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Life Insurance Agents Compliance Report: 2017/18 Examination Results

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Executive summary

Introduction

The Financial Services Commission of Ontario (FSCO) is a regulatory agency established by the Financial Services Commission of Ontario Act, 1997 and is accountable to the Minister of Finance. FSCO's legislative mandate is to provide regulatory services that protect the public interest and enhance public confidence in the sectors it regulates. FSCO oversees insurance, pension plans, mortgage brokering, credit unions and caisses populaires, co-operative corporations, loan and trust companies in Ontario, and service providers.

Life insurance agents (agents) are intermediaries who sell life and health insurance products and services on behalf of insurance companies. FSCO is responsible for the monitoring and oversight of the approximately 45,000 agents, working on behalf of 70 life insurance companies, who are licensed in Ontario.

All agents must meet their requirements under the Insurance Act and regulations, and their obligations under the Personal Information Protection and Electronic Documents Act (PIPEDA) and Financial Transactions and Reports Analysis of Canada (FINTRAC).

In 2017/18, FSCO enhanced its oversight of the life insurance sector by expanding the number of desk reviews. Desk reviews are off-site reviews conducted through email and telephone exchanges with agents. Similar to on-site examinations, desk reviews assess agents' compliance with the Insurance Act and regulations. They are narrower in scope and less intrusive than on-site examinations, and provide FSCO with an additional tool to monitor compliance.

FSCO takes a risk-based approach in choosing which agents to examine each year, selecting predominantly higher-risk agents for on-site examinations and medium-risk agents for desk reviews.

This report summarizes the results of FSCO's review findings and enforcement actions from the 132 on-site examinations and 94 desk reviews conducted during the April 1, 2017 to March 31, 2018 fiscal year. It also sets out FSCO's expectations for agents to be more accountable and compliant with the legislation, regulations, and best practices that govern the industry and help protect consumers. Both on-site examinations and desk reviews considered agents' business activities in 2016.

Summary of findings - On-site examinations

FSCO found an overall compliance level of 66 per cent during its 2017/18 on-site examinations.

Of the 132 agents examined on-site, 45 (34 per cent) were referred to Regulatory Discipline Officers (RDOs) for possible enforcement actions.

The most pervasive non-compliance issues included:

- failing to disclose in writing all insurers represented
- failing to comply with the continuing education (CE) requirement

The most common best practice issues included:

- failing to document client acknowledgement if agents' recommendations were not purchased
- failing to document client discussions
- failing to document recommendations provided to clients
- failing to document needs assessments

Summary of findings - Desk reviews

FSCO found an overall compliance level of 68 per cent during its 2017/18 desk reviews.

Of the 94 agents subject to desk reviews, 30 (32 per cent) were referred to RDOs for possible enforcement actions.

The most pervasive non-compliance issues included:

- failing to comply with the CE requirement
- failing to maintain valid Errors and Omissions (E&O) insurance coverage

Methodology

FSCO takes a risk-based approach in selecting which agents to examine each year. Specific risk criteria and factors applied to the agent selection process in 2017/18 included:

- licensing observations
- complaints from consumers about agent conduct
- sanctions by another regulator
- holding multiple licenses (for example, holding both a life insurance and mortgage broker/agent licence)
- history of previous compliance issues

Based on this criteria, agents were rated as having a higher, medium, or lower risk of non-compliance. FSCO predominantly selected higher-risk agents for on-site examinations and medium-risk agents for desk reviews.

FSCO conducted on-site examinations to evaluate and verify whether agents' business activities, selling practices and procedures were compliant, and whether agents were:

- meeting all licensing requirements, including maintaining valid E&O insurance and completing required CE credits
- making required point-of-sale statutory disclosures
- following industry best practices
- meeting legislative requirements when replacing life insurance policies
- complying with FINTRAC and PIPEDA requirements

FSCO conducted desk reviews to:

- collect agents' current information, including background information, business activities, distribution channels, insurance product sales, and mortgage activities, in order to understand their business profiles and assess relevant risks
- assess whether agents had met all licensing requirements, including having valid E&O insurance and completing required CE credits
- establish risk parameters to identify elevated risks and determine if on-site examinations are required

Detailed findings: On-site examinations

Profile summary

In 2017/18, FSCO conducted 132 on-site examinations of agents who were predominantly identified as having a higher risk of non-compliance as a result of FSCO's risk assessment process.

