

## **NFIP Reforms Implemented by FEMA, March 2018**

### **AGENCY:**

Federal Emergency Management Agency, DHS.

### **ACTION:**

Notice.

### **SUMMARY:**

The Federal Emergency Management Agency announces the Fiscal Year 2019 Financial Assistance/Subsidy Arrangement for private property insurers interested in participating in the National Flood Insurance Program's Write Your Own Program.

### **DATES:**

Interested insurers must submit intent to subscribe or re-subscribe to the Arrangement by June 14, 2018.

## FOR FURTHER INFORMATION CONTACT:

Kelly Bronowicz, Federal Insurance and Mitigation Administration, FEMA, 400 C St. SW, Washington, DC 20472; (202) 557-9488 (phone), or [Kelly.Bronowicz@fema.dhs.gov](mailto:Kelly.Bronowicz@fema.dhs.gov) (email).

## SUPPLEMENTARY INFORMATION:

### I. Background

The National Flood Insurance Act of 1968 (NFIA), as amended ([42 U.S.C. 4001](#) et seq.), authorizes the Administrator of the Federal Emergency Management Agency (FEMA) to establish and carry out a National Flood Insurance Program (NFIP) to enable interested persons to purchase insurance against loss resulting from physical damage to or loss of real or personal property arising from flood in the United States. See [42 U.S.C. 4011](#)(a). Under the NFIA, FEMA has the authority to undertake arrangements to carry out the NFIP through the facilities of the Federal Government, utilizing, for the purposes of providing flood insurance coverage, insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations, as fiscal agents of the United States. See [42 U.S.C. 4071](#). To this end, FEMA may “enter into any contracts, agreements, or other arrangements” with private insurance companies to utilize their facilities and services in administering the NFIP, and on such terms and conditions as may be agreed upon. See [42 U.S.C. 4081](#)(a).

Pursuant to this authority, FEMA enters into a standard Financial Assistance/Subsidy Arrangement (Arrangement) with private sector property insurers, also known as Write Your Own (WYO) companies, to sell NFIP flood insurance policies under their own names and adjust and pay claims arising under the Standard Flood Insurance Policy (SFIP). Each Arrangement entered into by a WYO company must be in the form and substance of the standard Arrangement, a copy of which is published in the **Federal Register** annually, at least 6 months prior to becoming effective. See [44 CFR 62.23](#)(a).

## II. Notice of Availability

Insurers interested in participating in the WYO Program for Fiscal Year 2019 must contact Clark Poland at Start Printed Page 11773 [Clark.Poland@fema.dhs.gov](mailto:Clark.Poland@fema.dhs.gov) by June 14, 2018.

Prior participation in the WYO Program does not guarantee that FEMA will approve continued participation. FEMA will evaluate requests to participate in light of publicly available information, industry performance data, and other criteria listed in [44 CFR 62.24](#) and the FY 2019 Arrangement, copied below. Private insurance companies are encouraged to supplement this information with customer satisfaction surveys, industry awards or recognition, or other objective performance data. In addition, private insurance companies should work with their vendors and subcontractors involved in servicing and delivering their insurance lines to ensure FEMA receives the information necessary to effectively evaluate the criteria set forth in its regulations.

FEMA will send a copy of the offer for the FY 2019 Arrangement, together with related materials and submission instructions, to all private insurance companies successfully evaluated by the NFIP. If FEMA, after conducting its evaluation, chooses not to renew a Company's participation, FEMA, at its option, may require the continued performance of all or selected elements of the FY 2018 Arrangement for a period required for orderly transfer or cessation of the business and settlement of accounts, not to exceed 18 months. See FY 2018 Arrangement, Article V.C. All evaluations, whether successful or unsuccessful, will inform both an overall assessment of the WYO Program and any potential changes FEMA may consider regarding the Arrangement in future fiscal years.

Any private insurance company with questions may contact FEMA at: Kelly Bronowicz, Federal Insurance and Mitigation Administration, FEMA, 400 C St. SW, Washington, DC 20472 (mail); (202) 557-9488 (phone), or [Kelly.Bronowicz@fema.dhs.gov](mailto:Kelly.Bronowicz@fema.dhs.gov) (email).

