



HARRP NOTES

Housing Authorities Risk Retention Pool
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PLEASE ROUTE:

- _____ Executive Director
- _____ Accounting / Finance
- _____ Maintenance
- _____ Property Management
- _____ Personnel
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- _____ Other

Housing Authorities Risk Retention Pool Rates and Terms for 2012!



On December 8, 2011, the Board of Directors elected to maintain HARRP rates from 2011 through 2012! With rates remaining flat for 2012, this represents the sixth year that HARRP has not increased the base rates for its property and casualty coverages! In these times of budget cuts and so many other fiscal challenges, HARRP remains dedicated to its membership in providing stable rates, exceptional service and custom tailored coverage designed for affordable housing risks.

There are some significant changes of which each of you should be aware. First, due to astronomical increases in excess property insurance, HARRP has severed its long standing relationship with Travelers, a leader in public entity excess property coverage. HARRP and Travelers have partnered since 1992. Over the past three years, renewal costs with Travelers has increased steadily, culminating in the proposed 2012 renewal terms which called for a 97% increase over 2011 rates. The Board of Directors elected to obtain excess property coverage from Munich reinsurance for 2012. With this change, HARRP elected to reduce the limit of property coverage from the expiring \$63M excess of HARRP to Munich’s proposed \$45M excess of HARRP’s coverage. The change in ultimate loss limit is more than sufficient to cover the risk base of the pool. Since inception, HARRP has never submitted a property claim to reinsurers, as the loss was always with HARRP’s self-insured layer.

The second major change to report for 2012 is the methodology of rating. You will recall that HARRP changed the rating structure from a specific State rate to an experience influenced rating system. The experience based structure is influenced by actual losses versus contributions made to the pool. There are five (5) tiers in which members are actuarially placed, depending on the loss history for the past four years. In order to “smooth” the transition from the specific State rate to the experience rate, the HARRP Board of Directors elected to make the maximum tier change only one, meaning that members could only fluctuate in rates incurred by one tier change. Since the rates have stabilized over the past three years, members are now permitted to jump more than one tier at renewal. This is the intent of the experience rating, to capture poor loss performance or reward good performance more accurately and timely. So, although the base rates for 2012 will remain the same, your 2012 may be different from 2011 based on your experience. Tier placement for 2012 is available upon request. If you have any questions, please do not hesitate to call Bill at the HARRP office.

Just a Reminder.....

Renewals in 2012 will require certification from the Executive Director that the personnel policies have been reviewed by legal counsel to assure that the latest legal requirements are reflected in the member’s policies. This is a risk management requirement for participation in HARRP and reads as follows:

**ADDITIONAL CONDITIONS APPLICABLE
TO EMPLOYMENT PRACTICES LIABILITY COVERAGE**

- A. As a condition to obtaining and retaining *coverage* for Employment Practices *claims*, each *covered entity* must certify in writing, each year, that it has adopted, trained its employees on, provided copies to its employees and enforces policies and procedures which prohibit acts of unlawful discrimination, harassment or other acts constituting a deprivation of civil rights. Such certifications shall state that the aforementioned policies and procedures have been drafted or approved by legal counsel who is knowledgeable and experienced in the current state of the law on these subjects. These certificates are applicable only to internally generated policies and procedures.
- B. At least every thirty-six (36) months each *covered entity* will certify that its personnel policy(ies) has/have been reviewed by qualified legal counsel and changes necessary to make them comply with current federal, state and local laws have been made.



Affordable Housing Risk Pool Rates and Terms for 2012!

The Housing Authorities Risk Retention Pool (HARRP) Board of Directors approved the launch of the Affordable Housing Risk Pool (AHRP) on January 1, 2011. After nearly four years of exhaustive research into the feasibility of providing stable, low cost and tailored coverage for non-governmental affordable housing, the decision to launch was based on favorable reinsurance treaties, retention of bid waivers from HUD, member education and approval and most importantly, advantageous rates from carriers that have partnered with HARRP. The process of developing AHRP has included substantial investigatory structures to achieve a number of goals. The goal of retaining the tax exempt status of HARRP was achieved, as was limiting the level of capitalization funding needed from HARRP.