Of those examined on-site:

Type

- 80 per cent were independent agents¹
- 16 per cent were career/captive agents²
- 4 per cent were national account agents³

Experience

- 55 per cent had more than 10 years of relevant experience
- 39 per cent had between three to 10 years of relevant experience
- 6 per cent had less than two years of relevant experience

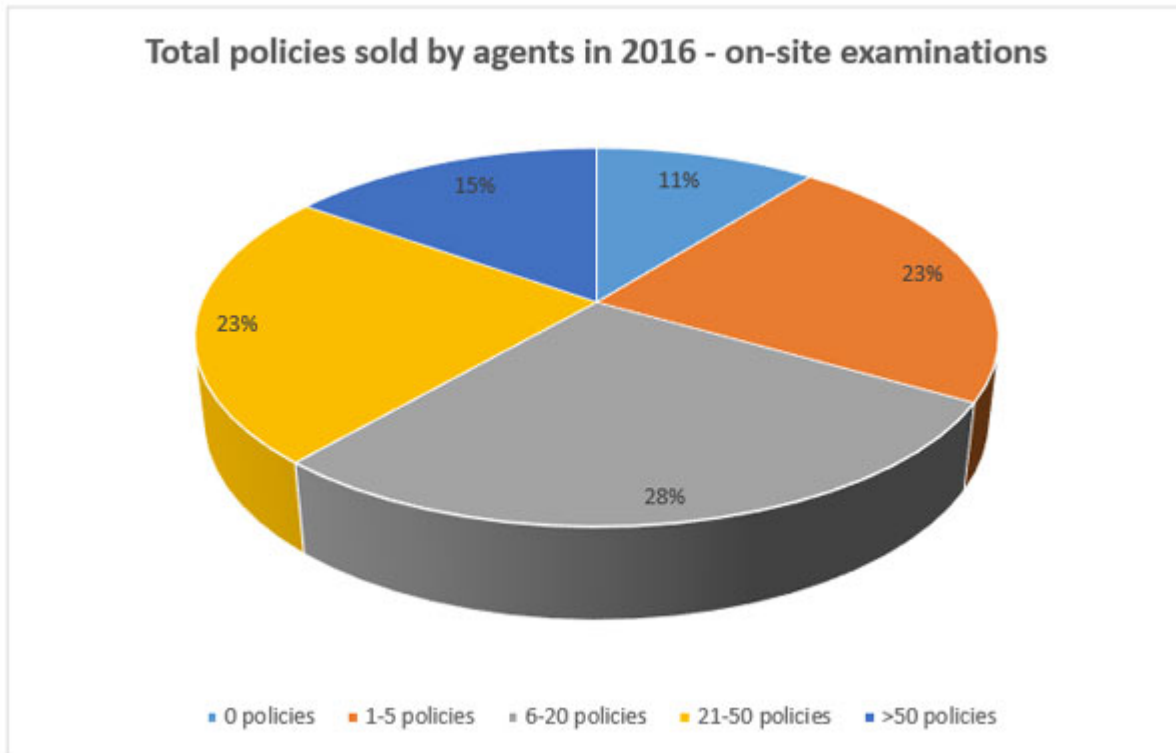
Business activities

Of the agents examined on-site:

- 89 per cent were active agents (i.e., sold more than one policy)
- 11 per cent were non-active agents (i.e., did not sell any policies)

It is important to note that both active and non-active agents must meet compliance requirements.

Compared to the agents selected for desk reviews, the majority of the agents selected for on-site examinations were active agents who sold larger volumes of policies.



Description of Total policies sold by agents in 2016 (on-site examinations) image 

Other business activities

Of the agents examined on-site, 65 per cent held more than one licence. Of these:

- 48 per cent held a licence issued by the Mutual Fund Dealer Association
- 28 per cent held a mortgage broker licence issued by FSCO
- 12 per cent held a securities licence issued by the Investment Industry Regulatory Organization of Canada
- 6 per cent held a property and casualty insurance licence issued by the Registered Insurance Brokers of Ontario and/or FSCO
- 6 per cent held a licence issued by the Real Estate Council of Ontario

