



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

July 3, 2012

CIRCULAR LETTER NO. 2199

To All Members and Subscribers of the WCRIBMA:

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

In response to inquiries from the Division of Insurance, we have updated the Audit Guidelines that were issued on October 24, 2007 ([Circular Letter No. 2071](#)). **These updated Audit Guidelines do not change the way in which Sole Proprietor and Partnership Certificates of Insurance will be treated at audit.**

The updated Audit Guidelines have a new format that is easier to follow, incorporate the instructions for issuing Certificates of Insurance that were originally announced on February 14, 2007 ([Circular Letter No. 2045](#)) and contain some clarifying language.

As indicated in previous Circular Letter Nos. 2045, 2057 and 2071 ([Circular Letter No. 2057](#)), the purpose of the Audit Guidelines is to provide consistent application of the Independent Contractor Law, consistent treatment of Certificates of Insurance, and consistent collection of premium at audit. The Massachusetts Commissioner of Insurance has approved the standard *Workers' Compensation and Employers Liability Insurance Policy* ("Policy") and the *Massachusetts Workers' Compensation and Employers Liability Insurance Manual* ("MA Manual"). In accordance with the terms of the Policy and the provisions of the MA Manual, insurers are entitled to collect premium for all persons engaged in work for the policyholder that could make the insurer liable under the Massachusetts workers' compensation law. As set forth in the Audit Guidelines, policyholders need to provide their insurers with proof that the persons they have hired are independent contractors or that the employers of any persons performing work for the policyholder have lawfully secured their workers' compensation coverage obligations. If such proof is not provided, premium will be collected for any such persons performing work for the policyholder.

Since the first issuance of the Audit Guidelines in 2007, a proof of coverage application has become available for policyholders and insurers to verify whether persons hired by the policyholder have met

their workers' compensation coverage obligations. The [Proof of Coverage Application](#) may be accessed on the Massachusetts Department of Industrial Accidents web site.

These Guidelines are mandatory for all policies issued through the Residual Market and are strongly recommended for all policies issued through the Voluntary Market.

Any questions regarding the Audit Guidelines may be addressed to Daniel Crowley, Vice President – Customer Services at 617-646-7594; dcrowley@wcribma.org or Ellen Keefe, Vice President/General Counsel at 617-646-7553; ekeefe@wcribma.org.

Daniel M. Crowley, CPCU,
Vice President-Customer Services

**WCRIBMA CIRCULAR LETTER NO. 2199
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* (“Policy”) and Rule V-A or Rule IX of the *Massachusetts Workers’ Compensation and Employers Liability Insurance Manual*.

In Massachusetts, the workers’ compensation insurance Policy does not provide coverage for a sole proprietor or partner(s) unless those individuals elect coverage for themselves in accordance with G.L. Chapter 152, section 1(4) and 482 CMR 8.07. As announced in Circular Letter No. 2045, before issuing a Certificate of Insurance, carriers must determine whether any coverage elections are reflected on a Policy issued to a sole proprietor or partnership. Based on the carrier’s findings, one of the following comments must be shown in the Description of Operations section of the Certificate of Insurance. See Exhibit A as an example.¹

COVERAGE ELECTIONS

LEGAL STATUS	ELECTION REFLECTED ON POLICY	COMMENT FOR CERTIFICATE OF INSURANCE
Sole Proprietor	Sole proprietor (“SP”) has elected coverage	“<SP NAME> is covered by the workers’ compensation policy.”
	Sole proprietor (“SP”) has not elected coverage	“The workers’ compensation policy does not provide coverage for <SP NAME>.”
Partnership	All partners have elected coverage	“All partners are covered by the workers’ compensation policy.”
	Some but not all partners have elected coverage	“<P NAMES> are covered by the workers’ compensation policy.” AND“ <P NAMES> are not covered by the workers’ compensation policy.”
	No partners (“P”) have elected coverage	“No partners are covered by the workers’ compensation policy.”

¹The *ACORD* Certificate of Insurance is used countrywide and contains the following question: “Any Proprietor/Partner/Executive Office/Member Excluded?” It should be noted that In Massachusetts, sole proprietors, partners (and members of LLCs per the Department of Industrial Accidents) are excluded from coverage unless they specifically elect to be deemed employees in accordance with G.L. Chapter 152, section 1 (4) and 452 CMR, sec. 8.07. Corporate/Executive officers are covered as employees unless they qualify for an exemption in accordance with G.L. Chapter 152, section 1(4) and 452 CMR sec. 8.06. Therefore, it is important to include a comment on the Certificate of Insurance that specifically states the coverage election of any sole proprietor or partner, rather than just checking the Y/N box on the *ACORD* form.

If during an audit, the carrier determines from review of the Certificate of Insurance, that their policyholder has hired a **sole proprietor that has selected coverage** for himself or a partnership of which **one or more of the partners have elected coverage** for themselves, (<NAME(s)> is covered by the workers' compensation policy is shown on the Certificate of Insurance), then no additional payroll should be picked up on the policyholder's policy.

If during an audit, the carrier determines from review of the Certificate of Insurance, that their policyholder has hired a **sole proprietor who has not elected coverage** for himself or a partnership of which **none of the partners have elected coverage** for themselves, then all payments made to the sole proprietor or partnership shall be picked up on the policyholder's policy in accordance with the Policy and *Massachusetts Workers' Compensation and Employers Liability Insurance Manual*, Rule IX. The only possible exceptions are:

- A. The policyholder can present satisfactory evidence to the auditor that the sole proprietor or partnership is a bona fide employer whose employees are covered by the policy identified on the Certificate of Insurance.²
- B. The sole proprietor or partnership cannot prove they have employees, but the policyholder can prove that the sole proprietor or partnership meets the following three-part test set forth in G.L. c. 149, section 148B that distinguishes independent contractors from employees:
 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.

NOTE: In those situations where the Certificate of Insurance is silent on coverage elections for the sole proprietor or partnership (or when no Certificate of Insurance has been presented), the auditor shall ask additional questions and obtain additional documentation from the policyholder to determine:

- Whether the sole proprietor or partnership is a bona fide employer as described in footnote 2, or
- Whether the sole proprietor or partnership is an independent contractor or an employee of the policyholder in accordance with the three-part test referenced above.

²Evidence to establish whether a sole proprietor or partnership is a bona fide employer could include, but is not limited to, the following types of documents that show the existence of employees: contracts providing size and scope of work between the policyholder and the sole proprietor or partnership; invoices itemizing work and materials from a sub-contractor to the general contractor; Employer Identification Numbers (EINs); state and federal tax forms listing employee and wage information, such as: W2 Forms: Wage and Tax Statements; 940 Forms: Employer's Annual Federal Unemployment (FUTA) Tax Returns; and/or 941 Forms: Employer's Quarterly Federal Tax Returns.

