

Manual of Administrative Procedures

**Chapter VII - Servicing Carrier/
Exclusive Representative Producer Responsibilities**

A. Reimbursement of Defaulted Exclusive Representative Producer Premiums

1. Introduction

Servicing Carriers may petition CAR for reimbursement of a defaulted Exclusive Representative Producer where the Exclusive Representative Producer collected premium from an insured, but failed to remit all or part of the premium to the Servicing Carrier, or there is unearned commission due the Servicing Carrier as a result of termination of the Exclusive Representative Producer or Representative Producer.

Petitions for reimbursement will be considered only for those Exclusive Representative Producers who have no voluntary contract to write automobile insurance with the petitioning Servicing Carrier.

The CAR Governing Committee shall appoint a Defaulted Brokers Committee including agent representatives to review any petition by a Servicing Carrier seeking reimbursement.

The Servicing Carrier must demonstrate that sound business practices and procedures were used in the Exclusive Representative Producers/company relationship with particular attention to possible collection problems. The recommendations contained in this section shall be considered minimum along with any other action the company deems prudent.

The Governing Committee, after reviewing the recommendations of the Defaulted Brokers Committee, will determine if the Servicing Carrier is entitled to reimbursement in accordance with the criteria listed below:

2. Requirements

Prior to recommending action to be taken on a request by a Servicing Carrier for reimbursement, CAR and/or the Defaulted Brokers Committee will review the procedures followed by the Servicing Carrier. CAR and/or the Defaulted Brokers Committee shall determine if:

a. Prior to Default:

- (1) There was an agreement that provided for complete understanding of the collection and payment procedures;

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(continued)

2. Requirements (continued)

a. Prior to Default: (continued)

- (2) The Servicing Carrier monitored the timely submission of applications;
- (3) The Servicing Carrier maintained communication with the Exclusive Representative Producer through agency visits, accounting department briefings and other techniques for explaining company procedures;
- (4) Safeguards were used by the Servicing Carrier if the Exclusive Representative Producer has a history of, or evidence of, collection and payment problems. Such safeguards shall include, but not be limited to regular agency visits, and strict monitoring of premium remittances within two working days.

b. After the Loss:

- (1) All reasonable collection procedures had been used including, but not limited to the following:
 - (a) Cancellation of, or audit letters to all insureds on whose behalf the Exclusive Representative Producer has not paid the company;
 - (b) Demand notice was sent to the Exclusive Representative Producer;
 - (c) Notice was sent to the Commissioner of Insurance and CAR;
 - (d) Legal action to recover the money at issue and company supplies;
- (2) Reasonable provisions have been made to adequately service policyholders affected.

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2. Requirements (continued)

- c. Consideration in determining the form and amount of recommended reimbursement shall include:

- (1) Policies for which the insured has presented proof of payment versus cancelable coverage.
- (2) Net loss versus gross premium (at least net of commission).

- d. Other Recommended Conditions

In addition to parts a. and b. above, other recommended conditions for reimbursement shall include, but not be limited to the following:

- (1) In applicable cases, appropriate legal steps to preclude further opportunity for fraud may be required such as action under Section 176 of Chapter 175 of the General Laws.
- (2) Reimbursement shall be made to the Servicing Carrier in the amount requested less the expected amount to be realized from the sale of the agency. The amount of reduction shall be based on:
 - (a) The number of policies/vehicles currently on the book of business.
 - (b) The area which is being serviced.
 - (c) The current market rate of agency sales based on factors a) and b) above.

If no sale has been effected within six months of the approved initial reimbursement, the Servicing Carrier may be reimbursed fully if it can satisfy the Committee that it has diligently pursued a sale.

NOTE: Prior to making a recommendation to the Governing Committee, CAR will verify that all premiums which are subject to reimbursement have been properly reported to CAR.

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B. Reimbursement of Defaulted Exclusive Representative Producer Extraordinary Expenses

In instances where an Exclusive Representative Producer is in default and the Servicing Carrier incurs extraordinary expenses in handling the default, the Servicing Carrier may petition CAR for reimbursement of these expenses. Expenses included are: professional services such as attorneys, auditors, serving of legal papers, etc. Prior to contracting these services, the Servicing Carrier must complete the Servicing Carrier Request for Reimbursement of Extraordinary Expenses (Exhibit VII-B-1) and obtain approval from CAR.

The Servicing Carrier must demonstrate that it acted in a timely manner to cure the default and has taken action to attach the assets of the agency. In addition the Servicing Carrier must also ensure that all reasonable precautions have been taken to prevent continued violations by the Exclusive Representative Producer.

The Servicing Carrier must submit to CAR, the name of any counsel retained for the purpose of litigating a default by an Exclusive Representative Producer, along with a synopsis of that counsel's experience in handling similar matters for the purpose of evaluating the reasonableness of any charges or fees to be paid to said retained counsel. The Servicing Carrier should further advise CAR of details of any fee arrangement.

The Defaulted Brokers Committee shall submit its recommendations to the Governing Committee for action.