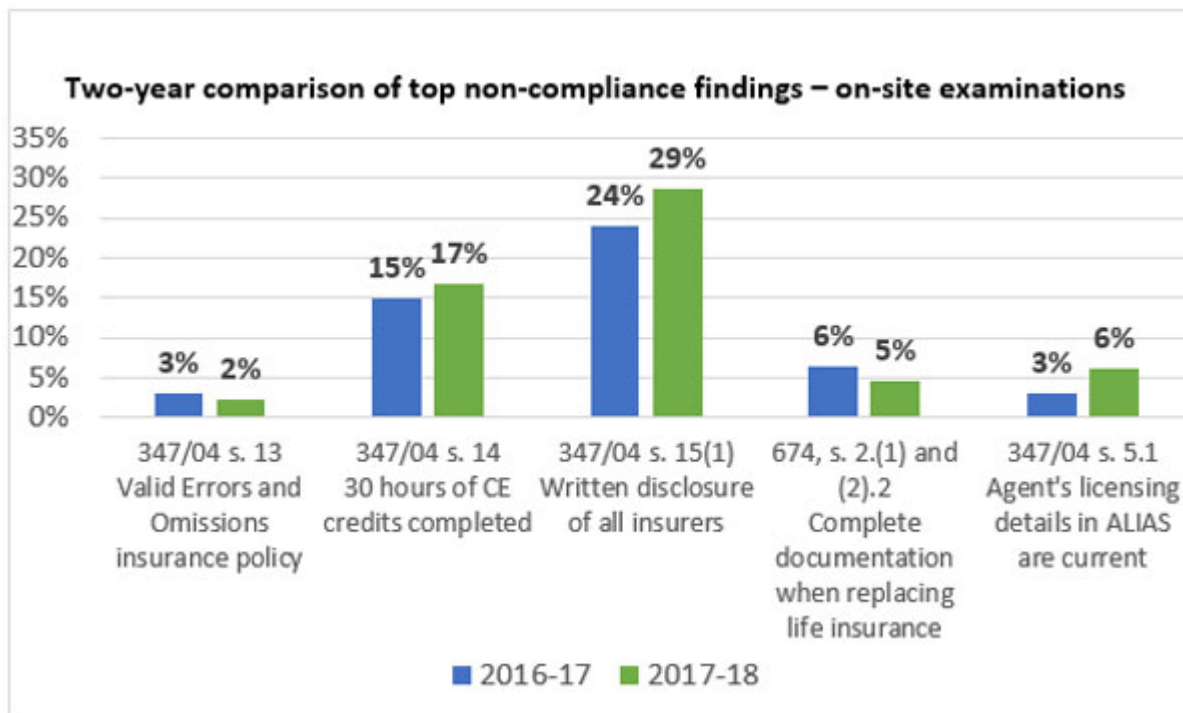
Top non-compliance findings


FSCO found an overall compliance level of 66 per cent for all agents examined on-site. Of those examined on-site:

- 29 per cent did not disclose in writing all insurers they represented⁴
- 17 per cent did not meet the CE requirement⁵
- 6 per cent did not update their contact information with FSCO⁶
- 5 per cent did not have complete documentation when replacing life insurance⁷
- 2 per cent did not maintain valid E&O insurance⁸

Compliance requirements apply to both active and non-active agents. The CE requirement is a licensing requirement, yet 77 per cent of active agents failed to comply.

The following chart shows the two-year comparison of non-compliance rates for the top five non-compliance findings:



[Description of Two-year comparison of top non-compliance findings \(on-site examinations\) image](#) 

