

## **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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#### A. Reimbursement of Defaulted Exclusive Representative Producer Premiums (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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#### **F. Termination of Exclusive Representative Producer Contracts**

##### **1. Termination by a Servicing Carrier**

- a. A Servicing Carrier may terminate an ERP contract upon failure of the ERP to meet the eligibility requirements and/or definition of ERP as provided by the Rules of Operation or as specified in Rule 13 – Servicing Carrier Requirements.
- b. A Servicing Carrier is responsible for terminating an ERP contract and the authority to bind coverage in accordance with Rule 13.B.6. In order to adequately advise the ERP of the termination and satisfy due process, a notice of termination of an ERP contract must contain sufficient facts and supporting documentation to establish the basis for the termination. At a minimum, a notice of termination of an ERP contract issued by a Servicing Carrier must:
  - (1) Be in writing.
  - (2) State the specific CAR Rule provision(s) that constitute the basis for the termination.
  - (3) Define changes in operational procedures, if any, that the Servicing Carrier intends to implement upon the ERP's receipt of the notice.
  - (4) Advise the ERP of the right to request that the termination be reviewed by CAR, pursuant to Rule 14.H. and include a copy of CAR's "Request for Review/Relief" form.
  - (5) Be hand delivered or mailed by a method that provides proof of mail to the ERP's principal place of business, with a copy of the termination sent to CAR and the Division of Insurance.
  - (6) Identify the specific provision(s) in the ERP contract, if any, that have been violated and constitute the basis for the termination.
- c. If, pursuant to Rules 14 and 20, the ERP requests a review by CAR of the termination, the Servicing Carrier must provide CAR with a copy of any documents and materials referenced in the notice of termination, including, if applicable, the ERP contract. Such documents and materials will become part of the record considered by the reviewing committee(s).

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#### **F. Termination of Exclusive Representative Producer Contracts (continued)**

##### **1. Request for Review of a Termination**

- a. Pursuant to Rule 14 – Exclusive Representative Producer Requirements, an ERP may request review of a Servicing Carrier’s termination of his or her ERP contract by submitting a completed “Request for Review/Relief” form to CAR. The completed “Request for Review/Relief” form must be received by CAR within 30 calendar days of the delivery of the termination notice.
- b. The receipt by CAR of a completed “Request for Review/Relief” form will stay the ERP’s termination until the ERP has exhausted all appeal rights pursuant to Rule 20 – Review and Appeal. However, any reviewing committee may lift the stay if such stay is not in the best interests of the motoring public.
  - (1) During any stay, Servicing Carriers are not to issue non-renewal notices to the ERP’s customers.
  - (2) During any stay, any operational procedures implemented by the Servicing Carrier pursuant to the notice of termination will remain in effect until they are reviewed by the Market Review Committee.
  - (3) CAR will not decertify the ERP as an Assigned Risk Producer until such time as the ERP has exhausted his or her appeal rights under Rules 14 and 20, or such rights are waived.
- c. The matter will be reviewed initially by the Market Review Committee. Following a decision by the Market Review Committee, a subsequent review by the Governing Committee Review Panel may be requested pursuant to Rule 20 – Review and Appeal. These committees will be convened within 15 business days from CAR’s receipt of the completed “Request for Review/Relief” form, unless the aggrieved ERP waives the 15-day requirement. Each party may, but is not required to, be represented by counsel in connection with the review of the termination.
- d. Any formal ruling of the Governing Committee (including a ruling by the Governing Committee Review Panel as its designee) may be appealed to the Commissioner pursuant to Rule 20 – Review and Appeal by filing a notice of appeal with CAR and the Commissioner within 30 days of the ruling. The ruling of the Governing Committee will remain in full effect unless otherwise directed by the Commissioner.

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e. Written Materials

- (1) Any written materials to be considered by the reviewing committee must be submitted to CAR's Docket Clerk no later than 12:00 p.m., 5 business days prior to the scheduled meeting date. Timely submitted materials will be docketed by CAR and distributed to the reviewing committee as soon as practicable.
- (2) Written materials submitted to CAR after 12:00 p.m. on the 5th business day prior to the scheduled meeting date will not be entered on the docket, but the submitting party may petition the reviewing committee directly for consideration of such materials. The reviewing committee has the discretion to determine whether such materials will be considered in its deliberations.
- (3) Parties who petition the reviewing committee for the submission of materials are expected to be prepared to provide a minimum of 25 copies at the meeting. Parties should provide copies of ALL written materials that they wish considered in the matter to the opposing party in concert with their submission(s) to CAR and/or the reviewing committee.

