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June 21, 2018

**BULLETIN NO. 1053**

**PROPOSED CHANGES TO THE RULES OF OPERATION**

At its meeting of June 20, 2018, the Governing Committee voted to amend the following Rule of Operation by deleting and adding the language as indicated on the attached copy. A copy of the Filing Letter, which contains an explanation of the Rule changes, is attached for your information. The impacted Rule is listed below.

**Rule 14 – Exclusive Representative Producer Requirements**

This Bulletin, with a copy of the proposed changes to the Rule listed above, is being furnished to every Member Company, each association of insurance Producers, and the Public Protection Division of the Office of the Attorney General as required in Article X of the Plan of Operation. Any Member Company, association of insurance producers, or the Attorney General may request a public hearing within five days of receipt of this Bulletin and Filing Letter, as provided by Article X of the Plan of Operation.

A proposed Rule shall become effective upon the written approval of the Commissioner or upon the expiration of 30 days after filing, provided the Commissioner has not previously disapproved the Rule in writing.

MARIAN ADGATE  
Corporate Documentation Specialist

Attachment



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June 21, 2018

Honorable Gary D. Anderson  
Commissioner of Insurance  
Massachusetts Division of Insurance  
1000 Washington Street, Suite 810  
Boston, MA 02118

### **Proposed Changes to the Rules of Operation**

Dear Commissioner Anderson:

In accordance with the provisions of Article X of the Plan of Operation, I hereby file, at the direction of the Governing Committee, amendments to the following Rule of Operation for your approval:

#### **Rule 14 – Exclusive Representative Producer Requirements**

Changes are shown by deleting and adding language as reflected on the attached copy. The remainder of the Rule is unchanged.

#### Explanation:

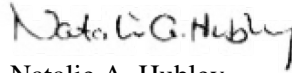
In conjunction with CAR's objective to improve commercial automobile residual market results, the Governing Committee continues to evaluate opportunities to enhance consistency among Servicing Carriers and producers in managing residual market risks. The Committee has employed a disciplined approach to thoughtfully debate program requirements and to introduce solutions incrementally which are individually thought to represent marked improvements that will collectively yield impactful results.

To that end, the Governing Committee is proposing amendments to Exclusive Representative Producer (ERP) eligibility requirements to enhance the requisite work experience to a minimum of 12 months (increased from 6) with a licensed producer or Member, with the applicant's efforts primarily devoted to commercial insurance in the Massachusetts motor vehicle insurance market. The Committee asserts that the heightened requirements will improve the prospects that qualified producers are appointed to service residual market applicants with unique and challenging risk characteristics.

Additionally, the Governing Committee, as a result of its efforts to introduce standard procedures where practical, is proposing to add to the ongoing ERP requirements the submission of appropriate certification form(s) completed in their entirety with all new business applications for insurance.

A copy of the proposed amendments to Rule 14 is attached hereto, and is being furnished to every Member Company, the two associations of insurance producers, and the Public Protection Division of the Office of the Attorney General, as required by Article X of the Plan of Operation.

Very truly yours,

A handwritten signature in black ink that reads "Natalie A. Hubley". The signature is written in a cursive style with a large, looped initial "N".

Natalie A. Hubley  
President

Attachment: Rule 14 – Exclusive Representative Producer Requirements

cc: Massachusetts Urban Agents Association, Inc.  
Massachusetts Association of Insurance Agents  
Public Protection Division – Office of the Attorney General

**A. Appointments**

1. New Appointments

A licensed producer who does not have a commercial Exclusive Representative Producer (ERP) appointment to one of the Member companies appointed as a Servicing Carrier, may apply for an appointment to represent a Servicing Carrier. The producer shall be subject to the eligibility criteria of Section A.4. If CAR determines the applicant has satisfied these criteria, the applicant will be appointed to a Servicing Carrier as an ERP. The Servicing Carrier shall provide service to such ERPs under substantially the same contractual terms and conditions governing its voluntary producer relationships.

An applicant applying as a consequence of a voluntary producer agreement being terminated because the applicant (1) intentionally withdraws from a voluntary agreement to write Motor Vehicle Insurance business on behalf of a Servicing Carrier, or (2) requests cancellation of a voluntary agreement for Motor Vehicle Insurance business, or (3) fails to fulfill any of the producer requirements specified in Section B.1. is ineligible for appointment to a Servicing Carrier as an ERP.

2. Affiliated Producers

a. If a producer applying for appointment as an ERP is found to have a contractual relationship or membership in a so-called producer cluster or network, or a direct or indirect material and continuing proprietary or management interest in another agency or brokerage firm which also has an ERP appointment to a Servicing Carrier such producer is presumed to be an affiliate of the other agency or brokerage firm. A producer who applies for an ERP appointment and who is determined to have an affiliated relationship, will be appointed to the same Servicing Carrier as all members of the affiliated group. Existing ERPs identified as having an affiliated relationship will be appointed to the same Servicing Carrier as all members of the affiliated group.