Best practice findings

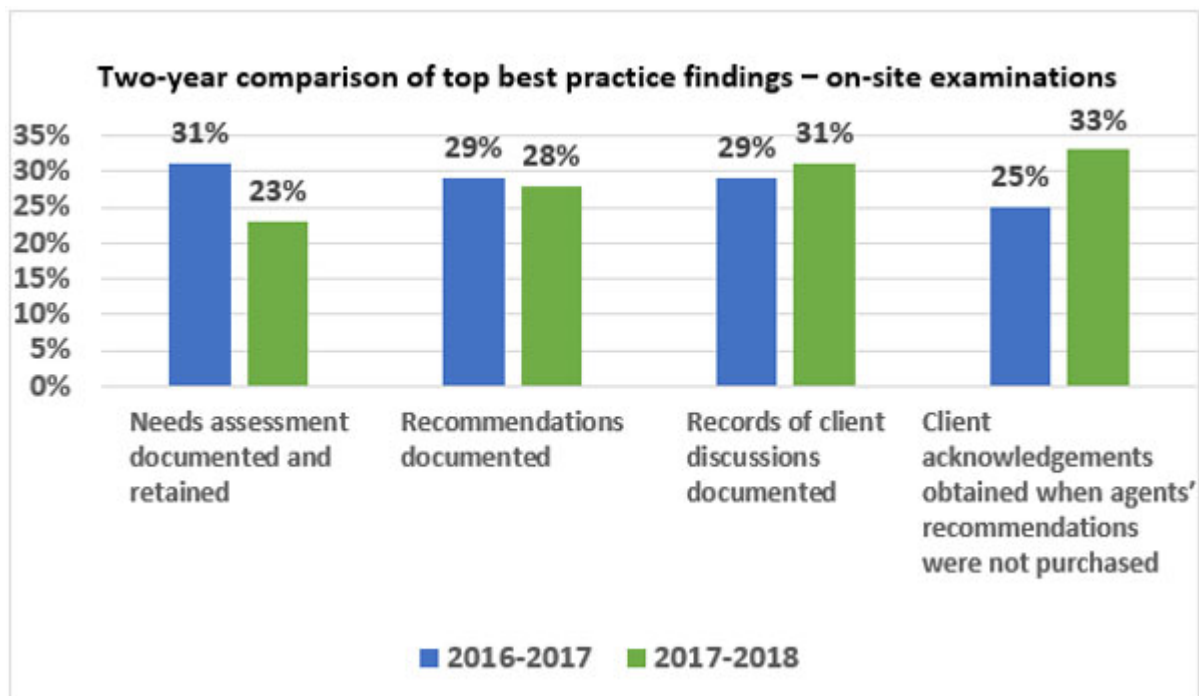
Best practices form an important part of the sales process, helping consumers make informed decisions, while reminding agents to conduct due diligence through record keeping.

It is FSCO's expectation that agents' sales practices follow generally accepted best practices and industry standards⁹.

Of the agents examined on-site:

- 33 per cent did not obtain client acknowledgements when agents' recommendations were not purchased
- 31 per cent did not document client discussions
- 28 per cent did not document recommendations provided to clients
- 23 per cent did not document needs assessments

The following chart shows the two-year comparison rates for the top four best practice findings:



[Description of Two-year comparison of top best practice findings \(on-site examinations\) image](#)

Compliance with PIPEDA and FINTRAC

FSCO expects that agents are aware of their legal obligations regarding PIPEDA and FINTRAC.

PIPEDA sets out rules for how private sector organizations may collect, use, or disclose personal information in the course of commercial activities.

Of the agents examined on-site:

- 8 per cent were not aware of and/or were not able to provide access to privacy-related policies and procedures in place

FINTRAC is the agency responsible for the collection, analysis, and disclosure of information to assist in the detection, prevention, and deterrence of money laundering and terrorist financing in Canada and abroad. Life insurance companies, brokers and agents must fulfill specific obligations under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA), and associated regulations.

Of the agents examined on-site:

- 12 per cent did not have FINTRAC policies and procedures in place
- 20 per cent of those who did have FINTRAC policies and procedures in place failed to include all FINTRAC requirements
- 7 per cent had not received any FINTRAC training over the last three years

Enforcement action

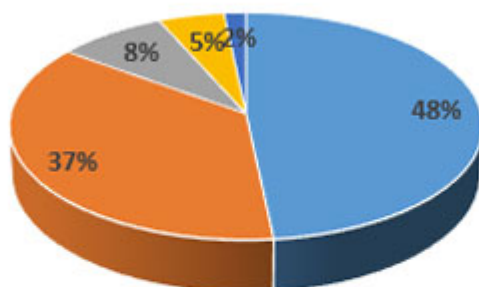
FSCO is committed to consumer protection and will pursue regulatory action where there is evidence of non-compliance with the Insurance Act and regulations. Regulatory action can range from a letter of warning to imposing an administrative monetary penalty to licence revocation, and can include a combination of enforcement actions. FSCO's regulatory decisions are based on the specific facts and circumstances of each case.

Of the 132 agents examined on-site:

- 45 (34 per cent) were found to be non-compliant with the Insurance Act and regulations and were referred to RDOs for potential enforcement actions
- 22 (17 per cent) were issued letters of warning by FSCO's Market Conduct Compliance Unit

FSCO noted 60 contraventions among the 45 non-compliant agents.

