



FEMA | OCC

National Flood Insurance Program

Litigation Manual

2018

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Litigation Manual

The Federal Insurance and Mitigation Administration (FIMA) and the Federal Emergency Management Agency (FEMA) Office of Chief Counsel (OCC) developed the 2018 NFIP Litigation Manual (Manual) to assist participating Write Your Own (WYO) companies and legal counsel representing WYO companies in National Flood Insurance Program (NFIP) litigation. The 2018 Litigation Manual captures the best practices and incorporates litigation trends and programmatic guidance that has developed since it was last revised in March 2001. The Manual formalizes FEMA's oversight of WYO litigation and is a tool that will improve the defense of flood insurance litigation. The Manual is a supplement to and does not replace the Financial Assistance/Subsidy Arrangement ([Arrangement](https://www.fema.gov/write-your-own-program-company-arrangements)), <https://www.fema.gov/write-your-own-program-company-arrangements>. To the extent that the Manual is inconsistent with the current or subsequent Arrangements, the terms of the Arrangement are considered primary.

1 National Flood Insurance Program

1.1 Role of the Federal Government

FIMA is a component of FEMA, a federal agency within the U.S. Department of Homeland Security. Pursuant to the National Flood Insurance Act of 1968, 42 U.S.C. §§ 4001 *et seq.* (Act), FEMA administers the NFIP, a federal program that makes flood insurance available in participating communities that adopt and enforce floodplain management ordinances meeting or exceeding FEMA's minimum requirements.

Pursuant to the Act and its implementing regulations, found at title 44 of the Code of Federal Regulations, flood insurance may be sold to the public either directly through FEMA (NFIP Direct) or by participating private sector WYO insurance companies. As the federal agency responsible for administration of the NFIP, FEMA has the following programmatic responsibilities:

- Define by regulation the terms and conditions under which flood insurance may be sold;
- Guarantee and review federally funded payments for losses incurred by the WYO companies; and
- Monitor WYO company underwriting, claims, and financial practices to ensure compliance with applicable laws, regulations, and policies.

Specifically, FEMA does the following to discharge its duties under the Act:

- Establishes the Standard Flood Insurance Policy, the three forms are codified at 44 C.F.R. Pt. 61, Appendices A(1)-A(3);
- Specifies the risk classes and premiums for covered property;
- Issues policy statements and interpretations;
- Promulgates regulations and issues guidance implementing the National Flood Insurance Act, as amended;
- Purchases reinsurance and other risk transfer instruments to engage private capital markets in federal flood insurance;
- Monitors and oversees federal funds expended by WYO companies pursuant to the Arrangement, and
- Performs other activities in the discretion of the Administrator to enhance Program delivery.

FEMA established and maintains the National Flood Insurance Fund (Fund) in support of the NFIP. The Fund consists of federal monies, including premium and fee dollars. It is maintained by the United States Treasury and is available for payment of programmatic expenses and insurance claims. FEMA, in its role as guarantor, has a fiduciary responsibility to ensure the proper use of the Fund.

In April 2016 FEMA OCC established the Write Your Own Oversight Team (WYOT) to enact FEMA's commitment to enhance oversight of NFIP litigation. The WYOT advises FEMA on NFIP issues arising out of litigation and actively engages WYO company management and legal counsel to ensure the defense of flood insurance litigation is aligned with FEMA's goals, including timely efforts at alternate

dispute resolution, accurate assessment of litigation risks, and management of expenses associated with the defense of flood insurance litigation. Any questions regarding this Manual or NFIP-related litigation should be directed to the WYOT at FEMA-NFIP-WYO-Oversight@fema.dhs.gov.

1.2 Role of WYO Companies

WYO companies are private insurance companies that elect to participate in the NFIP and meet the eligibility criteria in 44 C.F.R. Pt. 62.

