




FEMA

W-16045

July 19, 2016

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

FROM:   
David I. Maurstad  
Assistant Administrator for Federal Insurance  
Federal Insurance and Mitigation Administration

SUBJECT: WYO Litigation and Type 3 Special Allocated Loss Adjustment Expenses

This Bulletin is issued pursuant to 44 C.F.R. § 62.23(d), (e), and the Federal Emergency Management Agency (FEMA), Federal Insurance Administration, Financial Assistance/Subsidy Arrangement (the "Arrangement"), Article II (A)(2) and (G)(1), and Article III. 44 C.F.R. Part 62, App. A.

#### **A. Reimbursement of Type 3 Special Allocated Loss Adjustment Expenses (SALAEs)**

This Bulletin provides revisions and clarification to the Type 3 SALAE reimbursement process identified in Bulletins W-10039 and W-15010 but does not rescind any prior bulletin.

#### **1. Approval for All Expenses**

Type 3 SALAEs are reimbursed solely for litigation expenses. The regulations and the Arrangement do not authorize the reimbursement of other legal expenses, including pre-litigation matters or other legal advice. 44 C.F.R. § 62.23 and App. A. Only actual litigation expenses related to a filed lawsuit are reimbursable. Prior to the filing of a lawsuit, the matter is considered claims handling and ineligible for Type 3 SALAE reimbursement. This provision does not revise any of the expenses typically reimbursed throughout the claims handling process.

Effective immediately, FEMA will require WYO Companies to seek FEMA approval for all litigation expenses incurred to defend a lawsuit within the scope of the Arrangement brought against an insurer for claims under a WYO Company-issued policy. This requirement supersedes Bulletin W-10039 to the extent that Bulletin permits reimbursement of Type 3 SALAEs up to \$5,000 without FEMA approval.

## 2. Customary Standards

FEMA reimburses Type 3 SALAE Litigation expenses incurred by a WYO Company pursuant to the Arrangement subject to FEMA Office of Chief Counsel (OCC) guidance and direction. The WYO Company is responsible for ensuring litigation expenses for which reimbursement is sought are consistent with its own customary standards, staff and independent contractor resources, as it would in the ordinary and necessary conduct of its own business affairs, subject to the Act, the SFIP, the Arrangement, and other regulations prescribed by FEMA. 44 C.F.R. § 62.23(e). For example, if the customary standards of the WYO Company require reduction of hourly rates or expenses or other limitations on payment for outside expenses, the WYO Company is required to do the same for any Type 3 SALAE-related expense.

Under the Arrangement, FEMA is not responsible for payment to counsel representing WYO Companies. **The WYO Company is responsible for paying its counsel without delay and for seeking reimbursement for eligible expenses** under the Arrangement. WYO Companies must submit requests for reimbursement within 60 days of receipt of the invoice/bill from its outside counsel. If an invoice/bill will not be submitted within the 60-day period, the WYO Company shall notify FEMA of its existence and provide an explanation and estimation of when the invoice/bill will be submitted. Further, any invoice/bill submitted after 180 days will be denied unless sufficient justification is provided, or FEMA expressly and in writing waived the 180-day period authorizing an extension.

Prior to seeking FEMA's approval for reimbursement, a WYO Company must review the invoice to verify the work was completed, accuracy of the billing, reasonableness of the expenses incurred, and that the reimbursement would be approved under the WYO Company's customary standards as submitted subject to the Arrangement, Act, Regulation and FEMA guidance. **A certification signed by the WYO Company representative must be attached as a cover sheet or the expense will be denied.** The certification must provide the following:

I have reviewed and understand the FEMA guidelines that govern the Type 3 Special Allocated Loss Adjustment Expenses (SALAEs). I am responsible for reviewing and ensuring that Type 3 SALAE requests comply with the FEMA guidelines. I have reviewed the invoice for which reimbursement is sought, and to the best of my knowledge, information and belief, confirm that the invoice is reasonable, appropriate and complies with the applicable FEMA guidelines.

Executed on (date).

(Signature)

### **3. Overhead Expenses are Not Reimbursable**

Customary charges such as overhead, ordinary office supply costs, and local telephone costs are included in the hourly rate and are not reimbursable as Type 3 SALAE. The following expenses are considered overhead and generally are not reimbursable. FEMA will consider reimbursement on a case-by-case basis after pre-approval:

- a. Fees attributed to secretarial and administrative services;
- b. Organizing material for storage;
- c. Unless an attorney is required, responding to inquiries concerning services, billing statements, cases files or audit letters;
- d. Fees incurred for "learning time";
- e. Scheduling and arranging meetings, depositions, examinations or other event scheduling;
- f. Data entry, document scanning, document conversion to other electronic formats;
- g. Arranging travel;
- h. Time spent photocopying, collating, and faxing;
- i. Bates stamping of documents;
- j. Date stamping documents;
- k. Management of personnel;
- l. Annual or monthly fees for computerized legal research services such as LexisNexis, Westlaw, or PACER (Research time is reimbursable.);
- m. Rent for office space, equipment or software;
- n. Utilities including local and long distance telephone service;
- o. Charges for use of a teleconference line;
- p. Meeting rooms in the assigned counsel's law offices for local depositions and conferences;
- q. Catering;
- r. Facsimile charges of any kind;
- s. Postage;
- t. Meals or refreshments for anyone other than the attorney assigned to the case while attending meetings, depositions or similar events;
- u. Support staff salaries;
- v. Technology costs such as depreciation on electronic devices, copiers and other machinery;
- w. The use of an outside vendor for copy services unless pre-approved by FEMA (In-house photocopy charges are limited to ten cents per page); and
- x. Any other item associated with overhead or profit.

As noted above, FEMA recognizes there may be circumstances that warrant reimbursement of an expense listed above. Accordingly, FEMA may approve such expenses upon written request and appropriate justification by the WYO Company.

## **B. Limitations on Reimbursement for Discovery**

Substantial legal fees and expenses are incurred as part of discovery. WYO Companies must monitor these costs. Depositions can provide critical information, but present one of the most significant litigation costs to the NFIP. FEMA will reimburse up to three depositions per case without pre-approval. This does not apply to defending depositions. FEMA recognizes the need to zealously represent the Program. This provision is not intended to restrict or interfere with the outside counsel's ability to represent the WYO Company. The purpose of this provision is to provide better monitoring of discovery expenses. The WYO Company simply needs to provide a brief justification for the additional depositions to [FEMA-NFIP-WYO-Litigation@fema.dhs.gov](mailto:FEMA-NFIP-WYO-Litigation@fema.dhs.gov). The Write Your Own Oversight Team will promptly review and respond to all requests.

Video Teleconference for depositions and other proceedings is highly encouraged.

Any questions should be referred to FEMA's Office of Chief Counsel.

cc: Vendors, IBHS, FIPNC, Government Technical Representative

Suggested Routing: All Departments

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