## III. Fiscal Year 2019 Arrangement

Pursuant to [44 CFR 62.23\(a\)](#), FEMA must publish the Arrangement at least 6 months prior to the Arrangement becoming effective. The FY 2019 Arrangement copied below is substantially similar to the previous year's Arrangement. FEMA has made several changes designed to improve the overall clarity and readability of the document, as well as incorporate existing WYO Program policies and requirements.

Noteworthy changes include:

- Establishing timeliness requirements for the claim appeals process;
- Requiring WYO companies to submit an Operations Plan to FEMA.
- Removing the provision increasing the WYO Allowance by 1 percent of written premium over the rate indicated by expense data from non-flood insurance lines.
- Removing the cap on the maximum potential growth bonus paid to an individual WYO company, while limiting the total growth bonuses paid to all WYO companies at 2 percent of aggregate written premium.
- Formalizing FEMA's process to temporarily increase the allocated loss adjustment fee schedule when necessary to ensure supply of qualified adjusters during a catastrophic flood event.
- Removing restrictions on WYO companies choosing to offer private flood insurance, while maintaining requirements that such private flood insurance lines remain entirely separate from a WYO company's NFIP insurance business.
- Several stylistic changes designed to improve overall clarity and readability in accordance with Federal Plain Language Guidelines.

The Fiscal Year 2019 Arrangement reads as follows:

## **Financial Assistance/Subsidy Arrangement**

### **Article I. Findings, Purposes, and Authority**

Whereas, the Congress in its "Finding and Declaration of Purpose" in the National Flood Insurance Act of 1968, Public Law 90-448, Title XIII, as amended, ("the Act" or "Act") recognized the benefit of having the National Flood Insurance Program (the "Program" or "NFIP") "carried out to the maximum extent practicable by the private insurance industry"; and

Whereas, the Federal Emergency Management Agency ("FEMA"), which operates the Program through its Federal Insurance and Mitigation Administration ("FIMA"), recognizes this Arrangement as coming under the provisions of Sections 1340 and 1345 of the Act ([42 U.S.C. 4071](#) and 4081, respectively); and

Whereas, the goal of FEMA is to develop a program with the insurance industry where the risk-bearing



role for the industry will evolve as intended by the Congress (Section 1304 of the Act [[42 U.S.C. 4011](#)]); and

Whereas, Section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, [Public Law 108-264](#), as implemented by [44 CFR 62.20](#), permits Program policyholders to appeal the denial of a claim, in completely or in part, to FEMA; and

Whereas, the NFIP is a program administered by FEMA, all participants of this Arrangement, and other entities operating on their behalf, shall align themselves toward the common purpose of helping survivors and their communities recover from floods by effectively delivering customer-focused flood insurance products and information; and

Whereas, the insurer (hereinafter the “Company”) under this Arrangement must charge rates established by FEMA; and

Whereas, FEMA has promulgated regulations and guidance implementing the Act and the Write Your Own (WYO) Program whereby participating private insurance companies act in a fiduciary capacity utilizing Federal funds to sell and administer the Standard Flood Insurance Policies, and has extensively regulated the participating companies’ activities when selling or administering the Standard Flood Insurance Policies; and

Whereas, any litigation resulting from, related to, or arising from the Company’s compliance with the written standards, procedures, and guidance issued by FEMA arises under the Act or regulations, and legal issues thereunder raise a federal question; and

Whereas, through this Arrangement, the Federal Treasury will back all flood policy claim payments by the Company; and

Whereas, FEMA developed this Arrangement to enable any interested qualified insurer to write flood insurance under its own name; and

Whereas, insured survivors recover faster and more fully than uninsured survivors, and FEMA is committed to developing a culture of preparedness and closing the insurance gap across the nation; and

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The information presented in this publication is for general informational purposes and is not a substitute for legal advice. If you have a specific legal issue or problem, United Policyholders recommends that you consult with an attorney. Guidance on hiring professional help can be found in the “Find Help” section of [www.uphelp.org](http://www.uphelp.org). United Policyholders does not sell insurance or certify, endorse or warrant any of the insurance products, vendors, or professionals identified on our website.

