



FEMA

W-16033

May 12, 2016

MEMORANDUM FOR: Write Your Own (WYO) Company Principal Coordinators and the National Flood Insurance Program (NFIP) Direct Servicing Agent

FROM:

A handwritten signature in black ink that reads "Roy E. Wright".

Roy E. Wright
Deputy Associate Administrator for Insurance and Mitigation
Federal Insurance and Mitigation Administration

SUBJECT: FEMA Oversight of WYO Litigation

The Federal Emergency Management Agency (FEMA) is transforming the National Flood Insurance Program (NFIP) with a focus on customer experience and ensuring policyholders and communities become more disaster resistant and resilient. FEMA's commitment begins when a policyholder purchases a Federal flood insurance policy and does not end until after a claim has been resolved. On occasion, a claim will not be formally resolved until after litigation and FEMA is committed to ensuring the litigation process for our policyholders is respectful, reasonable, and transparent. We need to ensure that the same policyholder-centric, cost-reducing litigation strategies used in their private lines are being employed by Write Your Own (WYO) companies.

FEMA is now implementing the critical lessons learned from Superstorm Sandy to improve the customer experience for policyholders involved in litigation by strengthening FEMA's oversight of WYO litigation and more clearly communicating the roles of WYO Companies and FEMA. To better manage the process, FEMA has identified a dedicated team housed in the Office of Chief Counsel (OCC) to monitor and provide guidance, and will implement a series of measures designed to strengthen WYO oversight, reduce litigation costs, and ensure more robust coordination and alignment between FEMA and WYO companies in litigation.

When a policyholder sues a WYO Company, the WYO Company, as a fiscal agent of the United States, is responsible to its insured and taxpayers to defend the litigation in a cost-effective and appropriate manner. Consistent with FEMA Bulletin W-14038 and the NFIP Guide for WYO Counsel, WYO companies are under an obligation to monitor and control litigation costs and must treat policyholders with respect and courtesy. In the absence of FEMA guidance, however, WYO Companies are required to use customary standards, staff, and independent contractor resources as used in the ordinary and necessary conduct of their own business affairs. 44 C.F.R. § 62.23(e).

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This includes hiring outside counsel, reviewing litigation strategy, and reducing or limiting litigation expenses consistent with the manner in which the WYO Company handles business in its private lines of insurance.

FEMA retains the ultimate authority for the Program. FEMA issues written standards, procedures, and guidance related to the NFIP and applicable to WYO Companies. 44 C.F.R. § 62, App. A Art. I(G)(1). FEMA serves as a guarantor ensuring taxpayer money is accounted for and properly expended. Id. at Art. XVI. Provided the nature of the litigation is consistent with and contemplated by the Arrangement, FEMA will reimburse WYO companies for all reasonable litigation expenses. Id. at Art. III(D)(3).

To this end, FEMA has established the OCC WYO Oversight team to work with FEMA's Industry Management Branch to enhance FEMA's oversight of the WYO program and to improve FEMA's relationship with WYO Companies. The OCC WYO Oversight team will work closely with the NFIP to address standard billing practices, coordinate and communicate FEMA's position on matters in litigation, and render settlement concurrence on WYO cases when sought by a WYO Company. Further, upon notification of litigation by a WYO Company, the team will assign an attorney to monitor the litigation and be available to respond directly to litigation questions posed by WYO Companies. Finally, the team will continue to advise the NFIP on whether litigation falls within the scope of the Arrangement and, as such, is eligible for reimbursement.

In the near future, FEMA will issue guidance on standardizing billing, settlement concurrence, and other initiatives to build a better partnership with WYO Companies. A stronger partnership with WYO Companies and a better customer service experience for NFIP policyholders benefits all stakeholders and is in the best interest of the Federal Government.

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Required Routing: Data Processing, Marketing, Underwriting