Contraventions leading to RDO escalation - on-site examinations



- No written disclosure of all insurers represented (O. Reg 347/04, s. 15(1))
- Not completing 30 hours of CE credits (O. Reg 347/04, s. 14)
- Agent's licensing details not up to date (O. Reg. 347/04, s. 5.1)
- Invalid Errors and Omissions insurance policy (O. Reg. 347/04, s. 13)
- Other reason (Product suitability)

[Description of Contraventions to RDO escalation \(on-site examinations\) image](#) 

FSCO issued letters of warning mainly for the following reasons:

- failing to consistently disclose in writing all insurers represented
- completing large amounts of CE hours within one or two days

Detailed findings: Desk reviews

In 2017/18, FSCO enhanced its oversight of the life insurance sector by expanding its use of desk (or off-site) reviews.

In 2017, FSCO sent questionnaires to selected agents who were given 15 business days to submit their responses along with supporting documents. The questionnaires requested more demographic and business information than what is obtained during on-site examinations.

Profile summary

In 2017/18, FSCO conducted 94 desk reviews of agents who were predominantly identified as having a medium risk of non-compliance as a result of FSCO's risk assessment process.

Of those examined during desk reviews:

Type

- 66 per cent were independent agents
- 23 per cent were career/captive agents
- 7 per cent were national account agents
- 4 per cent fell into other categories¹⁰

Experience

- 48 per cent had more than 10 years of relevant experience
- 41 per cent had between three to 10 years of relevant experience
- 11 per cent had less than two years of relevant experience

Business activities

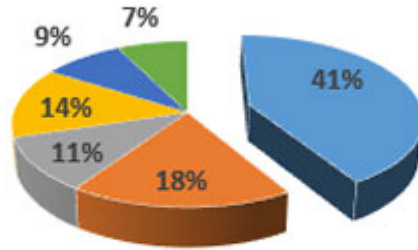
Of the agents reviewed:

- 59 per cent were active agents (i.e., sold more than one policy)
- 41 per cent were non-active agents (i.e., did not sell any policies)

It is important to note that both active and non-active agents must meet compliance requirements.

The following three charts show active agents' business activities by the number of insurance policies sold in 2016, the types of insurance policies sold, and the average face value of life insurance policies sold.

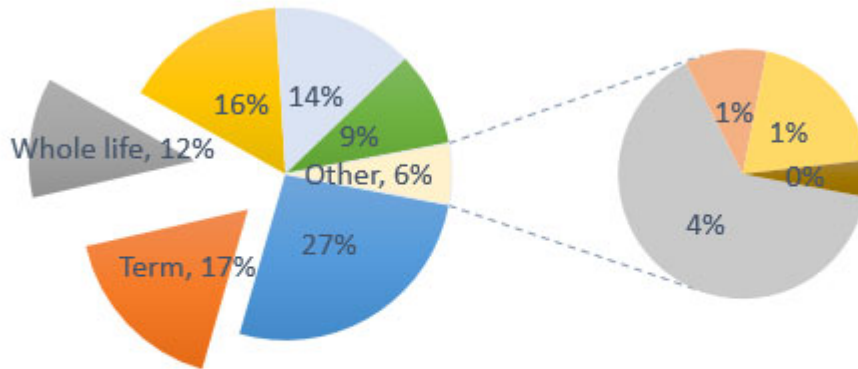
Total policies sold by agents in 2016 – desk reviews



- 0 policies
- 1-5 policies
- 6-20 policies
- 21-50 policies
- 51-100 policies
- >101 policies

Description of Total policies sold by agents in 2016 (desk reviews) image 

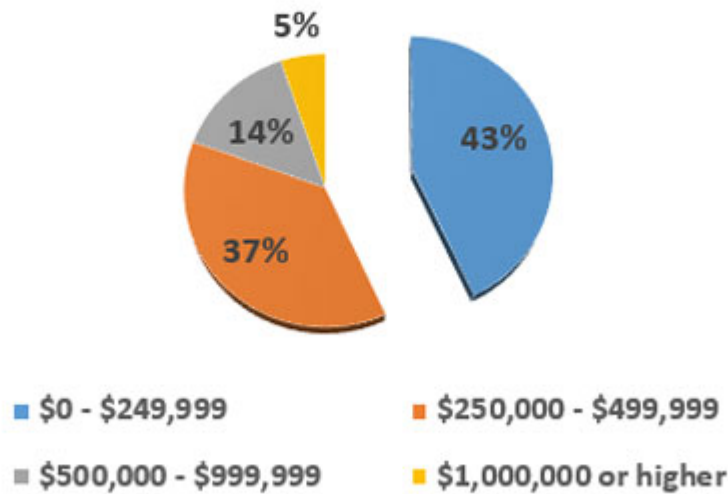
All types of policies sold by agents in 2016 – desk reviews