All federal flood insurance policies offered through the NFIP must be sold and administered in accordance with the Act, implementing regulations, and policies developed by FEMA. The Arrangement establishes the relationship between FEMA and WYO companies and authorizes WYO companies to sell and administer the Standard Flood Insurance Policies in their own names. WYO companies retain from premiums various expense allowances and are reimbursed as set forth in the Arrangement, but assume no insurance risk. WYO companies serve as fiscal agents of the United States and any funds collected from policyholders are federal funds.

As stewards of federal funds, WYO companies must act in furtherance of the fiduciary obligation to FEMA. The Arrangement and the WYO Financial Control Plan specify the financial procedures WYO companies must adhere to as a condition for reimbursement of expenditures and that apply to the processing and documentation of invoices, receipts, disbursements and any other fiscal operation and control mechanisms.

WYO companies may be sued by flood insurance policyholders and other parties with disputes arising out of the companies' participation in the NFIP. The Arrangement requires WYO companies to notify FEMA of NFIP litigation and allocates the responsibility for costs arising from NFIP litigation. Absent specific guidance from FEMA OCC, WYO companies should handle NFIP litigation with the level of efficiency that is applied to the handling of litigation in other lines of insurance that place the companies' privately owned assets at risk. FEMA seeks the most expeditious and appropriate resolution of legal matters while maintaining the integrity of both the WYO company's defense and of the NFIP. Consistent with those goals, FEMA expects WYO counsel to carefully manage time and costs.

Pursuant to the Arrangement and 44 C.F.R. § 62.23, FEMA is not a proper party to any NFIP flood insurance litigation stemming from policies sold pursuant to the Arrangement and WYO companies are solely responsible for the defense of such litigation.

1.3 Legal Counsel for WYOs

A. Counsel Qualifications

WYO companies are responsible for hiring and paying their legal counsel and for seeking reimbursement from FEMA pursuant to the Arrangement. FEMA reimburses WYO companies for the costs the companies incur defending NFIP litigation, including reasonable attorney's fees paid by the WYO company. Legal counsel retained to represent WYO companies in flood insurance litigation will be litigating issues arising under the Act and related federal laws and regulations. All legal service providers for WYO companies should be familiar with federal practice, the Act, federal regulations implementing the NFIP, the terms and conditions of the SFIP, the substantial body of NFIP-related legal precedent, the terms and conditions of the Arrangement, and other applicable guidance.

FEMA will not reimburse legal expenses incurred by an attorney hired to represent a WYO company who is or becomes suspended, disbarred, or otherwise ineligible to practice law.

B. Conflicts of Interest

WYO company counsel must be free of any actual or apparent conflict of interest involving the NFIP, WYO companies, or contractors assisting with NFIP litigation. WYO companies and their counsel may engage experts, claim adjusters, and other contractors to assist with NFIP litigation. Similar to counsel representing the NFIP, litigation contractors must be free of actual or apparent conflicts of interest.

"Conflict" includes, but is not limited to, matters where there is a significant risk that the ability to recommend or carry out a course of action will be materially limited as a result of other responsibilities to

another client, a former client or third person, or by a personal interest. “Conflict” also includes representation by counsel or any attorney in counsel’s firm in litigation adverse to FEMA, FIMA, or a WYO company litigating an NFIP issue, and participation by experts, claim adjusters, and other contractors in litigation against FEMA, FIMA, or a WYO company litigating an NFIP issue.

Failure to promptly disclose actual or potential conflicts of interest or matters that have the potential to create the appearance of a conflict may result in denial of reimbursement in whole or in part of submitted litigation expenses, and/or the implementation of other corrective actions. FEMA may request that legal counsel for WYO companies provide information regarding any system maintained for tracking conflicts and a copy of any written policy that governs the resolution of conflicts. Actual or apparent conflicts may be waived with the prior approval of FEMA. WYO companies should contact the WYOT for guidance and/or a waiver as soon as it becomes aware of an actual or potential conflict.

WYO companies must immediately inform the WYOT and the FEMA Industry Management Branch of any termination of WYO legal counsel or litigation contractor due to conflict of interest or the appearance of impropriety. Failure to promptly notify the WYOT in a timely manner may result in a delay or denial of reimbursement of expenses and or fees.

