Association Contact Person}*

FROM: *{Insert Relevant State Regulatory Official Name, Title}*

SUBJECT: **State Review of *{Insert Cooperative or Trade Association's Name}*'s Request To Participate in the Cooperative or Trade Associations Payment Rebate Program**

It is the State's understanding that *{insert cooperative or trade association's name}* has applied to the Risk Management Agency (RMA), under Section 508(b)(5)(B) of the Federal Crop Insurance Act (Act), to provide a rebate of the licensing fees or other payments made to it by *{insert the name of the insurer(s)}* to members of its association. It is also the State's understanding that the RMA has determined, or will make a determination, that the association meets its definition of a cooperative or trade association and that the proposed program meets all the requirements of the Act.

[DRAFTING NOTE: The state regulator should provide a detailed statement describing the State's understanding of the proposed licensing fee or other payment to be made by the insurer to the cooperative or trade association and the distribution of the resulting benefits to the members of the cooperative or trade association. This description should be provided to you by the cooperative or trade association submitting the program information request to the state and can be supplemented by insurance department staff with follow-up information as necessary.]

In the review process undertaken by the State, we considered the following applicable state laws, regulations and rules as they apply to the proposed program: *{insert relevant cites to laws, rules and regulations}*.

[DRAFTING NOTE: Recitation or citation of applicable laws should include, but not be limited to, a review of rebating laws, cooperative and trade associations and commission sharing of the State considered applicable by the State in conducting its review of the proposed licensing fee or other payment by the AIP to the cooperative or trade association and the distribution of the resulting benefits to the members of the cooperative or trade association.]

After reviewing both the association's program, as understood by the State, and all applicable State laws, rule and regulations, I have determined that the program *{does/does not}* comply with State laws and, as proposed, *{may/may not}* be implemented in the state of *{insert state name}*. [ALTERNATE LANGUAGE: After reviewing both the association's program, as understood by the State, and all applicable State laws, rules and regulations, there is insufficient legal clarity to determine whether the program would be in compliance with State laws.]

[DRAFTING NOTE: Provide a comprehensive analysis that specifically addresses the proposed licensing fee or other payment and the distribution of the resulting benefits to the members of the cooperative or trade association as such payments relate to the applicable State rebating laws, as well as any other applicable state laws. The RMA has determined that use of the alternative language above will prohibit the association's participation in the program.]

[DRAFTING NOTE: The letter must be signed by the head of the State regulatory body covering insurance or a designee. In the case of a designee, evidence of the delegation of authority from the head of the State regulatory body covering insurance must also be provided.]