#### 2. Guidance for Reviewing Committees

In the event that an ERP requests that the termination of his or her ERP contract be reviewed, the reviewing committee(s) should be guided by the following principles.

a. Foundation for Review

- (1) Upon receipt of a request for review of the termination of an ERP contract, the matter will be docketed by CAR's Docket Clerk.
  - (a) CAR staff, with the assistance of counsel (if directed by CAR's President), will perform a quality check and review the notice of termination, as well as any documentation and materials submitted by the Servicing Carrier, to ascertain whether the Servicing Carrier has complied with Rule 13 – Servicing Carrier Requirements in issuing the notice of termination. CAR staff will not evaluate the amount of information purportedly supporting the termination or make any determination regarding the merits of the termination, or the credibility or probative value of any information submitted to CAR.

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- (b) During its review of the notice of termination, if CAR staff identifies any deficiencies, CAR staff will inform the Servicing Carrier and the ERP of such deficiencies. However, CAR staff will not review the quantum of supporting documentation.
  - (2) CAR staff (or counsel if appropriate), will open the meeting of Market Review Committee (and the Governing Committee Review Panel if there is a subsequent request for review) by framing the issue for review and providing a summary of the procedural history of the matter, including information about the notice of termination and its compliance with the requirements contained in Rule 13 – Servicing Carrier Requirement and the ERP’s request for review.
- b. Scope and Standard of Review
- (1) Any operational procedures implemented by the Servicing Carrier pursuant to the notice of termination will be reviewed by the Market Review Committee to determine whether each such operational procedure is in the best interest of the motoring public and should remain in effect during a stay of the termination. Any party aggrieved by the Market Review Committee’s decision with respect to operational procedures may request further review by the Governing Committee Review Panel pursuant to Rule 20 – Review and Appeal.
  - (2) The Market Review Committee (and the Governing Committee Review Panel if there is a subsequent request for review) will consider whether the termination should be upheld based on the grounds stated in the notice of termination, and not on any grounds that were not articulated in the notice of termination. The ERP’s conduct in connection with the MAIP or any business other than residual market commercial motor vehicle insurance will not be considered in the review of the Servicing Carrier’s termination of the ERP contract.
  - (3) Although CAR staff will perform a quality check and review of the notice of termination and supporting documentation, the reviewing committee is expected to expressly consider the adequacy of the notice of termination and the evidentiary support offered with respect to each claimed basis for termination.

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- (4) The Market Review Committee (and the Governing Committee Review Panel if there is a subsequent request for review) is expected to deliberate on each alleged violation that was the basis of the Servicing Carrier's termination of the ERP contract and, when multiple violations have been alleged, to determine whether each one separately is a valid basis for termination. Pursuant to Rule 20 – Review and Appeal, the reviewing committee should decide whether the termination is an unfair, unreasonable or improper practice.
- (5) In the event that the termination is not upheld, the Market Review Committee (or the Governing Committee Review Panel if there is a subsequent request for review) may defer a finding and establish a probationary period for the ERP and determine which operational procedures, if any, should remain in place during the probationary period. The reviewing committee may establish the probationary period subject to the condition that if any documented transgressions of the same type that formed the basis for the notice of termination or violations of the operational procedures are reported, the termination will be upheld.
- (6) In the event of a request for review of a decision of the Market Review Committee, the Governing Committee Review Panel will review the matter *de novo*. The Governing Committee Review Panel may consider the Market Review Committee's decision but is not bound by it. The Governing Committee Review Panel is entitled to hear statements from the parties and to review additional materials that were not necessarily before the Market Review Committee. If documentation is considered by the Governing Committee Review Panel that was not before the Market Review Committee, the Governing Committee Review Panel should re-examine the action by the Market Review Committee in light of such new documentation.

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