C. Other Ethical Considerations

FEMA expects WYO counsel to observe the highest ethical standards and to comply with all applicable laws, rules, and regulations governing ethical conduct and conflicts of interest. Attorneys, experts and other contractors assisting with NFIP litigation are compensated with federal funds and must be eligible to contract with the federal government.

D. Equal Employment Opportunity

Federal law prohibits unlawful discrimination in all federal programs, including the NFIP.

E. Contacts with the Media and the Public

WYO company counsel shall not discuss NFIP litigation with representatives of the media. If media representatives contact WYO counsel concerning cases the firm is handling on behalf of the NFIP, the inquiry should be forwarded immediately to the WYOT, which will relay the inquiry to the FEMA Industry Management Branch. The Industry Management Branch will assume responsibility for responding to such an inquiry and will coordinate with FEMA OCC and FEMA’s Office of External Affairs to produce and distribute an appropriate and accurate response. Under no circumstances shall legal counsel for WYO companies comment to the media on the specifics of a case or on more general matters involving the policies and procedures of the NFIP or Program decision-making.

Legal representatives for WYO companies who address the public orally or in writing on general topics pertaining to the NFIP or laws and regulations affecting it must prominently disclose to the audience that he or she is making the presentation on his or her own behalf and not on behalf of the NFIP.

2 Litigation Coordination and Case Management

2.1 Joint Defense

FEMA and a WYO company share a unique and common interest in the defense of litigation related to the NFIP. Among the factors that give rise to this shared interest are the fiduciary responsibilities of the company, the statutory and regulatory foundation of the NFIP, federal administrative and oversight responsibilities, the need to share confidential and privileged information, and the risk to federal funds. Accordingly, through the [Arrangement](#) FEMA and WYO companies participating in the NFIP have entered into a joint defense agreement to implement FEMA’s oversight responsibilities for the purpose of any litigation related to or arising under the NFIP to enable the free flow of information between FEMA, FEMA OCC, U.S. Department of Justice, WYO companies, and legal counsel for WYO companies.

2.2 Notice of Litigation

WYO companies must inform FEMA and FEMA OCC of material aspects of an NFIP-related lawsuit. Reimbursement of litigation expenses may be delayed, jeopardized, or reduced if the WYO Company

fails to comply with this requirement. Multiple failures to promptly notify FEMA of all NFIP-related lawsuits as required will trigger referral of the non-compliance for review by the Standards Committee pursuant to the Arrangement or denial of reimbursement under the [Arrangement](#). Specifically, a WYO company shall:

A. Provide Initial Notice

FEMA requires all WYO companies to notify FEMA of litigation. The WYO company shall notify FEMA within 30 business days after receipt of a Complaint to allow FEMA OCC to monitor and, if necessary, assist in the disposition of the NFIP-related litigation. The notice should include a copy of the **Summons and Complaint** and the attorney's **Case Plan and Budget**. The initial notification, Summons and Complaint, and the Case Plan and Budget and Initial Analysis must be submitted through the Litigation & Expense (L&E) Module via the Underwriting and Claims Operation Review Tool (UCORT).

B. Prepare Case Plans and Budgets and Quarterly Litigation Updates

The Case Plan and Budget should set forth the WYO company's preliminary assessment and plan for the litigation. The Case Plan and Budget and subsequent Quarterly Litigation Updates will contain privileged attorney work product and attorney-client communications and is submitted pursuant to the joint defense agreement with FEMA. It should prominently identify itself as such.