The formation of an affiliated group for the sole purpose of placing commercial Motor Vehicle Insurance business is prohibited.

b. A producer applying for an ERP appointment must identify any affiliated relationships that relate to commercial Motor Vehicle

Insurance business at the point of application. An existing ERP must notify its Servicing Carrier and CAR of any new affiliated relationship, or change in affiliated status within 30 days of such change.

- c. Annually, upon request by a Servicing Carrier, an ERP must furnish updated information relative to its affiliated relationships or change in affiliated status for commercial Motor Vehicle Insurance business.
- d. The Servicing Carrier may terminate an ERP appointment for failure to provide the requested affiliated agency disclosure information. An ERP terminated under the provision of this section shall be provided 30 days written notice, and shall be ineligible for appointment to a Servicing Carrier for a period of two years commencing on the effective date of the termination. If the requested information is provided prior to the expiration of the 30 days, the ERP's appointment will be reinstated.
- e. An applicant or existing ERP aggrieved by CAR's determination of its affiliated status may appeal to the Governing Committee pursuant to Rule 20 and may present evidence to refute that determination. If successful, the applicant will be appointed to a Servicing Carrier pursuant to Rule 13.C.

### 3. Sale of Exclusive Representative Producer Business

If an ERP sells its stock or its book of business to a producer which does not have a Motor Vehicle Insurance relationship with a Servicing Carrier, such appointment will inure to the purchaser subject to the eligibility requirements in Section A.4. and production criteria in Section C. Any probationary status of the ERP appointment, resulting from failure of the ERP to maintain eligibility requirements or failure to develop and maintain the established minimum written premium volume requirement will carry over to the purchaser of the business.

If the sale does not result in the continuation of the appointment to the seller's Servicing Carrier, then that Servicing Carrier shall enter an agreement with the purchaser whereby all risks written by the Servicing Carrier on behalf of the seller, for policies with an effective date as of 90 days subsequent to the date of the sale for renewal business and as of the date of sale for new business, will

be fully serviced through the purchaser until the policy expiration date of each risk, as noted on the declaration page of each policy in force as of these respective dates. "Servicing" shall include, but not be limited to, changing existing vehicles, adding additional insureds, adding named operators onto the existing policy, endorsing coverage limits, providing all notices required by law, processing claims and collecting premium. All other obligations of both Servicing Carrier and producer as set forth pursuant to the Plan and Rules of Operation shall remain in force during the term of this agreement.

#### 4. Eligibility Requirements

Prior to any action being taken on an application for an ERP appointment, the producer must satisfy the following requirements:

- a. Complete a course of study, approved by the Commissioner of Insurance, which concentrates on the commercial Massachusetts Motor Vehicle Insurance system;
- b. Attain a passing grade on a written examination based on material covered in the approved course;
- c. Within the preceding ~~12~~ 24 month period, work for a minimum of ~~6~~ 12 months with a producer licensed by the Division of Insurance, or with a Member, during which time the applicant's efforts were primarily devoted to commercial automobile insurance in the Massachusetts Motor Vehicle Insurance market; and
- d. Has an existing commercial relationship with a Member other than a Servicing Carrier or can provide letter(s) of intent from insureds identifying commercial policies expected to be written as of the first year of appointment that would satisfy the production criteria pursuant to Section C.1. Continued eligibility is dependent upon compliance pursuant to the provisions of Section C.1.

Having satisfied the preceding criteria the applicant must conclusively show that such applicant:

- (1) is applying in good faith;

- (2) will operate from an established location in Massachusetts, except licensed nonresident producers in a state contiguous to Massachusetts if licensed pursuant to Massachusetts General Laws;
- (3) will maintain regular business hours;
- (4) has not been convicted of a crime related to his occupation as an insurance producer;
- (5) has not had his producer's license to engage as an insurance producer revoked or suspended;
- (6) has not materially or substantially breached a contract with a Member;
- (7) is not in default on the remittance of any Motor Vehicle Insurance premiums due a Member;
- (8) agrees to comply with the provisions of the Plan of Operation, the Rules of Operation, the Manual of Administrative Procedures, the contract between the ERP and the Servicing Carrier, and the applicable regulations of the Division of Insurance;
- (9) agrees to notify CAR and the appointed Servicing Carrier of an agreement to sell the agency 15 days in advance of the proposed closing of any such sale and further agrees to obtain a certification from the Servicing Carrier, which shall be provided to CAR, that the agency does not owe to the Servicing Carrier any past due premium based upon the latest available statement;
- (10) has not been declined an ERP appointment within the preceding 60 days, unless the declination was reversed by the Governing Committee, the Division of Insurance, or a court of competent jurisdiction;
- (11) has not had an ERP appointment terminated by a Servicing Carrier pursuant to Section E., within the preceding 24 months, unless the termination was reversed by the Governing Committee, the Division of Insurance or a court of competent jurisdiction.