- Segregated Funds
- Whole life
- Accident and Sickness
- Critical Illness
- Disability
- Term
- Travel
- Universal Life
- Annuities
- Long term care

Description of All types of policies sold by agents in 2016 (desk reviews) image 

Average face value of life policies sold by agents in 2016 – desk reviews



Description of Average face value of life policies sold by agents in 2016 (desk reviews) [image](#)

Other business activities

Of the agents reviewed, 16 per cent referred clients to a mortgage broker/agent, and 15 per cent received fees for making these mortgage referrals without having a mortgage broker/agent licence. The majority of these agents referred borrowing products and received fees in the range of \$1 - \$4,999 in 2016. Based on FSCO's analysis, the majority of these were considered simple referrals¹¹.

Top non-compliance findings

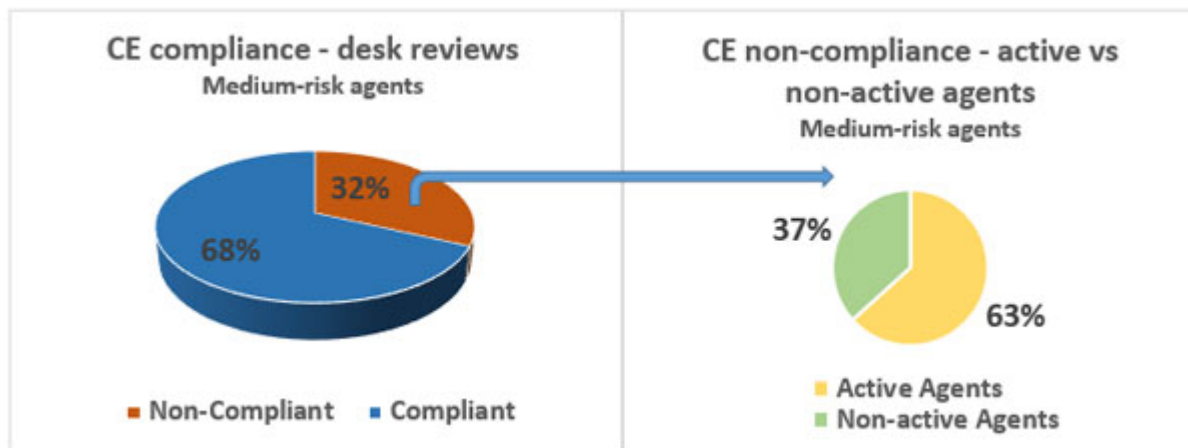
FSCO found an overall compliance level of 68 per cent for all agents subject to desk reviews.

Of the agents reviewed:

- 32 per cent did not meet the CE requirement
- 11 per cent did not maintain valid E&O insurance
- 4 per cent did not update their contact information with FSCO