**Absent special arrangements, FEMA will no longer accept paper documentation or CDs of case pleadings, Case Plans and Budgets, and associated documents.*

1. The Case Plan should summarize the WYO company's defense and settlement strategy and anticipated schedule for preparing and trying the case. Complex or time-consuming activities should be divided into subparts. The Budget should provide the expected financial costs of the litigation from the beginning of the case through trial. At a minimum, the Budget should conform to the case plan, identify specific phases of the case, and estimate the cost of each phase. (See [Appendix 1](#) for a sample Case Plan and Budget. A WYO company and its counsel may use other formats for its Case Plan and Budget submissions, but must provide all of the information described in this sample). Any adjustments to the Case Plan and Budget should be submitted through the L&E Module via UCORT.
2. Following the submission of the initial Case Plan and Budget, the WYO company shall provide litigation updates on a quarterly basis. Quarterly litigation updates should include the current status of the case and indicate whether any changes have occurred over the past quarter, including any updates to proposed motion practice or case deadlines or changes in strategy. The quarterly update also should highlight any other significant activities including changes related to federal jurisdiction, current policy/agency practice, and issues of agent error. Quarterly updates and any communication regarding ongoing litigation should be sent to the WYOT via electronic mail at FEMA-NFIP-WYO-Oversight@fema.dhs.gov.

C. Coordinate with FEMA Office of Chief Counsel

After receipt of the initial notification from a WYO company, the WYOT will assign an attorney to monitor the case and to provide assistance. FEMA OCC is required by the [Arrangement](#) to review claims in litigation and determine whether it believes a claim is grounded in actions that are significantly outside the scope of the [Arrangement](#), the [National Flood Insurance Act](#), the NFIP's implementing regulations, or involve issues of insurer/agent negligence. Reimbursement and the propriety of the use of federal funds to pay a settlement or judgment under the Arrangement will be determined by FEMA in consultation with FEMA OCC.

FEMA OCC also is a resource for legal and programmatic assistance. FEMA OCC has extensive experience litigating NFIP cases and has access to recent NFIP case law and FEMA's position on coverage and underwriting issues. Although FEMA does not anticipate that government employees will generally be witnesses in cases where the WYO company is the proper party, on rare occasions FEMA may agree a case raises issues of sufficient importance that a FEMA employee may be authorized to appear as a witness. All requests for FEMA witnesses or related information such as declarations by FEMA employees should be coordinated through the FEMA WYOT Team Member

assigned to the particular case. See 6 C.F.R. Part 5; *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

D. Anticipate Possible Appeals

WYO Company counsel must promptly notify FEMA OCC of any adverse ruling in an NFIP case so a decision can be made regarding appeal. WYO counsel are expected to take all steps necessary to protect the interests and preserve all rights of the NFIP pending a decision to appeal.

E. Coordinate on Post-Catastrophe Mass NFIP Litigation

In litigation arising from severe flood events, a number of WYO companies may be separately named as defendants in a particular jurisdiction. To better manage strategy and costs in high-volume litigation, FEMA may provide additional guidance to address common legal and case management issues, unique administrative requirements, and extraordinary considerations, and to streamline discovery and responses to case management orders and other court requirements. In addition, the United States Department of Justice (DOJ) and local Offices of the United States Attorney (USAO) may be involved, particularly on the FEMA NFIP Direct cases. FEMA may communicate any additional guidance verbally or in writing. Additionally, during these periods, FEMA may elect to extend the reporting time frames outlined throughout this Manual.

F. Participate in Joint Defense Meetings, Teleconferences and other Privileged Communications

Under the joint defense agreement, FEMA OCC may hold regular meetings or conference calls with counsel after a catastrophic flood event to discuss issues of general applicability, including litigation-specific guidance, and to discuss matters of common interest such as joint defense strategies. FEMA OCC will provide teleconference access information via electronic email at least 24 hours prior to the scheduled teleconference. The joint defense meetings are convened only for OCC, WYO defense and in-house counsel, DOJ or appropriate USAO, and FIMA programmatic litigation points of contact. WYO companies and their counsel cannot disclose information covered in the joint defense meeting absent a court order and consultation with the WYOT.

G. Request for Amicus Brief or Statement of Interest

Pursuant to Rule 29 of the Federal Rules of Appellate Procedure, FEMA may file an *amicus curiae* brief without the consent of the parties or leave of court in litigation involving the NFIP. FEMA also may file a statement of interest in a particular litigation pursuant to 28 U.S.C. § 517. A statement of interest will enable the United States independently to make its views on a particular issue known to the Court. If a WYO company identifies a significant issue that may lead to a ruling that could impact an existing NFIP policy, program activity, or practice, the company can ask FEMA to file an *amicus curiae* brief or submit a statement of interest.