**B. Ongoing Exclusive Representative Producer Requirements**

1. It will be the ongoing responsibility of an ERP to fulfill the following requirements and maintain eligibility pursuant to Section A.4.
  - a. Maintain a valid producer's license as issued by the Division of Insurance.
  - b. Collect, process and remit premium due a Servicing Carrier in accordance with the provisions of the Rules of Operation.
  - c. Refrain from engaging in fraudulent activity in connection with the business of Motor Vehicle Insurance.
  - d. Submit for all applicants a new business application for insurance with appropriate certification form(s), completed in ~~its~~ their entirety, and a signed premium finance application/agreement, if applicable within two business days;
  - e. Provide a reasonable and good faith effort to verify the information provided by the applicant, including rating and licensing data;
  - f. Report all coverage bound and all registrations certified to the Servicing Carrier within two business days after binding coverage or certifying a registration;
  - g. Verify that the applicant has not been in default in the payment of any Motor Vehicle Insurance premiums in the past 24 months;
  - h. Comply with written procedures supplied by the Servicing Carrier for processing claims, remitting premiums and requesting coverage;
  - i. Forward to the insured within 30 days of receipt from the Servicing Carrier, all policies and endorsements if not mailed directly by the Servicing Carrier to the policyholder;
  - j. Forward all premium payments to a Servicing Carrier within two business days of receipt. However, a Servicing Carrier shall extend the payment period for an additional seven days upon sufficient notice that all or part of a premium is being financed by a licensed premium finance company where the premium finance company has given its written assurance to pay the full premium financed



directly to the Servicing Carrier. This provision shall not obligate a Servicing Carrier to provide such additional time if notwithstanding any written assurances the premium finance company has previously failed to perform its commitment;

- k. Notify the Servicing Carrier of any suspected fraud;
- l. Cooperate with the Servicing Carrier and CAR during all audits and investigations;
- m. Properly order endorsements;
- n. Order only those coverages from the Servicing Carrier that are requested by the insured and for which the insured is eligible;
- o. Quote proper premiums based on information provided by the applicants for the coverage desired;
- p. Conduct all monetary transactions with the insured and the Servicing Carrier as required by the Rules of Operation and the ERP contract;
- q. Notify the premium finance company and the insured that premium checks for all financed accounts are to be made payable to the Servicing Carrier;
- r. Retain the necessary documentation of Servicing Carrier transactions in accordance with the Manual of Administrative Procedures;
- s. Notify the applicant for insurance that he has the option of utilizing an Installment Payment Plan;
- t. Comply with appropriate notification procedures relative to the transfer of Motor Vehicle Insurance coverage to another Member;
- u. Develop and maintain a book of business pursuant to Section C.;
- v. Adhere to any directive issued by the Commissioner relative to the charging of service fees.
- w. Provide the Servicing Carrier and CAR with affiliated agency disclosure information pursuant to Sections A.2.b. and c.

- x. Comply with all of the conditions set forth in the contract between the ERP and the Servicing Carrier.
- y. Comply with all of the provisions of the Rules of Operation and the Manual of Administrative Procedures.

2. Grounds for Termination

a. Immediate Termination

The following shall be cause for a Servicing Carrier to immediately terminate an ERP's contract and the authority to bind coverage on behalf of a Servicing Carrier.

- (1) Failure to maintain a valid producer's license as issued by the Division of Insurance.
- (2) Willful misappropriation of premium due a Servicing Carrier in accordance with the provisions of the Rules of Operation.
- (3) The entry of a finding, by a court of competent jurisdiction that the producer has engaged in fraudulent activity in connection with the business of Motor Vehicle Insurance.

b. Termination with a 30-Day Notice

Failure to fulfill the requirements in Sections B.1.d. through B.1.y. shall be cause for a Servicing Carrier to terminate an ERP's contract and the authority to bind coverage with 30 days written notice of termination.

- 3. An ERP terminated pursuant to Section B.2. shall have its MAIP Assigned Risk Producer certification revoked commencing on the effective date of the termination in accordance with Rule 31.D.3.

**C. Production Criteria**

- 1. An ERP who fails to develop and maintain the following minimum commercial Motor Vehicle Insurance written premium volume requirements will be terminated. Total written premium includes all agency commercial Motor Vehicle Insurance written premium, voluntary and ceded combined.

Months after Appointment	Minimum Volume Requirement (Total Written Premium)
12	\$10,000
24	\$20,000
36	\$30,000
Subsequent Evaluations	\$30,000

An ERP's book of business will be evaluated on an annual basis by the Servicing Carrier with a copy of the evaluation provided to the ERP and to CAR within 15 days of the evaluation date.