Source: <https://uphelp.org/nfip-reforms-implemented-by-fema-march-2018/> Date: June 30, 2024

Whereas, one of the primary objectives of the Program is to provide coverage to the maximum number of buildings at risk and because the insurance industry has marketing access through its existing facilities not directly available to FEMA, FEMA concludes that coverage will be extended to those who would not otherwise be insured under the Program; and Whereas, flood insurance policies issued subject to this Arrangement must be only that insurance written by the Company in its own name under prescribed policy conditions and pursuant to this Arrangement, the Act, and any guidance issued by FEMA; and

Whereas, over time, the Program is designed to increase industry participation, and, accordingly, reduce or eliminate Government as the Start Printed Page 11774 principal vehicle for delivering flood insurance to the public; and

Whereas, the sole parties under this Arrangement are the Company and FEMA.

Now, therefore, the parties hereto mutually undertake the following:

## **Article II. Undertakings of the Company**

### **A. Eligibility Requirements for Participation in the NFIP.**

1. Policy Administration. All fund receipt, recording, control, timely deposit requirements, and disbursement in connection with all Policy Administration and any other related activities or correspondences, must meet all requirements of the Financial Control Plan and any guidance issued by FEMA. The Company shall be responsible for:

- a. Compliance with the Community Eligibility/Rating Criteria.
- b. Making Policyholder Eligibility Determinations.
- c. Policy Issuances.
- d. Policy Endorsements.
- e. Policy Cancellations.
- f. Policy Correspondence.

g. Payment of Agents' Commissions.

2. Claims Processing. The Company must process all claims consistent with the Standard Flood Insurance Policy, Financial Control Plan, other guidance adopted by FEMA, and as much as possible, with the Company's standard business practices for its non-NFIP policies.

3. Reports. The Company must submit monthly financial reports and statistical transaction reports in accordance with the requirements of the NFIP Transaction Record Reporting and Processing Plan for the Company and the Financial Control Plan for business written under the WYO Program, as well as with WYO Accounting Procedures. FEMA will validate, edit, and audit in detail these data and compare and balance the results against Company reports.

4. Operations Plan. Within ninety (90) days of the commencement of this Arrangement, the Company must submit an Operations Plan to FEMA describing its efforts to perform under this Arrangement. The plan must include the following:

- a. A marketing plan describing the Company's forecasted growth, efforts to achieve that growth, and ability to comply with any marketing guidelines provided by FEMA.
- b. A description of the Company's NFIP flood insurance distribution network, including anticipated numbers of agents, efforts to train those agents, and an average rate of commissions paid to producers by state.
- c. A catastrophic claims handling plan describing how the Company will respond and maintain service standards in catastrophic flood events.
- d. A business continuity plan identifying threats and risks facing the Company's NFIP-related operations and how the Company will maintain operations in the event of a disaster affecting its operational capabilities.

B. Time Standards. Time will be measured from the date of receipt through the date mailed out. All dates referenced are working days, not calendar days. In addition to the standards set forth below, all functions performed by the Company must be in accordance with the highest reasonably attainable quality standards generally utilized in the insurance and data processing field. Continual failure to meet these

requirements may result in limitations on the company's authority to write new business or the removal of the Company from the WYO Program. Applicable time standards are:

1. Application Processing—15 days (*Note: if the policy cannot be mailed due to insufficient or erroneous information or insufficient funds, the Company must mail a request for correction or added moneys within 10 days*).
2. Renewal processing—7 days.
3. Endorsement processing—15 days.
4. Cancellation processing—15 days.
5. Claims Draft Processing—7 days from completion of file examination.
6. Claims Adjustment—45 days average from the receipt of Notice of Loss (or equivalent) through completion of examination.