To request an *amicus curiae* brief or federal participation through a statement of interest, the WYO company should submit to FEMA OCC a written memorandum identifying the issues that will be subject to the Court's ruling, how the brief or participation will further the NFIP, and the Agency's interests.

The requesting memorandum should be submitted to the WYOT as soon as possible due to numerous levels of approval required. A request for the Agency's submission of an *amicus curiae* brief or for federal participation through a statement of interest should be sent to the attention of the WYOT at FEMA-NFIP-WYO-Litigation@fema.dhs.gov. A request for an *amicus curiae* must be submitted to the Agency at least sixty (60) days prior to the deadline established by FRCP Rule 29(a)(6).

Within two (2) business days of receipt of a request for the United States to participate or to file an *amicus curiae* brief, the WYOT will acknowledge receipt and coordinate a teleconference with WYO counsel to address any questions. All requests for a statement of interest or *amicus curiae* brief must be approved and filed by DOJ.

H. Closure/Disposition of Litigation

All WYO companies must notify the WYOT of case closure within forty-five (45) days of their notice of closure. This includes closure through settlement and by court order. The WYO companies shall also provide a copy of any final opinion or settlement documentation to the WYOT at FEMA-NFIP-WYO-Litigation@fema.dhs.gov.

3 Reimbursement of Litigation Expenses Incurred by WYOs

FEMA reimburses Type 3 SALAE (Special Allocated Loss Adjustment Expenses) incurred by a WYO company pursuant to the [Arrangement](#) subject to FEMA OCC's guidance and direction. FEMA recognizes that the engagement of outside counsel will sometimes be necessary, and that reasonable expenses relating to such outside counsel are reimbursable as Type 3 SALAE expenses. Under the [Arrangement](#), FEMA does not retain and is not responsible for payment of counsel representing WYO companies. The WYO company is responsible for paying its counsel and for seeking reimbursement.

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, and that it manages litigation in the same manner as it would litigation arising 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). 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.

3.1 Submission of Type 3 SALAEs

WYO companies must submit requests through the L&E Module via UCORT.

FEMA may ask a WYO company to submit additional documentation to verify legal billing. FEMA may disallow, in whole or in part, legal fees that are unsupported or that otherwise do not conform to industry or FEMA policies and procedures. Inappropriate costs include, but are not limited to, excessive expenses, redundant work done within one firm or by different firms handling the case, and multiple or redundant depositions. FEMA does not approve expenses for excessive time for attorneys to familiarize themselves with the NFIP, federal practice, the required removal of NFIP-related lawsuits to federal court, and other general legal matters that should be familiar to experienced counsel defending an NFIP lawsuit. The WYO companies may deviate from these standards only with prior approval from FEMA. Legal counsel for WYO companies are encouraged to use paralegal assistance when appropriate and cost effective.

Litigation expenses generated by WYO companies are subject to independent audit by the NFIP or by the Department of Homeland Security Office of the Inspector General. For audit purposes, WYO companies must retain copies of all NFIP-related bills and original underlying support documentation, including time sheets and time and expense adjustment records, for at least four years after final payment. FEMA may seek additional documentation to support a request for reimbursement submitted to the NFIP.

3.2 Fees and Expenses

For the fees and expenses identified below, FEMA retains the discretion to review requests for reimbursement under the Arrangement and decline or limit reimbursement if the Agency finds that they do not meet these standards.

A. Overhead Expenses are Not Reimbursable

Customary charges such as overhead and ordinary office supply costs are included in the hourly rate and generally are not reimbursable as Type 3 SALAEs. FEMA will consider reimbursement on a case-by-case basis after pre-approval. Requests for pre-approval should be sent to the WYOT at FEMA-NFIP-WYO-Litigation@fema.dhs.gov.