The goal of lowering the cost of reinsurance for AHRP was achieved by increasing the spread of risk, while bolstering the level of protection for HARRP properties by having reinsurance take a portion of the risk. Further, the goal of obtaining acceptance by mortgage holders, syndicators and private lending institutions was achieved by partnering with Munich Reinsurance, and subsidiaries, to “purchase” their AM Best rating. The goal of allowing all of this success was achieved by aggressively pursuing independent State legislation allowing for multi-State pooling of non-profits and tax credit partnerships.

There have been numerous internal structural components that have been tackled and many more needing modifications to achieve some efficiencies; however through the challenges have emerged a program that addresses the needs of affordable housing providers that is unique to the nation. AHRP will provide the same level of service and dedication to claims and risk management services that you enjoy with HARRP. Prior to January 1, 2012, only tax credit and nonprofit housing affiliated with members of HARRP were given the opportunity to obtain coverage from AHRP. With 9 months of operational experience and growth doubling projections, the AHRP Board of Directors has elected to open AHRP to non-privately owned tax credit and nonprofit affordable housing entities.

In order to assist AHRP in realizing the scales of economy that comes from building capacity, we respectfully request that you, as a pillar in your community for affordable housing, spread the word of AHRP. All members of HARRP are partners in the success of AHRP. Your knowledge of quality providers in your community will assist in the continued growth and strength of AHRP.

The AHRP Board of Directors elected to maintain AHRP rates the same as 2011. AHRP will continue to utilize the services of Willis Pooling as its consultant and Munich Reinsurance as its coverage partner. AHRP is excited to enter into an exclusive arrangement with Munich for excess casualty limits above AHRP’s self-insured layers. This new agreement promises to expedite turnaround times on quoting, but more importantly trim the largest cost factor associated with issuance of AHRP policies...the cost of excess casualty to comply with lender requirements. If AHRP was unsuccessful at saving premium cost in 2011, please allow AHRP another chance in 2012. Many of the uncompetitive quotes from AHRP were directly related to the cost of the old excess casualty arrangement. You can call Gil, Robin or Rebecca at the HARRP office for more information.

Which Hat Are You Wearing, Housing Authority or General Partner?

Housing authorities are creating new affiliated entities to develop and fund properties. We have seen the creation of nonprofit and tax credit entities and in some instances, the creation of Community Development Corporations. These arrangements often lease housing authority staffing which are charged back to the affiliated building owner. Coverage issues can get tricky when entering into a contract with the property and having no employees. These contracts should be entered between the affiliated entity and “The Housing Authority acting as General Partner or managing agent of the non-profit.”

If a claim were to occur, would you want your housing authority’s coverage to pay for work on the affiliated entity’s property? A contract that is not worded correctly, listing the correct role of the housing authority may trigger a claimant suing multiple policies.

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For example, if the contract names the housing authority as party to the contract and not “the housing authority acting as the managing partner for “XYZ non-profit”, both the housing authority’s own insurance and the affiliate’s insurance could each get claims filed against them (i.e. double dipping). Tax credit and nonprofit coverage through HARRP (the original pool) is limited, but not so with the insurance policy covering the owner. More likely than not, we would not find “XYZ non-profit” as a covered location under the HARRP Pool.

This double dipping can also occur if each party indemnifies the other with parallel hold harmless clauses. You may be wondering why this matters when the staffing is identical? From an insurance stand point, each entity has its own insurance policy and each policy protects the owner. In the case of AHRP and commercial insurance protection would also be provided to the housing authority as the “real estate” manager. So, do yourself a favor, make sure the proper entity is listed in your policy and the contract. Your Risk Manager Al Alvarez is here to assist you in sorting out these contract coverage issues.

Purchase Orders will not Trigger Additional Insured Coverage

Years ago, while analyzing procurement by housing authorities, I came across a housing authority that was procuring small construction jobs through purchase orders. We are all for working smarter and not harder on small jobs. In some cases, the cost to have your attorney write a contract for a small contract would exceed the procurement services cost. So in one sense, use of purchase orders may look appropriate, but there is one pitfall. The solution is below, keep reading! Recently, one of our keen eyed members noticed that the additional insured endorsement they received from a tree trimming company stated that the property owner was automatically additional insured IF that requirement was in a written contract or agreement. The problem was that this small business’ service was procured by a purchase order.