C. Policy Issuance.

1. The flood insurance subject to this Arrangement must be only that insurance written by the Company in its own name pursuant to the Act.
2. The Company must issue policies under the regulations prescribed by the Federal Emergency Management Agency, in accordance with the Act, on a form approved by FEMA.
3. All policies must be issued in consideration of such premiums and upon such terms and conditions and in such states or areas or subdivisions thereof as may be designated by FEMA and only where the Company is licensed by State law to engage in the property insurance business.

D. FEMA may require the Company to discontinue issuing policies subject to this Arrangement immediately in the event Congressional authorization or appropriation for the NFIP is withdrawn.

E. The Company must separate federal flood insurance funds from all other Company accounts, at a bank or banks of its choosing for the collection, retention and disbursement of federal funds relating to its



obligation under this Arrangement, less the Company's expenses as set forth in Article III, and the operation of the Letter of Credit established pursuant to Article IV. The Company must remit all funds not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

F. The Company must investigate, adjust, settle, and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company bind FEMA, subject to appeal.

G. Compliance with Agency Standards and Guidelines.

1. The Company must comply with the Act, regulations, written standards, procedures, and guidance issued by FEMA relating to the NFIP and applicable to the Company, including, but not limited to:

a. Financial Control Plan.

b. Transaction Record Reporting and Processing (TRRP) Plan.

c. Flood Insurance Manual.

d. Adjuster Claims Manual.

e. WYO Bulletins.

2. The Company must market flood insurance policies in a manner consistent with marketing guidelines established by FEMA.

3. FEMA may require the Company to collect customer service information to monitor and improve their program delivery.

4. The Company must notify its agents of the requirement to comply with State regulations regarding flood insurance agent education, notify agents of flood insurance training opportunities, and assist FEMA in periodic assessment of agent training needs.

H. Compliance with Appeals Process.

1. FEMA will notify the Company when a policyholder files an appeal. After notification, the Company must provide FEMA the following information:
  - a. All records created or maintained pursuant to this Arrangement requested by FEMA; and
  - b. A comprehensive claim file synopsis that includes a summary of the appeal issues, the Company's position on each issue, and any additional relevant information. If, in the process of writing the synopsis, the Company determines that it can address the issue raised by the policyholder on appeal without further direction, it must notify FEMA. The Company will then work directly with the policyholder to achieve resolution and update FEMA upon completion. The Company may Start Printed Page 11775 have a claims examiner review the file who is independent from the original decision and who possesses the authority to overturn the original decision if the facts support it.
2. The Company must cooperate with FEMA throughout the appeal process until final resolution. This includes adhering to any written appeals guidance issued by FEMA.
3. Resolution of Appeals. FEMA will close an appeal when:
  - a. FEMA upholds the denial by the Company;
  - b. FEMA overturns the denial by the Company and all necessary actions that follow are completed;
  - c. The Company independently resolves the issue raised by the policyholder without further direction;
  - d. The policyholder voluntarily withdraws the appeal; or
  - e. The policyholder files litigation.
4. Processing of Additional Payments from Appeal. The Company must follow supplemental claim procedures for appeals that result in additional payment to a policyholder.
5. Time Standards.
  - a. Provide FEMA with requested files pursuant to Article II.H.1.a—10 business days after request.

- b. Provide FEMA with comprehensive claim file synopsis pursuant to Article II.H.1.b—10 business days after request.
  - c. Responding to inquiries from FEMA regarding an appeal—10 business days after inquiry.
- I. Other Flood Insurance. If the Company also offers flood insurance outside of the NFIP in any geographic area in which Program authorizes the purchase of flood insurance, the Company must:
- 1. Ensure that all public communications (whether written, recorded, electronic, or other) regarding non-NFIP flood insurance lines would not lead a reasonable person to believe that the NFIP, FEMA, or the Federal Government in any way endorses, sponsors, oversees, regulates, or otherwise has any connection with the non-NFIP flood insurance line. The Company may assure compliance with this requirement by prominently including in such communications the following statement: “This insurance product is not affiliated with the National Flood Insurance Program.”
  - 2. Ensure that data related to this Arrangement are not used to further or support the Company’s non-NFIP flood insurance lines.