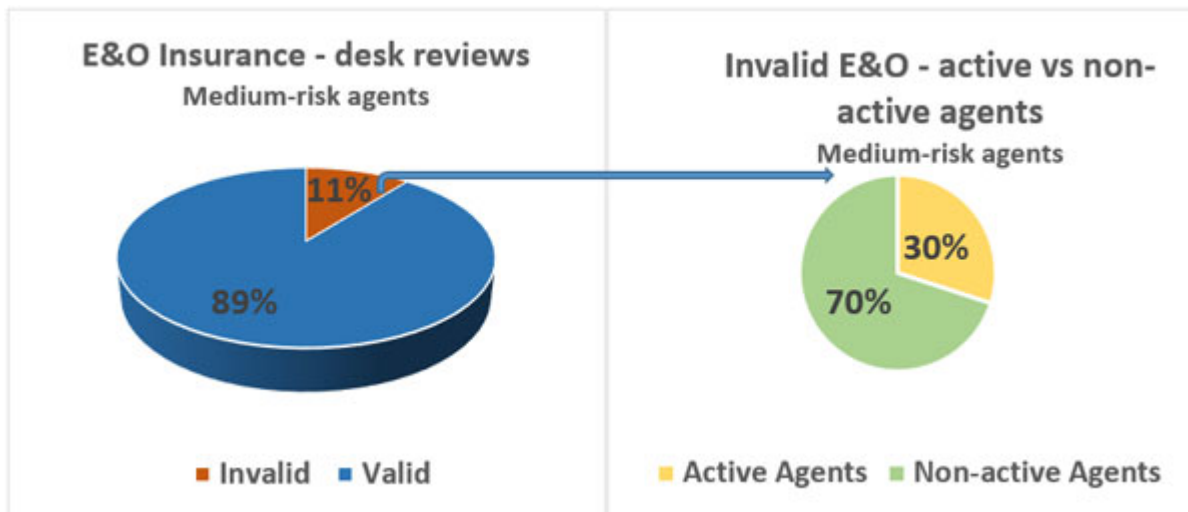
The following charts show CE and E&O insurance non-compliance rates, as well as active agent versus non-active agent CE and E&O insurance non-compliance rates.

Medium-risk agents selected for desk reviews had a 32 per cent CE non-compliance rate. The majority of these (63 per cent) were active agents. As can be noted, CE non-compliance was most pervasive in medium risk active agents.



Description of CE compliance (desk reviews – medium-risk agents) image 

Medium-risk agents selected for desk reviews had an 11 per cent E&O insurance non-compliance rate. The majority of these (70 per cent) were non-active agents. As can be noted, E&O non-compliance was most pervasive in medium risk non-active agents.



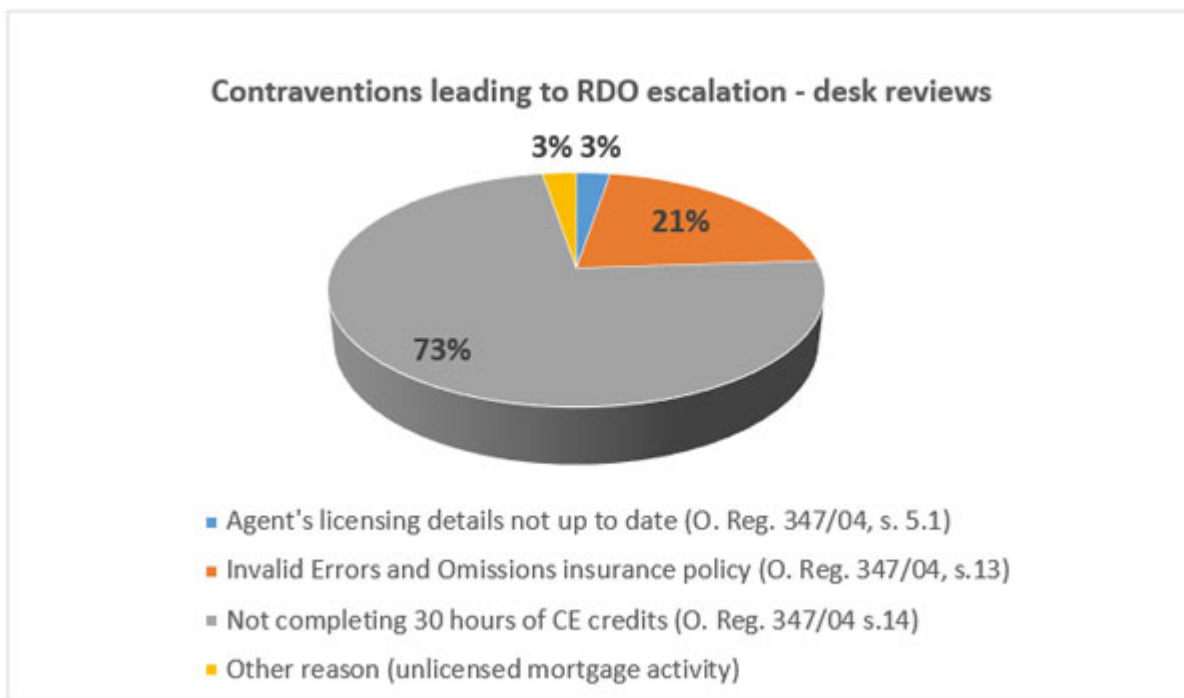
Enforcement action

FSCO is committed to consumer protection and will pursue regulatory action where there is evidence of non-compliance with the Insurance Act and regulations. Regulatory action can range from a letter of warning to imposing an administrative monetary penalty to licence revocation, and can include a combination of enforcement actions. FSCO's regulatory decisions are based on the specific facts and circumstances of each case.