Those of you who have attended our Contractual Risk Transfer class know that we recommend that housing authorities address this blanket additional insured issue by procuring a rubber stamp that says:

By signing this purchase order agreement you shall indemnify the Housing Authority of _____ for your work under this purchase order agreement subject to the attached indemnification and Insurance requirements. No work shall begin until the Housing Authority is named as additional insured as agreed to on this purchase order agreement. Your procurement staff should attach the appropriate indemnification for your state and the insurance requirements to all purchase orders where they are used for something other than procurement of supplies. These can be found on HARRP’s website Require a signature on the purchase order below or on the rubber stamp. Finally make sure the Purchase Order is precise as to the duties of the other party and the location(s).

These simple steps will lock in the automatic coverage under the aforementioned, “**If required in a written contract or agreement**”, endorsement clause”.

The HARRP Risk Management HELPLINE’s Question of the Month

Each month, the HARRP HELPLINE delivers a new Question of the Month to foster proactive thinking about HR risk management and employment law issues.

For members already enrolled in the HELPLINE, you can view this month’s Question as well as **ask your specific HR risk management and employment law questions directly to the HELPLINE attorneys** through the HELPLINE website – www.harrp.com (then click on “Members”, “Links”, and "Attorney Assistance"). If you’ve forgotten your access codes please contact the HELPLINE at toll-free 1-877-568-6655.

Look on Page 4 for the Question of the Month!

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What are the laws governing the confidentiality of the employees' medical information? We have two employees out on STD and FMLA. At a managers' meeting, the manager of those two employees informed the other managers of these employees' medical conditions. The owners of the company, who are part of this meeting, feel that the managers have the right to know.

Response:

Both the Health Insurance Portability and Accountability Act (HIPAA) and the Americans with Disabilities Act (ADA) protect medical information in the workplace. HIPAA's Privacy Rule generally only pertains to 3 categories of "covered entities," however: health care providers, health plans, and health care clearinghouses. An organization may be a HIPAA "hybrid" entity if it provides health care as only part of its business (i.e., corporation that has a self-insured health plan for employees), and in such case only the portion of the company that processes claims and makes payments to health care providers is subject to HIPAA. As such, the disclosure of personal health information (PHI) may or may not violate HIPAA, depending on its applicability

Regardless of HIPAA's applicability, though, the ADA does apply to your company, and it specifically requires employers to keep confidential any medical information learned about an applicant or employee, even if it contains no medical diagnosis or treatment course (as may be the case with certain doctor's notes for time off), and even if it is not generated by a health care professional. The ADA recognizes that employers may sometimes have to disclose medical information about applicants or employees and thus contains certain exceptions to the general rule requiring confidentiality that permits otherwise confidential ADA information to be disclosed.

For example, while employers have an affirmative obligation to keep confidential medical information about employees, this does not include withholding information from managers and supervisors who have a legitimate need to know it in order to enforce policies, accommodate restrictions or requests for time off, or ensure that employees' statutory rights are not violated, etc. Employers can also lawfully disclose confidential medical information lawfully: (a) to first aid and safety personnel if an employee would need emergency treatment or require some other assistance because of a medical condition; (b) to individuals investigating compliance with the ADA and with similar state and local laws; and (c) pursuant to workers' compensation laws or for insurance purposes. Although it is not clear if your organization is covered by HIPAA, the ADA confidentiality requirements are still applicable. If an employee has disclosed a particular condition that one or more members of management needs to know about in order to ensure that the employer complies with its obligations and protects the employee's rights, we are not aware of any law which would prevent the employer from providing it to the appropriate managerial or supervisory employee(s). In such case, any manager or supervisor to whom such information is disclosed should not provide the information to anyone else who does not meet these criteria.

That said, if there is no legitimate business purpose served in disclosing this kind of information to all members of management (i.e., during a company meeting as you describe) or otherwise outside of the exceptions noted herein (and it is unlikely that there is a need to notify ALL members of management), the employer should not do so. If the owners of the company are improperly disclosing confidential information to employees (including managers) who do not need to know it, you may want to advise them against doing so in the future -- indeed this may be a good time to train all managers and supervisors on their rights and obligations in this regard. Note that an employer can always let co-workers and other employees, including managers, know if a particular employee is going to be absent (for any reason -- though no need to state what it is) to the extent that the co-workers need this information for legitimate business purposes, perhaps in connection with covering the absent employee's shifts, taking over his/her job duties or responsibilities, etc. If an ill or injured employee wants to let other employees know his/her condition, which is the employee's prerogative, but is not something that should come from the employer outside of what has been noted in this response.

For more information on the value of HELPLINE please visit www.hrhelpline.com/harrp/overview.