### **Article III. Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds**

A. The Company is liable for operating, administrative and production expenses, including any State premium taxes, dividends, agents’ commissions or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement but excluding other taxes or fees, such as municipal or county premium taxes, surcharges on flood insurance premium, and guaranty fund assessments.

B. Payment for Selling and Servicing Policies.

1. Operating and Administrative Expenses. The Company may withhold, as operating and administrative expenses, other than agents’ or brokers’ commissions, an amount from the Company’s written premium on the policies covered by this Arrangement in reimbursement of all of the Company’s marketing, operating, and administrative expenses, except for allocated and unallocated loss adjustment expenses described in Article III.C. This amount will equal the sum of the average industry expenses ratios for

“Other Acq.”, “Gen. Exp.” and “Taxes” calculated by aggregating premiums and expense amounts for each of five property coverages using direct premium and expense information to derive weighted average expense ratios. For this purpose, FEMA will use data for the property/casualty industry published, as of March 15 of the prior Arrangement year, in Part III of the Insurance Expense Exhibit in A.M. Best Company’s Aggregates and Averages for the following five property coverages: Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril (non-liability portion).

2. Agent Compensation. The Company may retain fifteen (15) percent of the Company’s written premium on the policies covered by this Arrangement as the commission allowance to meet the commissions or salaries of insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

3. Growth Bonus. FEMA may increase the amount of expense allowance retained by the Company depending on the extent to which the Company meets the marketing goals for the Arrangement year contained in marketing guidelines established pursuant to Article II.G. The total growth bonuses paid to companies pursuant to this Arrangement may not exceed two (2) percent of the aggregate net written premium collected by all WYO companies. FEMA will pay the Company the amount of any increase after the end of the Arrangement year.

4. Reimbursement for Services of a National Rating Organization. The Company, with the consent of FEMA as to terms and costs, may use the services of a national rating organization, licensed under state law, to help us undertake and carry out such studies and investigations on a community or individual risk basis, and to determine equitable and accurate estimates of flood insurance risk premium rates as authorized under the Act, as amended. FEMA will reimburse the Company for the charges or fees for such services under the provisions of the WYO Accounting Procedures Manual.

C. FEMA will reimburse Loss Adjustment Expenses as follows:

1. FEMA will reimburse unallocated loss adjustment expenses to the Company pursuant to a “ULAE Schedule” coordinated with the Company and provided by FEMA.

2. FEMA will reimburse allocated loss adjustment expenses to the Company pursuant to a “Fee Schedule” coordinated with the Company and provided by FEMA. To ensure the availability of qualified insurance

adjusters during catastrophic flood events, FEMA may, in its sole discretion, temporarily authorize the use of an alternative Fee Schedule with increased amounts during the term of this Arrangement for losses incurred during a time frame and geographic area established by FEMA.

3. FEMA will reimburse special allocated loss expenses to the Company in accordance with guidelines issued by FEMA.

#### D. Loss Payments.

1. The Company must make loss payments for flood insurance policies from federal funds retained in the bank account(s) established under Article II.E and, if such funds are depleted, from federal funds derived by drawing against the Letter of Credit established pursuant to Article IV.

2. Loss payments include payments because of litigation that arises under the scope of this Arrangement, and the Authorities set forth herein. All such loss payments and related expenses must meet the documentation requirements of the Financial Control Plan and of this Arrangement, and the Company must comply with the litigation documentation and notification requirements established by FEMA. Failure to meet these requirements may result in FEMA's decision not to provide reimbursement.