B. Hourly Rates

When establishing a reimbursable hourly billing rate for attorneys handling NFIP litigation, factors such as years of experience, geographic market rates, complexity of the case, and industry standards may be taken into consideration.

C. Limitations on Reimbursement for Discovery

Discovery, particularly depositions, can be costly, and WYO companies should closely monitor discovery to ensure that NFIP funds are spent in an efficient and cost-effective manner while ensuring a zealous defense of the Program. FEMA will reimburse up to three affirmative depositions per case without pre-approval. If a particular matter warrants additional depositions, the WYO Company should provide a brief justification to the WYOT at FEMA-NFIP-WYO-Litigation@fema.dhs.gov. The WYOT will promptly review and respond to all requests.

To minimize travel expenses, when appropriate video teleconferences for depositions and other proceedings is encouraged.

D. National and Local Counsel

The Case Plan and Budget should include an analysis of the cost-efficiency of hiring local counsel to minimize litigation travel expenses and to avoid duplicative legal expenses. Where possible, FEMA recommends that WYO companies hire experienced NFIP attorneys located in the state in which the lawsuit originates to minimize costs.

If the WYO company requires the use of a second attorney or law firm, the WYO company shall ensure that specific legal work is not duplicated, and/or that a second firm's expertise is needed.

E. Travel Expenses

Travel costs must be reasonable. Counsel may refer to the Government rate website to determine reasonable travel costs. Air travel will be reimbursed at not more than the coach rate for the subject flight. Attorney travel time outside the metropolitan area in which counsel is located should be charged at no more than 50% of counsel's normal hourly rate.

4 Litigation Strategies

4.1 Litigation Policy

FEMA expects counsel for WYO companies in litigation to act in a manner consistent with the overall NFIP objectives of protecting the integrity of the NFIP, respecting our policyholders, and resolving litigation in an expeditious and cost-effective manner. Although FEMA does not expect that the parties will be able to settle all litigation, the Agency expects settlement to be assessed early in the litigation, and the Agency expects WYO companies to attempt settlement and make reasonable efforts to expedite litigation. Where appropriate, motions to dismiss, for judgment on the pleadings, or for summary judgment should be employed to resolve or refine the issues in dispute. Unnecessary and overly burdensome discovery should be avoided.

Legal counsel for WYO companies should anticipate the broader ramifications of litigation and notify FEMA of any possible outcome, positive or negative, that may have a programmatic impact on the NFIP.

A. Alternate Dispute Resolution

The federal government encourages the use of alternative dispute resolution (ADR) in appropriate cases. These techniques may be a less expensive and more effective means of facilitating negotiated settlements prior to litigation. Throughout the course of a lawsuit, WYO company counsel should consider whether ADR is appropriate and explore opportunities for utilizing non-judicial dispute resolution approaches.

B. Settlement Negotiations and Requests for Concurrence

FEMA encourages appropriate settlement and requires WYO companies in NFIP litigation to consider settlement options early in litigation and continually as litigation progresses. Although not all litigation can or will be settled, FEMA may coordinate with the WYO company and its assigned counsel to ensure settlement opportunities are pursued in a manner that effectively and appropriately considers NFIP's mission, potential liability, and the costs of defense.

The WYO company is responsible for negotiating and facilitating settlement. When considering settlement options, the WYO company should act in a manner consistent with its fiduciary obligations as a fiscal agent of the federal government, and the propriety of a settlement will be evaluated on that basis. FEMA also expects WYO companies to consider settlement using the same standards the companies apply in litigation over their private lines. FEMA recognizes that there may be specific cases where FEMA policy or guidance may indicate an approach to settlement that differs from the private lines, and the WYO company considering settlement should consult with OCC on those matters.

The WYOT will consider requests for concurrence from WYO companies on a case-by-case basis and has authority to approve concurrence requests for matters in litigation. Notwithstanding, WYO companies must submit all negotiated offers to settle NFIP litigation to the WYOT for tracking and oversight. In addition, the WYOT may require WYO companies to submit additional information if there are questions regarding the litigation, including settlement or strategy. Any request for concurrence and all negotiated settlement offers should be sent to the attention of the WYOT, at FEMA-NFIP-WYO-Litigation@fema.dhs.gov.