The effective date of termination shall be one year after the evaluation date on which the ERP failed to develop or maintain the applicable minimum book of business. If, during that year, the ERP obtains and maintains the applicable minimum book of business, the termination process shall be suspended but the ERP shall continue to be subject to annual evaluations.

2. An ERP terminated under the provisions of Section C. shall be ineligible for appointment to a Servicing Carrier for a period of two years commencing on the effective date of the termination.

The term ERP, for purposes of this paragraph, includes any licensed producer and any other newly emerging producer with whom or which the terminated ERP has a direct or indirect material and continuing proprietary or management interest.

**D. Service Fees**

1. G.L. c. 175, §182, in part, prohibits producers and others in connection with the placing or negotiation of insurance policies or the continuance or renewal thereof from selling or offering to sell anything of value whatsoever not specified in the policy of insurance. See also G.L. c. 176D, §3(8). The following acts and practices are prohibited:
  - a. Charging a fee in addition to the premium for certifying a registration on behalf of a Servicing Carrier;
  - b. Charging a fee in addition to the premium for acting as a producer and placing the applicant's Motor Vehicle Insurance business with a Servicing Carrier;

- c. Charging a fee in addition to the premium for providing assistance to the insured in the completion of forms which are completed in order for the insured to procure or to continue Motor Vehicle Insurance; and
    - d. Charging a fee in addition to the premium for the sale of a service contract which provides for service or advice relating to the issuance, continuance, or renewal of an insured's Motor Vehicle Insurance policy.
  2. Nothing set forth in the provisions of Section D.1. is intended to prohibit producers from charging courier fees and other non-insurance related fees if the following requirements are met;
    - a. The producer provides to the applicant a complete description of the non-insurance related services for which the fee, in addition to the premium rate, is being charged;
    - b. The producer advises the applicant that there is no obligation to purchase the non-insurance related service and that the insured may obtain Motor Vehicle Insurance through the producer, notwithstanding the insured's decision not to purchase the non-insurance related services;
    - c. The applicant, after having been apprised of the information set forth in Sections D.2.a. and D.2.b., agrees to pay the fee; and
    - d. The fee for the services provided is reasonable.
  3. The producer may enter into a contract with the applicant pursuant to which the producer provides non-insurance related services to the applicant if the producer complies with all of the requirements of Sections D.1. and D.2. In the event the producer and applicant execute such a service contract, the producer shall give the applicant an executed copy of the contract and shall retain an executed copy in his file which shall be made available to the Servicing Carrier, Division of Insurance and CAR upon request.

**E. Appointment Ineligibility**

1. An ERP that has had an appointment terminated by a Servicing Carrier for failing to satisfy any of the requirements specified in Section B.1. or for failing to maintain eligibility pursuant to Section A.4. shall be ineligible for reappointment for a period of two years commencing on the effective date of the termination.

A licensed property and casualty producer whose appointment has been terminated by a Member as a consequence of failing to satisfy any of the requirements of Section B.1. or failing to maintain eligibility pursuant to Section A.4. will be ineligible for appointment as an ERP for a period of two years commencing on the effective date of the termination.

2. If the certification of a MAIP Assigned Risk Producer has been revoked by CAR for violations of any obligation(s) delineated in Rule 31 and having exhausted the appeal rights pursuant to Rule 40, the producer is ineligible for the appointment or continuation of its ERP appointment. The producer shall be ineligible to reapply for appointment as an Exclusive Representative Producer until such time as the producer is eligible to reapply for certification as an Assigned Risk Producer.
3. An ERP terminated for failure to meet minimum production criteria pursuant to Section C. shall be ineligible for appointment to represent a Servicing Carrier as an ERP for a period of two years commencing on the effective date of the termination.
4. The term ERP, for purposes of Section E., includes any licensed producer and any other newly emerging producer with whom or which the terminated ERP has a direct or indirect material and continuing proprietary or management interest.

**F. Review/Relief of ERP Termination**

A terminated ERP may request that the termination be reviewed by CAR.

A completed "Request for Review/Relief" form must be received by CAR within 30 calendar days of the delivery of the termination notice. A review by CAR's Market Review Committee will be held within 15 business days of the date of CAR's receipt of the completed "Request for Review/Relief" form unless such requirement is waived by the

aggrieved ERP. The receipt by CAR of such form will stay the ERP's termination until the ERP has exhausted all appeal rights pursuant to Rule 20. However, any reviewing committee may lift the stay if such stay is not in the best interests of the motoring public.

During the period of stay, operational procedures identified by the Servicing Carrier in the termination letter will remain in effect until reviewed by the Market Review Committee. The Market Review Committee may approve, modify or disapprove the operational procedures.