Of the 94 agents subject to desk reviews:

- 30 (32 per cent) were found to be non-compliant with the Insurance Act and regulations and were referred to RDOs for potential enforcement actions
- 12 (13 per cent) were issued letters of warning
- 11 (12 per cent) were selected for future on-site examination based on parameters established in the examination program

FSCO noted 38 contraventions among the 30 non-compliant agents.



FSCO issued letters of warning mainly for the following reasons:

- completing large amounts of CE hours within one to two days
- not completing CE requirement explicitly related to technical aspects of life insurance and/or knowledge to give advice about financial products or services, or to operate a financial services business
- not maintaining proper CE certificates, including all required information

FSCO recommended agents for on-site examination mainly for the following reasons:

- making false and misleading statements/representation
- being involved in unlicensed mortgage activity
- selling high-risk insurance products

Conclusion and next steps

All active and non-active agents must meet their requirements under the Insurance Act and regulations, and their obligations under PIPEDA and FINTRAC.

The results of FSCO's on-site examinations and desk reviews reveal that CE non-compliance continues to be a pervasive issue among both high- and medium-risk active agents. E&O non-compliance also continues to be a concern particularly among medium-risk non-active agents.

Using the findings arising from the 2016/17 on-site examinations, FSCO will require those agents identified as medium to high risk to provide proof of valid E&O insurance and completion of their CE credits when they submit licence renewals. Failure to maintain E&O insurance or to complete the mandatory 30 hours of CE credits may result in enforcement action, which includes, but is not limited to, an administrative monetary penalty.

Best practices also form an important part of the insurance sales process, helping consumers make informed decisions, while reminding agents to conduct due diligence through record keeping.

FSCO's year-over-year examinations have not shown a significant improvement in compliance with industry best practices. As a result, FSCO will be conducting follow-up desk reviews on agents where multiple best practice issues were noted. When agents do not consistently follow industry best practices that support consumer protections, FSCO will also assess whether more proscriptive measures should be considered.

FSCO will also look to monitor and make recommendations to those agents who fail to implement best practices based on a previous year's examination. In cases of ongoing non-compliance, FSCO may take regulatory action.

In addition, FSCO will continue to conduct life insurance company examinations. As per Ontario Regulation 347/04, insurers are required to establish and maintain a system to ensure that each agent complies with the Insurance Act, regulations, and the requirements of the agent's licence. These examinations allow FSCO to proactively assess insurance companies' supervision of agents, and provide another tool to monitor industry compliance at the macro (insurer) and micro (agent) level, while optimizing regulatory resources.


Endnotes

1. Independent agent: Has agreement with one or more Managing General Agencies (MGAs)/Associated General Agencies (AGAs) and/or an insurance company, and is able to sell products of multiple insurance companies.
2. Career/captive agent: Primarily sells products of one insurance company.
3. National account agent: Has a contract with an investment dealer.
4. All agents are required to disclose in writing the names of all of the insurers that the agent represents to a prospective insured and to every insured who makes an application to renew or replace a policy of life insurance according to Ontario Regulation 347/04 s. 15(1).
5. Every two years, all agents are required to complete at least 30 hours of CE acceptable to the Superintendent according to Ontario Regulation s. 14.

6. All agents are required to provide FSCO with new contact information within five days of an effective change according to Ontario Regulation 347/04 s. 5.1.

7. All agents are required to obtain complete documentation before accepting an application for a contract of insurance when replacing life insurance according to Ontario Regulation 674 s. 2(1) and (2).

8. All agents are required to maintain E&O insurance in a form approved by the Superintendent according to Ontario Regulation s. 13(1).

9. These best practices can be found on the [Canadian Life and Health Insurance Association's](#)  website.

10. Other categories include agents who held a licence due to job requirements, or who did not indicate a response in the questionnaire.

11. According to the Mortgage Brokerages, Lenders and Administrators Act s.6(4), a person or entity is exempted from the requirement to have a brokerage licence or mortgage broker/agent licence when conducting a simple referral. Any referrals outside of simple referrals require a mortgage broker/agent licence.