

measures to ensure the insurance provider is adequately serving small producers, limited resource farmers as defined in section 1 of the Basic Provisions in 7 CFR 457.8, women and minority producers or that such unfair discrimination has been discontinued and corrective action taken).

(f) In no event shall RMA, FCIC or any other agency of the United States Government be liable for any damages caused by any mistakes, errors, misrepresentations, or flaws in the premium reduction plan or its implementation.

(g) If RMA approves a dollar amount, and corresponding percentage of net book premium, for the premium discount for a State in accordance with § 400.720, it will be applicable to the reinsurance year in which the efficiencies were attained and the approved insurance provider must pay that dollar amount, and corresponding percentage of net book premium, for the premium discount to its policyholders in that State for that reinsurance year. If the approved insurance provider fails to pay this amount, the approved insurance provider:

(1) Will not be eligible for the opportunity to offer a premium discount for the reinsurance year immediately following RMA's approval of the payment of a premium discount; and

(2) Must disclose in all its promotional and advertising material that it was approved to pay a premium discount by RMA but elected not to pay such discount, unless approval to pay the premium discount was withdrawn by RMA, for the next two reinsurance years subsequent to the failure to pay the premium discount.

(h) For policyholders that were insured with the approved insurance provider in the reinsurance year from which the approved premium discount is applicable but are not currently insured with the approved insurance provider, any premium discount payments must be sent to the last known address of the policyholder.

(i) The approved insurance provider and its representatives, agents, employees and contractors must fully cooperate with RMA and any State or Federal government agencies in any review of the operations or activities of

the approved insurance provider and its representatives, agents, employees and contractors, with respect to the premium reduction plan.

(j) At its sole discretion and upon written notice, RMA may withdraw a determination of eligibility for the opportunity to offer a premium discount under the premium reduction plan or approval of all or a part of a premium discount payment, preclude eligibility for the opportunity to offer a premium discount, or otherwise participate, under the premium reduction plan for a period determined by RMA commensurate with offense, take such other actions as authorized under the SRA, or require appropriate remedial measures as determined by RMA, if RMA determines that:

(1) Any approved insurance provider or its representative, agent, employee or contractor has failed to comply with any term or condition contained in 7 CFR 400.714 through 400.721; or

(2) The payment of a premium discount could adversely affect the financial or operational stability of the approved insurance provider, its MGA or TPA as required by applicable regulations or approved procedures.

(k) The insurance provider may be held solely responsible for the actions of its representatives, agents, employees or contractors with respect to any violation of any term or condition contained in §§ 400.714 through 400.721 or action under paragraph (j) of this section may be taken individually against the insurance provider or its representatives, agents, employees or contractors.

[70 FR 41922, July 21, 2005]

§ 400.720 Standards for approval of a premium discount.

For approval of a premium discount:

(a) If the approved insurance provider intends to offer a premium discount in a State listed by the approved insurance provider under § 400.716(b) based on efficiencies attained during the reinsurance year, the approved insurance provider must, not later than December 31 after the annual settlement for the reinsurance year, submit to RMA:

(1) An audit, in a format approved by RMA, of the Expense Exhibits provided with the Plan of Operations, and the

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estimated A&O costs for the reinsurance year that were not included in such Expense Exhibits, certified by an independent certified public accountant with experience in insurance accounting, who must certify to the accuracy and completeness of the costs stated therein and the Expense Exhibits' conformance with the requirements of the SRA (The costs associated with such audit and certification will be at the approved insurance provider's expense and must be included in the approved insurance provider's A&O costs for the purposes of determining an efficiency);

(2) A detailed description of all profit sharing arrangements that the approved insurance provider claims are not to be included as compensation (RMA reserves the right to request copies of such profit sharing contracts or other agreements); and

(3) The dollar amount, and corresponding percentage of net book premium, for the premium discount that the approved insurance provider will pay in the State.

(b) RMA will use the Expense Exhibits required to be submitted as part of the Plan of Operations to determine:

(1) Whether the approved insurance provider's A&O costs were less than its A&O subsidy for the reinsurance year for the entire book of business; and

(2) The actual dollar amount of efficiency attained by the approved insurance provider for the reinsurance year for each State where the approved insurance provider was eligible for the opportunity to offer a premium discount under the premium reduction plan. The dollar amount of efficiency and the dollar amount, and corresponding percentage of net book premium, for the premium discount must be prepared and submitted in accordance with approved procedures.

(i) For the 2006 reinsurance year, such approved procedures will be issued within 5 days after July 20, 2005; and

(ii) For all subsequent reinsurance years, such procedures will remain in effect unless revised and if such approved procedures will be revised, these approved procedures will be issued not later than January 1 before the start of the reinsurance year.

(c) For each State listed by the approved insurance provider under § 400.716(b) for which the insurance provider requests approval to pay a premium discount, RMA will compare the dollar amount, and corresponding percentage of net book premium, for the premium discount determined in accordance with applicable approved procedures with the dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider.

(d) RMA may approve the dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider if and to the extent that:

(1) The dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider does not exceed the dollar amount, and corresponding percentage of net book premium, for the premium discount determined by RMA in accordance with paragraph (b) of this section; and

(2) If all other requirements of §§ 400.714 through 400.722 have been met.

(e) If the dollar amount, and corresponding percentage of net book premium, for the premium discount submitted by the approved insurance provider exceeds the dollar amount, and corresponding percentage of net book premium, for the premium discount determined by RMA in accordance with paragraph (b) of this section, the approved insurance provider will be limited to paying the dollar amount, and corresponding percentage of net book premium, for the premium discount determined by RMA.

[70 FR 41923, July 20, 2005]

§ 400.721 Determinations and reconsiderations.

(a) If RMA takes any action authorized in § 400.719(j), the Director, Reinsurance Services Division, or a designee or successor will notify the approved insurance provider or its representatives, agents, employees or contractors against whom such action is taken, as applicable, in writing:

(1) Of the action taken;