#### 3. Limitation on Litigation Costs.

a. Following receipt of notice of such litigation, the FEMA Office of Chief Counsel ("OCC") will review the information submitted. If OCC finds that the litigation is grounded in actions by the Company that are significantly outside the scope of this Arrangement, and/or involves issues of agent negligence, then OCC may make a recommendation regarding whether all or part of the litigation is significantly outside the scope of the Arrangement.

b. In the event the FEMA determines that the litigation is grounded in actions by the Company that are significantly outside the scope of this Arrangement, and/or involves issues of agent negligence, then FEMA will notify the Company in writing within thirty (30) days that any award or judgment for damages and any costs to defend such litigation will not be recognized under Article III as a reimbursable loss cost, expense, or expense reimbursement.

c. In the event a question arises whether only part of the costs of a litigation is reimbursable, OCC may

make a recommendation about the appropriate division of responsibility, if possible.

d. In the event that the Company wishes to petition for reconsideration of the determination that it will not be reimbursed for any part of the award or judgment or any part of the costs expended to defend such litigation made under Article III.D.3.a-c, it may do so by mailing, within thirty (30) days of the notice that reimbursement will not be made, a written petition to FEMA, who may request advice on other than legal matters of the WYO Standards Committee established under the WYO Financial Control Plan. The WYO Standards Committee will consider the request at its next regularly scheduled meeting or at a special meeting called for that purpose by the Chairman and issue a written recommendation to the Administrator. FEMA's final determination will be made in writing within a reasonable time to the Company.

E. The Company must make premium refunds required by FEMA to applicants and policyholders from federal flood insurance funds referred to in Article II.E, and, if such funds are depleted, from funds derived by drawing against the Letter of Credit established pursuant to Article IV. The Company may not refund any premium to applicants or policyholders in any manner other than as specified by FEMA since flood insurance premiums are funds of the Federal Government.

## **Article IV. Undertakings of the Government**

A. FEMA must establish Letter(s) of Credit against which the Company may withdraw funds daily, if needed, pursuant to prescribed procedures implemented by FEMA. The amounts of the authorizations will be increased as necessary to meet the obligations of the Company under Article III.C-E. The Company may only request funds when net premium income has been depleted. The timing and amount of cash advances must be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable Letter of Credit expenses. Request for payment on Letters of Credit may not ordinarily be drawn more frequently than daily. This Letter of Credit may be drawn by the Company for any of the following reasons:

1. Payment of claims, as described in Article III.D;
2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund, as described in Article III.E; and

3. Allocated and unallocated loss adjustment expenses, as described in Article III.C.

B. FEMA must provide technical assistance to the Company as follows:

1. FEMA's policy, history concerning underwriting, and claims handling.
2. A mechanism to assist in clarification of coverage and claims questions.
3. Other assistance as needed.

C. FEMA must provide the Company with a copy of all formal written appeal decisions conducted in accordance with Section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, [Public Law 108-264](#) and [44 CFR 62.20](#).

D. Prior to the end of the Arrangement period, FEMA may provide the Company a statistical summary of their performance during the signed Arrangement period. This summary will detail the Company's performance individually, as well as compare the Company's performance to the aggregate performance of all WYO companies and the NFIP Direct Servicing Agent.

## **Article V. Commencement and Termination**

A. The effective period of this Arrangement begins on October 1, 2018 and terminates no earlier than September 30, 2019, subject to extension pursuant to Article V.C. FEMA may provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting, and eligibility rules.

B. Pursuant to [44 CFR 62.23\(a\)](#), FEMA will publish the Arrangement and the terms for subscription or re-subscription for Fiscal Year 2020 in the **Federal Register** no later than April 1, 2019. Upon such publication, the Company must notify FEMA of its intent to re-subscribe or not re-subscribe to the WYO Program for the following term within ninety (90) calendar days.

C. In addition to the requirements of Article V.B, in order to assure uninterrupted service to policyholders, the Company must promptly notify FEMA in the event the Company elects not to re-subscribe to the WYO Program during the term of this Arrangement. If so notified, or if FEMA chooses not to renew the

Company's participation, FEMA, at its option, may require the continued performance of all or selected elements of this Arrangement for the period required for orderly transfer or cessation of business and settlement of accounts, not to exceed eighteen (18) months after the end of this Arrangement (September 30, 2019), and may either require transfer of activities to FEMA under Article V.C.1 or allow transfer of activities to another WYO company under Article V.C.2:

1. FEMA may require the Company to transfer all activities under this Arrangement to FEMA. Within 30 calendar days of FEMA's election of this option, the Company must deliver to FEMA the following:
  - a. A plan for the orderly transfer to FEMA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance.
  - b. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FEMA, in a standard format and medium.
  - c. All claims and policy files, including those pertaining to receipts and disbursements that have occurred during the life of each policy. In the event of a transfer of the services provided, the Company must provide FEMA with a report showing, on a policy basis, any amounts due from or payable to insureds, agents, brokers, and others as of the transition date.
  - d. All funds in its possession with respect to any policies transferred to FEMA for administration and the unearned expenses retained by the Company.
  - e. A point of contact within the Company responsible for addressing issues that may arise from the Company's previous participation under the WYO Program. Start Printed Page 11777
2. FEMA may allow the Company to transfer all activities under this Arrangement to one or more other WYO companies. Prior to commencing such transfer, the Company must submit and FEMA must approve a formal request. Such request must include the following:
  - a. An assurance of uninterrupted service to policyholders.
  - b. A detailed transfer plan providing for either: (1) The renewal of the Company's NFIP policies by one or more other WYO companies or (2) the transfer of the Company's NFIP policies to one or more other WYO



companies.

c. A description who the responsible party will be for liabilities relating to losses incurred by the Company in this or preceding Arrangement years.

d. A point of contact within the Company responsible for addressing issues that may arise from the Company's previous participation under the WYO Program.

D. Cancellation by FEMA.

1. FEMA may cancel financial assistance under this Arrangement in its entirety upon thirty (30) days written notice to the Company by certified mail stating one or more of the following reasons for such cancellation:

a. Fraud or misrepresentation by the Company subsequent to the inception of the Arrangement; or

b. Nonpayment to FEMA of any amount due; or

c. Material failure to comply with the requirements of this Arrangement or with the written standards, procedures, or guidance issued by FEMA relating to the NFIP and applicable to the Company.

2. If FEMA cancels this Arrangement pursuant to Article V.D.1, FEMA may require the transfer of administrative responsibilities and the transfer of data and records as provided in Article V.C.1.a-d. If transfer is required, the Company must remit to FEMA the unearned expenses retained by the Company. In such event, FEMA will assume all obligations and liabilities owed to policyholders under such policies, arising before and after the date of transfer.

3. As an alternative to the transfer of the policies to FEMA pursuant to Article V.D.2, FEMA will consider a proposal, if it is made by the Company, for the assumption of responsibilities by another WYO company as provided in Article V.C.2.

E. In the event that the Company is unable or otherwise fails to carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any jurisdiction to which the Company is subject, the Company agrees to transfer, and FEMA will accept, any

and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event FEMA will assume all obligations and liabilities within the scope of the Arrangement owed to policyholders arising before and after the date of transfer, and the Company will immediately transfer to FEMA all needed records and data and all funds in its possession with respect to all such policies transferred and the unearned expenses retained by the Company. As an alternative to the transfer of the policies to FEMA, FEMA will consider a proposal, if it is made by the Company, for the assumption of responsibilities by another WYO company as provided by Article V.C.2.

F. In the event the Act is amended, repealed, expires, or if FEMA is otherwise without authority to continue the Program, FEMA may cancel financial assistance under this Arrangement for any new or renewal business, but the Arrangement will continue for policies in force that shall be allowed to run their term under the Arrangement.

## **Article VI. Information and Annual Statements**

A. The Company must furnish to FEMA such summaries and analysis of information including claim file information, and property address, location, and/or site information in its records as may be necessary to carry out the purposes of the Act, in such form as FEMA, in cooperation with the Company, will prescribe.

B. Upon FEMA's request, the Company must provide FEMA with a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof as filed with the State Insurance Authority of the Company's domiciliary State.

## **Article VII. Cash Management and Accounting**

A. FEMA must make available to the Company during the entire term of this Arrangement, and any continuation period required by FEMA pursuant to Article V.C, the Letter of Credit provided for in Article IV drawn on a repository bank within the Federal Reserve System. This Letter of Credit may be drawn by the Company for reimbursement of its expenses as set forth in Article IV that exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw. In the event that adequate Letter of Credit funding is not available to meet current Company obligations for flood policy claim payments issued, FEMA must direct the Company to immediately suspend the issuance of loss payments until such time as adequate funds are available. The Company is not required to pay claims from their own funds in the event of such suspension.