Reimbursement of defaulted premium and extraordinary expenses will be reviewed on an individual case basis.

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EXHIBIT VII-B-1

Servicing Carrier Request for Reimbursement of Extraordinary Expenses

1. Exclusive Representative Producer _____
2. Amount of default _____
3. Date company became aware of default _____
4. Name of legal firm retained _____
5. Name of attorney handling default _____
6. Has this firm and/or attorney previously handled a default? _____
If yes, for which company? _____
Name of Broker _____
7. Method of billing by the attorney(s)
 - a. Contingency fee based on recovered premiums and commission _____
 - b. Per hour or part thereof/principal attorney or paralegal staff _____
 - c. Estimated total extraordinary expense to be incurred _____
8. Check action(s) taken:
 - a. License revocation proceedings Yes [] No [] Date: _____
 - b. Have steps been taken to attach assets? (i.e., bank accounts, R.E., etc.)
Yes [] No [] Date: _____ Court: _____
 - c. Has the company attempted to see the agency?
Yes [] No [] To whom: _____
 - d. Immediate steps taken to protect company's interests?

9. Is the Exclusive Rep. Producer represented by an attorney? _____
10. Is the Exclusive Rep. Producer still conducting business at the same or another location?
Yes [] No [] Indicate other location, if applicable _____

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C. Sale of an Exclusive Representative Producer Agency

Any Producer appointment made by CAR, whether made to a Servicing Carrier which is a voluntary company in the agency, or to a Servicing Carrier which has no voluntary relationship with the agent or broker, terminates with the sale of the agency.

If the purchaser has no voluntary market, he or she may apply to become an Exclusive Representative Producer.

If the purchaser has a voluntary market and is a Representative Producer for one or more Servicing Carriers, consideration should be given to rewriting the automobile business in the voluntary or involuntary market(s) of the purchaser, unless the purchaser is appointed as a voluntary agent of the company(s) writing in the purchased agency. The purchaser would then be eligible for Representative Producer appointment by CAR to that company as a Servicing Carrier.

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**D. Administration of the Start-up Fee for Newly Assigned Exclusive Representative Producers
(Rule 17, c, 1)**

A start-up fee for first time newly assigned Exclusive Representative Producers, as outlined in Rule 17, C, 1, CAR Rules of Operation, will be given a Servicing Carrier for all CAR ID Code 5 Producers who have had no previous direct or indirect relationship or interest, voluntary or involuntary, with the assigned Servicing Carrier.

Eligibility for the fee will be further defined by the reason for assignment. A Servicing Carrier will receive the start-up fee if the reason for assignment is the assigned Servicing Carrier was the "Next Servicing Carrier in Line" to receive an Exclusive Representative Producer assignment. In addition, the start-up fee will be paid to those Servicing Carriers electing to accept an Exclusive Representative Producer who would have otherwise qualified for the fee as previously indicated.

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E. Administration of the Annual Processing Fee (Rule 17, c, 2)

An involuntarily assigned Exclusive Representative Producer shall be considered newly assigned for a period of 24 months following the Exclusive Representative Producer's original assignment date or until such time as the Exclusive Representative Producer meets the minimum production criteria as stated in Rule 14, for purposes of administration of the annual processing fee. The annual processing fee will be paid the Servicing Carrier, for an Exclusive Representative Producer qualifying for the fee, following the review of the Exclusive Representative Producer's vehicle production as required by Rule 14, C, CAR Rules of Operation. Vehicle count and date of review must be submitted to CAR, in writing, prior to processing fee payment. Payment of the processing fee will be made to a Servicing Carrier for each Exclusive Representative Producer qualifying as newly assigned, pursuant to Rule 17, C, 2, subsequent to the first and second anniversary date of the producer appointment.

Servicing Carriers shall not be entitled to the annual processing fee for any Exclusive Representative Producers who have attained the minimum vehicle volume for the year in which the Exclusive Representative Producer met the minimum production criteria requirements.

An Exclusive Representative Producer who fails to attain the minimum number of vehicles, following the first review date, shall be advised by the Servicing Carrier that their Exclusive Representative Producer appointment will terminate upon the next anniversary date unless the Exclusive Representative Producer has met the minimum stated requirements. Exclusive Representative Producers who have met the first year minimum requirement but failed to meet the second year minimum requirement shall be advised by the Servicing Carrier that their Exclusive Representative Producer appointment will terminate upon the next (third) anniversary unless the minimum stated requirements are met during the third year. CAR and the Exclusive Representative Producer shall be advised of all actions relative to the appointment status of Exclusive Representative Producers pursuant to Rule 14, C.

If a Servicing Carrier renews the book of business of a low volume Exclusive Representative Producer after termination pursuant to Rule 14, C, the Exclusive Representative Producer shall not be entitled to the commissions on the business renewed. The Servicing Carrier may continue to report that business to CAR for one year following the termination effective month of the Exclusive Representative Producer under the same terms and conditions as if it were being written by a newly appointed Exclusive Representative Producer.

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