If a case is unable to settle and the matter is submitted on motion or otherwise proceeds to hearing or trial, FEMA expects counsel to raise all appropriate defenses and communicate with the WYOT regarding dispositive motion practice and trial dates.

4.2 Subrogation

Pursuant to [44 C.F.R. § 62.23\(i\)\(8\)](#), FEMA has the right of first recovery in the event of any subrogation claim under the NFIP.

If the adjuster believes there may be potential for subrogation, the adjuster should complete FEMA Form 086-0-16 – Cause of Loss and Subrogation Report, to identify a potentially responsible third party and how their actions may have caused or worsened flood damage.

In the appropriate circumstances, the WYO company should evaluate subrogation recovery. Whether the WYO company pursues recovery or foregoes pursuit, the WYO company should notify the NFIP Bureau and Statistical Agent (NFIP BSA) and submit the Cause of Loss and Subrogation Report and a copy of the claim and underwriting file. Subrogation-related documentation and information should be sent to the NFIP BSA **via electronic mail** at NFIPClaimsMailbox@fema.dhs.gov. Upon receipt of the information, the NFIP BSA will log the information and refer all documents to the WYOT by email to FEMA-NFIP-WYO-Litigation@fema.dhs.gov, for handling. The WYOT will contact the insurer if additional information is required or necessary.

4.3 Defenses

Legal counsel for WYO companies should be aware that legal defenses that otherwise may not be available to a private sector insurer may be asserted due to the federal nature of the NFIP. Legal counsel for WYO companies should identify available defenses in the initial Case Plan and Budget submitted to the WYOT. Any inquiries regarding available defenses should be submitted to the WYOT at FEMA-NFIP-WYO-Litigation@fema.dhs.gov.

4.4 Referral of Criminal and Civil Misconduct

Fraudulent activities undertaken in connection with NFIP flood insurance policies administered by a WYO company constitute fraud against the federal government and subject the perpetrator to a range of criminal and civil penalties under federal criminal and civil anti-fraud statutes, including the [False Claims Act, 31 U.S.C. § 3729](#).

FEMA and WYO companies are required to notify and, where appropriate, to assist law enforcement officials, including the Department of Homeland Security Office of the Inspector General, in investigating conduct that may constitute a violation of criminal or civil fraud statutes. Legal counsel for WYO companies must immediately forward any information that suggests possible criminal or fraudulent behavior to WYOT. If necessary, the attorney and/or WYO company may be required to submit supporting information regarding the misconduct. In the event WYO counsel is called upon to prepare and gather such information, the costs will be reimbursed as NFIP legal expenses.

FEMA also administers a Suspension and Debarment (S&D) program under the authority of the Federal Acquisition Regulation Subpart 9.4, 48 C.F.R. 9.4, and the Federal non-procurement Common Rule, 2 C.F.R. Part 180. The S&D program provides an administrative mechanism to ensure that entities doing business with the United States and Federal instrumentalities are presently responsible and capable of performing, and enables the Federal government to stop doing business with ineligible contractors. FEMA expects WYO companies, their counsel, and other entities responsible for oversight and expenditures of Federal funds to monitor contractors and other participants for legal violations and other factors that affect present responsibility and will report potential violations through the WYOT. FEMA considers S&D to be an important tool that ensures that Federal dollars are properly expended, and expects that participants in the WYO program will monitor contractors to ensure that systemic problems are brought to our attention.

5 Legal Disclaimer

This document represents the current FEMA guidance on the covered topics and may assist NFIP insurers and their counsel in applying applicable statutory and regulatory requirements, as well as the terms and conditions of the Standard Flood Insurance Policy. This document is not a substitute for applicable legal requirements, nor is it itself a rule. It is not intended to, nor does it impose, legally-binding requirements on any party, except where parties have voluntarily entered into an agreement requiring compliance with FEMA guidance.

