



## Market Conduct Agency Audit News

Office of Insurance Licensing and Market Conduct

### Introduction

Welcome to the 2017 annual Market Conduct Agency Audit News. In this edition, we will discuss some important licensing requirements, when a licensed producer may charge fees, the need for appointments, and issues pertaining to surplus lines tax filings for purchasing groups. We also provide information about surplus lines due dates and reminder notices.

Newsletters, insurance bulletins, Agency Best Practices, statutes and other useful information can be accessed on the [Market Conduct website](http://www.michigan.gov/difsmarketconduct) via the following link: [www.michigan.gov/difsmarketconduct](http://www.michigan.gov/difsmarketconduct). We welcome your feedback on the newly designed page.

### Important Licensing Requirements

Producers are required under Section MCL 500.1238(1) of the Michigan Insurance Code (the Code) to update their mailing and electronic mailing address with the Department of Insurance and Financial Services (DIFS) within 30 days of any change. Individual producers may change their addresses electronically by using [NIPR](#) and agencies can change their addresses by using [ILOS](#) at [www.michigan.gov/ILOS](http://www.michigan.gov/ILOS). This is important as the department has a periodic need to contact producers individually or via mass mailings pertaining to regulatory matters.

Establishment of a designated responsible licensed producer (DRLP) is a requirement of licensure for every agency under Section 500.1205(2)(b) of the Code. The purpose of a DRLP is to ensure that each agency has a knowledgeable person designated as responsible for agency compliance with statutory and administrative requirements. When a DRLP changes, the agency must notify the department of the departure date of the existing DRLP and the name and start date of the new DRLP. An agency must maintain a DRLP for the agency license to remain active. Failure to maintain a DRLP will result in compliance action, including a fine and/or revocation of the agency license. Additionally, agencies must affiliate owners, officers, directors, partners, LLC member or manager, and producers working for the agency. Agencies can update the agency DRLP and affiliate information (addition and cancellation) by using [ILOS](#) at [www.michigan.gov/ILOS](http://www.michigan.gov/ILOS).

## Can Insurance Producers Charge Fees to Michigan Consumers?

This is a common question we were asked during past audits and risk assessments. The answer is “it depends”.

First, insurance producers are not allowed to charge or pass a service fee to consumers for insurance policies sold in the admitted market. Michigan is a non-broker state; therefore, insurance producers act as agents on behalf of their insurance companies instead of their clients. Producers receive compensation from the companies for whom they sell insurance in the form of commission payments which are included in the premiums collected from the clients. The only exception applies to licensed surplus lines producers who may charge a fee not exceeding the statutory limit for surplus lines policies only.

The following scenarios and DIFS’ analysis are provided to further clarify the statutory requirements. In both scenarios, it is assumed that the producers involved do not hold an insurance counselor’s license.

*Scenario 1:* A licensed producer sells to a Michigan consumer an insurance policy that is placed in the admitted market. Can the producer charge the consumer a \$50 fee in addition to the insurance premium?

*DIFS’ Analysis:* No. The producer is not allowed to charge a fee on policies placed in the admitted market, even when the producer has a surplus lines license.

*Scenario 2:* In August 2016 a licensed surplus lines producer sells a surplus lines policy to a Michigan consumer. The invoice he receives from the surplus lines carrier shows a \$6,000 premium, \$150 taxes/regulatory fee (2.5% of the written premium), and a \$100 inspection fee paid to a third party inspector. How much fee can the producer charge the policyholder?

*DIFS’ Analysis:* The producer is allowed to bill a maximum fee of \$160 in this situation (\$100 inspection fee + \$60 the maximum fee allowed by statute). The \$100 inspection fee is a reimbursement of the actual cost of placing the policy and is allowed under current statute. The surplus lines producer placing a surplus lines policy can charge and retain up to a \$60 fee according to MCL 500.1915 of the Code and explained in insurance [Bulletin 2016-14-INS](#).

## Unappointed Activity

In the 2016 Agency Audit News, we discussed the statutory requirements for an insurance producer to have direct appointments with insurance companies for whom they are soliciting, negotiating or selling insurance (acting as an agent for). In the past year we continued to see multiple cases where an agency, or producer sold insurance policies without getting properly appointed by companies. Acting as an agent of an insurer without an appointment constitutes a violation of Section 1208a of the Code. It is

important to note that the responsibility of ensuring proper appointments rests not only on the insurers, but also on the agencies and producers. Please use the following agency and agent locators on DIFS' website to verify the appointments:

[Insurance Agency Locator](#)

[Insurance Agent Locator](#)

## **“Home State” and Purchasing Groups**

The passage of the Nonadmitted and Reinsurance Reform Act (NRRA) in July 2011 introduced the “Home State” approach to surplus lines which has brought efficiency and uniformity to the regulation of surplus lines insurance by requiring an insured’s Home State be responsible for regulating and taxing surplus lines transactions. “Home State” generally refers to the state of the “insured’s principal place of business” for a single insured according to Section 527(6) of the NRRA. When it comes to an affiliated group, Home State means the state of the “principal place of business” of the “member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract”. The term “affiliate” means, “with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.” The term “affiliated group” is defined as “any group of entities that are all affiliated.” The definitions can be reviewed [here](#).

Purchasing groups are business entities formed under the Federal Liability Risk Retention Act of 1986 which authorize a group of insureds engaged in similar businesses or activities to purchase insurance coverage and negotiate a better price or policy terms on a group basis. Due to the nature of purchasing groups, they do not meet the definition of “affiliated groups” under the NRRA. Because purchasing groups are not considered affiliated groups, the Home State approach does not apply to them. If a purchasing group buys a multi-state policy from a non-admitted insurance company, the group is still required to pay surplus lines taxes to each state where the insured risk is located.

## **Reminder Notices for Surplus Lines Producers**

February 15 and August 15 are filing deadlines for surplus lines agencies and producers to report surplus lines taxes to DIFS for policies transacted in each respective semiannual period. We ask all surplus lines licensees to file the semiannual report, even when you report zero transactions during the period. To better serve our customers, the Agency Audit Unit will continue sending out two reminder notices to our licensees for each semiannual filing period as shown below in the chart.

<b>Semiannual Filing Period</b>	<b>Filing Due Date</b>	<b>Reminder Notice</b>	<b>Past Due Notice</b>
2017-1st	8/15/2017	7/31/2017	9/29/2017
2017-2nd	2/15/2018	1/31/2018	3/30/2018

2018-1st	8/15/2018	7/31/2018	9/28/2018
2018-2nd	2/15/2019	1/31/2019	3/29/2019

MCL 500.1205(2)(b) of the Code requires a DRLP be responsible for an insurance agency's compliance with state insurance laws, rules and regulations. Therefore, we address the reminder notices to the licensed agency and to the named DRLP(s) for a surplus lines agency.

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<https://public.govdelivery.com/accounts/MIDIFS/subscriber/new>

Any questions regarding the content of this newsletter, or any suggested topics for future newsletters, may be directed to the DIFS Market Conduct Section, Agency Audit Unit at (877) 999-6442 or [DIFS-MarketConduct@michigan.gov](mailto:DIFS-MarketConduct@michigan.gov).