B. The Company must remit all funds, including interest, not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual or procedures approved in writing by FEMA.

C. In the event the Company elects not to participate in the Program in this or any subsequent fiscal year, or is otherwise unable or not permitted to participate, the Company and FEMA must make a provisional settlement of all amounts due or owing within three (3) months of the expiration or termination of this Arrangement. This settlement must include net premiums collected, funds drawn on the Letter of Credit, and reserves for outstanding claims. The Company and FEMA agree to make a final settlement, subject to audit, of accounts for all obligations arising from this Arrangement within eighteen (18) months of its expiration or termination, except for contingent liabilities that must be listed by the Company. At the time of final settlement, the balance, if any, due FEMA or the Company must be remitted by the other immediately and the operating year under this Arrangement must be closed.

## **Article VIII. Arbitration**

If any misunderstanding or dispute arises between the Company and FEMA with reference to any factual issue under any provisions of this Arrangement or with respect to FEMA's nonrenewal of the Company's participation, other than as to legal liability under or interpretation of the Standard Flood Insurance Policy, such misunderstanding or dispute may be submitted to arbitration for a determination that will be binding upon approval by FEMA. The Company and FEMA may agree on and appoint an arbitrator who will investigate the subject of the misunderstanding or dispute and make a determination. If the Company and FEMA cannot agree on the appointment of an arbitrator, then two arbitrators will be appointed, one to be chosen by the Company and one by FEMA.

The two arbitrators so chosen, if they are unable to reach an agreement, must select a third arbitrator who must act as Start Printed Page 11778umpire, and such umpire's determination will become final only upon approval by FEMA. The Company and FEMA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FEMA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

## **Article IX. Errors and Omissions**

In the event of negligence by the Company that has not resulted in litigation but has resulted in a claim against the Company, FEMA will not consider reimbursement of the Company for costs incurred due to that negligence unless the Company takes all reasonable actions to rectify the negligence and to mitigate any such costs as soon as possible after discovery of the negligence. The Company may choose not to seek reimbursement from FEMA.

Further, if the claim against the Company is grounded in actions significantly outside the scope of this Arrangement or if there is negligence by the agent, FEMA will not reimburse any costs incurred due to that negligence. The Company will be notified in writing within thirty (30) days of a decision not to reimburse. In the event the Company wishes to petition for reconsideration of the decision not to reimburse, the procedure in Article III.D.3.d applies.

However, in the event that the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment may not be paid by the Company from any portion of the premium and any funds derived from any federal letter of credit deposited in the bank account described in Article II.E. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

## **Article X. Officials Not To Benefit**

No Member or Delegate to Congress, or Resident Commissioner, may be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision may not be construed to extend to this Arrangement if made with a corporation for its general benefit.

## **Article XI. Offset**

At the settlement of accounts, the Company and FEMA has, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses,

salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and FEMA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts or credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset.

Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

## **Article XII. Equal Opportunity**

The Company shall not discriminate against any applicant for insurance because of race, color, religion, sex, age, handicap, marital status, or national origin.

## **Article XIII. [Reserved]**

**[Reserved]**

## **Article XIV. Access to Books and Records**

FEMA, the Department of Homeland Security, and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records that fully disclose all matters pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. FEMA shall have access to policyholder and claim records at all

times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

## **Article XV. Compliance With Act and Regulations**

This Arrangement and all policies of insurance issued pursuant thereto are subject to federal law and regulations.

## **Article XVI. Relationship Between the Parties and the Insured**

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, that is, to assure that any taxpayer funds are accounted for and appropriately expended. The Company is a fiscal agent of the Federal Government, but is not a general agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any policy issued pursuant hereto, such that the Federal Government is not a proper party to any lawsuit arising out of such policies.

Authority: [42 U.S.C. 4071](#), 4081; [44 CFR 62.23](#).

Dated: March 8, 2018.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Federal Emergency Management Agency.

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