Appendix

1 Sample Case Plan and Budget

This sample Case Plan and Budget has been developed to assist in the submission of documentation related to NFIP litigation.

To assist in the review and processing of National Flood Insurance Program NFIP-related litigation conducted by Write Your Own (WYO) Companies, please provide the following preliminary information within 30 days. Please submit the completed report through the L&E Module via UCORT.

Please note FEMA does not reimburse WYO Companies for the cost of education regarding the NFIP and its policies, related Federal Regulations, activities in Federal Practice and related subjects.

CASE PLAN FOR NFIP-RELATED LITIGATION

CASE NAME:

Initial Filing Date:

Date Notice to FEMA Achieved:

Expected End Date:

WRITE-YOUR-OWN INSURER:

Policy #:

Insured Name:

Claim #:

Property Location:

Date of Loss:

Policy Limits:

Prior SFIP Payments for Date of Loss:

ATTORNEY/FIRM AUTHORIZED TO DEFEND:

DATE AUTHORIZED:

POTENTIAL LITIGATION-RELATED ACTIVITIES

PLEADINGS: Briefly discuss all allegations in the complaint that might require your consideration as well as the affirmative defenses that would be raised.

JURISDICTION AND VENUE: Please remember that all NFIP-related Litigation should be removed to Federal Court in the District where the property is located. If available, please provide comments regarding known past NFIP-related litigation in the locale, and other pertinent information.

DEFENSE THEORIES: Briefly describe all affirmative defenses that may be raised.

REGULATORY DEFENSES: Have you reviewed the regulations to determine whether there are regulatory defenses?

LIABILITY: How do you assess the defendant's liability? Please include an assessment of the strength and weakness of the opposition's claim.

DAMAGES: Please discuss the potential damages (or specific damages sought). Please note your estimate regarding the value of the case, both potential settlement value and potential verdict scope.

POTENTIAL FOR SETTLEMENT: Is settlement likely? If so, can you set a potential range for settlement?

DEFENSE/LITIGATION PLAN: What is your suggested course of action for this lawsuit? Please include comments on your anticipated discovery requests and any potential depositions.

ALTERNATIVE DISPUTE RESOLUTION OPTIONS: Is mediation possible?

INVESTIGATION: Has any investigation been conducted prior to this date? What investigation do you expect to conduct, and at what stage in the litigation?

DEFENSE BUDGET: While you are not expected to anticipate all variables, please estimate all expected defense costs? Those costs should include the cost of preparation of pleadings, written discovery and subpoenas; the cost of depositions; and any additional defense expenses consistent with your defense plan. Please note that you will be expected to report any extreme changes in this assessment prior to and including closure.

DEPOSITIONS OF FEDERAL EMPLOYEES: Do you anticipate the deposition of any Federal Employees, either from the Federal Emergency Management Agency (FEMA) or of the Federal Insurance and Mitigation Administration (FIMA).

AGENT ERROR: is this an instance of pure agent error, i.e. the facts do not relate to the issuance, content or other areas of the Standard Flood Insurance Policy (SFIP).

ADDITIONAL INFORMATION:

BUDGET FOR NFIP-RELATED LEGAL ACTIVITIES

INITIAL HANDLING (CASE ASSESSMENT, DEVELOPMENT AND ADMINISTRATION)

(Please describe all expected activity at this stage.)

_____ Hours \$_____

PRETRIAL PLEADINGS AND MOTIONS

(Please describe all expected activity at this stage.)

_____ Hours \$_____

DISCOVERY

Depositions: (Estimate #) _____

_____ Hours \$_____

Other Discovery: (Research, motions, etc.)

_____ Hours \$_____

Other Discovery Costs: (Please describe.)

_____ Hours \$_____

Total: _____ Hours \$_____

TRIAL

(Please describe all expected activity at this stage.)

_____ Hours \$_____

NON-ATTORNEY FEES & OTHER EXPENSES

(Please describe all expected activity at this stage.)

\$_____

TOTAL EXPECTED LITIGATION COSTS

(Please describe all expected activity at this stage.)

Total: _____ Hours \$_____