



**THE WORKERS' COMPENSATION
RATING AND INSPECTION BUREAU**

October 24, 2007

CIRCULAR LETTER NO. 2071

To All Members and Subscribers of the Bureau:

**AUDIT GUIDELINES FOR SOLE PROPRIETOR AND PARTNERSHIP
CERTIFICATES OF INSURANCE**

The attached Audit Guidelines ("Guidelines") were drafted by a subcommittee of the Bureau Producer Advisory Group in an effort to provide consistent application of the Independent Contractor Law, consistent treatment of Certificates of Insurance, and consistent collection of premium at audit. When a policyholder presents an auditor with a Certificate of Insurance for a Sole Proprietor or Partnership, the auditor should use the Guidelines to make a determination on whether payments by the policyholder to the Sole Proprietor or Partnership should be included in the premium basis used to calculate the policyholder's workers' compensation premium.

These Guidelines were prepared as a follow up to Circular Letter No. 2045 that announced the approval of the *Procedures for Issuing Certificates of Insurance for Sole Proprietors and Partnerships* and Circular Letter No. 2057 that was issued to address some of the questions that came about as a result of the new *Procedures*. The Guidelines were also presented to the Massachusetts Workers' Compensation Advisory Council. In letters to the Commissioners of the Division of Insurance ("DOI") and the Department of Industrial Accidents ("DIA"), the Advisory Council members expressed their belief that finalized audit guidelines will ensure that as many workers as possible will be covered under the workers' compensation system and will further assist insurers in better understanding their exposure when writing and collecting premiums.

The Guidelines, which have been discussed with and reviewed by representatives from both the DOI and DIA, shall be effective immediately. The Audit Guidelines are mandatory for all policies issued through the Residual Market. Furthermore, the Bureau strongly recommends the use of the Guidelines for all policies issued through the Voluntary Market.

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Vice President – Customer Services

Attachment

AUDIT GUIDELINES FOR
SOLE PROPRIETOR AND PARTNERSHIP CERTIFICATES OF INSURANCE

The following audit guidelines shall be followed by carriers when a policyholder provides a Certificate of Insurance for a Sole Proprietor or Partnership to determine whether payments by the policyholder to the Sole Proprietor or Partnership should be included in the policyholder's workers' compensation insurance premium basis in accordance with Parts One and Five of The Standard Workers' Compensation and Employers Liability Insurance Policy and/or Rule V-A and/or Rule IX of the Massachusetts Workers Compensation and Employers Liability Insurance Manual.

<p>IF, during an audit, the carrier determines that their policyholder has hired a Sole Proprietor or a Partnership Without Coverage Election ("The workers' compensation policy does not provide coverage for <NAME>" is shown on the Certificate of Insurance) for the Sole Proprietor or <u>any</u> of the partners of a Partnership, and</p>	
IF...	THEN...
<p>The policyholder can present satisfactory evidence* to the auditor that the Sole Proprietor or Partnership is a bona fide employer,</p> <p>The Sole Proprietor or Partnership has no employees, but the policyholder can prove that the Sole Proprietor or Partner(s) meets the following three-part test set forth in G.L. c. 149, section 148B that distinguishes independent contractors from employees:</p> <ol style="list-style-type: none"> 1. The individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and 2. The service is performed outside the usual course of the business of the employer; and 3. The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed. 	<p>No additional payroll shall be picked up on the policyholder's policy.</p> <p>No additional payroll shall be picked up on the policyholder's policy.</p>
<p>The policyholder fails to present satisfactory evidence* to the auditor that the Sole Proprietor or Partnership is a bona fide employer; and/or</p> <p>The policyholder cannot prove that the Sole Proprietor or Partner(s) meets the three-part test that distinguishes independent contractors from employees,</p>	<p>All payments made to the sole proprietor and/or partnership shall be picked up on the policyholder's policy in accordance with the Massachusetts Workers' Compensation and Employers Liability Insurance Manual, Rule IX.C.</p>
<p>IF... during an audit, the carrier determines that their policyholder has hired a Sole Proprietor With Coverage Election ("<NAME> is covered by the workers' compensation policy" is shown on the Certificate of Insurance), OR a Partnership With Coverage Election for any <u>or</u> all Partners,</p>	<p>THEN... No additional payroll shall be picked up on the policyholder's policy.</p>

NOTE: In those situations where the Certificate of Insurance is silent on coverage elections, the auditor shall ask additional questions and obtain additional documentation from the policyholder to determine the appropriate treatment at audit of the sole proprietors or partnerships hired by the policyholder.

* Evidence to establish whether a sole proprietor or partnership is a bona fide employer could include, but not be limited to, such things as: contracts between the policyholder and the sole proprietor or partnership; invoices from a sub contractor to the general contractor; W2 Forms; Employer Identification Numbers (EINs); 940 Forms: Employer's Annual Federal Unemployment (FUTA) Tax Returns; and/or 941 Forms: Employer's Quarterly Federal Tax Returns.