

delay in the adoption of the provisions of the June 12, 1998, ASC proposed rule as a final rule to be concurrent with the adoption as final of the hospital outpatient prospective payment system as soon as possible after January 1, 2000.

Published elsewhere in this issue of the **Federal Register** is a notice extending for 60 days the comment period for the September 8, 1998, hospital outpatient proposed rule (63 FR 47552). Because Medicare payments to ASCs are closely linked to the way Medicare proposes to pay hospitals under a prospective payment system for surgical services furnished on an outpatient basis, we are extending the comment period for the June 12, 1998, ASC proposed rule for 60 days to be concurrent with the extended comment period for the September 8, 1998, hospital outpatient proposed rule. The comment period will close at 5 p.m. on January 8, 1999.

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 3, 1998.

Nancy-Ann Min DeParle,
Administrator, Health Care Financing Administration.

Dated: November 9, 1998.

Donna E. Shalala,
Secretary.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067-AC86

National Flood Insurance Program; Advance Notice of Determining the Write-Your-Own Expense Allowance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We, FEMA, are considering changes under the flood insurance Write-Your-Own (WYO) program to our rules on marketing incentives, performance measures, compensation under the WYO expense allowance, agent compensation, and compensation for unallocated loss expenses. Before publishing any rule change in these areas, we want the advice and comments of WYO companies, agents,

consumers, and any other interested parties.

DATES: We invite your advice and comments on the proposal. Please send your comments on or before January 12, 1999.

We intend to hold a public meeting for oral submissions in early 1999. We will publish notice in the **Federal Register** with the date and location of the public meeting after the comment period expires for this advance notice of proposed rulemaking.

ADDRESSES: Please send your written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (telefax) (202) 646-4536, or (email) rules@fema.gov.

FOR FURTHER INFORMATION CONTACT: Claudia I. Murphy, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., room 429, Washington, DC 20472, (202) 646-2775, (email) claudia.murphy@fema.gov.

SUPPLEMENTARY INFORMATION:

Background

The WYO program is a cooperative venture between the Federal Government and private insurance companies. Goals of the program include: increase the flood insurance policy base and the geographic distribution of policyholders; improve service to policyholders and agents; increase the National Flood Insurance Program's (NFIP) ability to settle claims promptly when catastrophes occur; and give private insurers experience operating the NFIP. The duties and responsibilities of the Federal Government and the private insurers participating in the WYO program and the terms for compensation are spelled out each year in the Financial Assistance/Subsidy Arrangement. (44 CFR Part 62, Appendix A.)

FEMA believes the WYO program is the most effective vehicle for delivering flood insurance to consumers and supporting the floodplain management goals of the NFIP. As pressure to raise flood insurance rates continues, particularly regarding reducing premium subsidies, FEMA must examine ways to contain operating costs and determine the most equitable and cost-effective ways to compensate companies that sell and service flood insurance policies.

Marketing and Promotional Expense

We invite your comments on the reasonableness of adjusting the expense allowance for WYO companies to reflect

the expense incurred by the FIA in funding marketing efforts. In recent years, FIA marketing and promotional expenses have been about one percent of total flood insurance premiums written. We did not incur similar marketing expense when the WYO expense allowance formula was established. FIA effectively incurs the type of expense that would be considered "other acquisition expense" when incurred by a private insurer. Because "other acquisition expense" is one of the expense components reflected in the WYO expense allowance calculation, it may be reasonable to reflect some or all of the marketing expense incurred by FIA as an offset to the marketing expense we allow in determining the overall WYO expense allowance.

Marketing Incentives

We adjust a company's base expense allowance depending on how well the company met the marketing goals for the arrangement year contained in the marketing guidelines established pursuant to Article II.G. of the Arrangement. We seek your comments on whether a company's compensation should be contingent on meeting the marketing guidelines and if the marketing incentive is the most effective way to encourage the marketing of flood insurance.

As a separate consideration, we ask for your comments on options regarding the marketing incentive adjustment that has been a feature of the expense calculation since arrangement year 1994-95. We have identified possible approaches to the marketing incentive allowance:

- (1) Change the current maximum addition to the basic WYO expense allowance from 1.3 percentage points to some other amount, such as 1.0 or 0.5 percentage points;
- (2) Eliminate the marketing incentive program; or
- (3) Continue the current marketing incentive program.

Performance Measures

We also invite your comments on how performance should be considered in determining the expense allowance of a particular WYO company. Incorporating performance measures into the determination of a company's expense allowance would create incentives to maximize efficiency in areas such as the settlement of NFIP claims, underwriting accuracy, customer services, financial and statistical reporting, and to maximize the cost effectiveness of the WYO program.

Alternatives to the Current Compensation Scheme

We ask for your advice and comments on alternatives to the current compensation scheme. One future approach might be to determine the WYO expense allowance using actual average expense ratios of the WYO companies as opposed to the ratios of the entire property/casualty industry. We could use direct written premium and expense information allocated to Federal flood insurance from Part III—Allocation to Lines of Direct Business Written for the property/casualty industry as reported in A.M. Best Company's *Aggregates and Averages*.

(1) We could total the amounts incurred for "Commissions", "Taxes", "Other Acquisition", and "General Expense" and divide this sum by "Premiums Written" to derive a baseline expense ratio.

(2) Alternatively, we could compute an operating allowance percentage by totaling the amounts incurred for "Taxes", "Other Acquisition", and "General Expense" and dividing this sum by "Premiums Written" to derive a baseline expense ratio and add a fixed percentage commission allowance.

We could adjust the percentage amount of either of the computed ratios to compensate the companies for their participation in the WYO program. One approach could be to set the expense ratio at the mid-point, or some other point, between the expense ratio computed using the proposed expense allowance formula and the ratio derived from direct Federal flood program premium and expense data. We welcome your comments on how this adjustment could be determined.

Agent Compensation

FEMA does not determine commissions paid by WYO companies to their agents; however, we include a 15 percent agent commission expense in calculating the WYO expense allowance. Market evidence based on the prevalence of rebating suggests this commission level is high for Residential Condominium Building Association Policies. We invite comments on how to modify the expense structure in light of the practice of rebating.

We do not intend to change the portion of the WYO expense allowance for agents but would like to gather information on industry practices for compensating agents who sell insurance products. We encourage and invite you to provide a description of your commission structure and/or other methods for compensating your agents. We are interested in knowing about

differences in compensation for flood insurance and other types of property and casualty insurance and any differences in commissions paid for large and small policies, new and renewal business, and commercial and residential business.

Compensation for Unallocated Loss Expenses

Finally, we would like to gather information on the costs companies incur handling NFIP claims, which are in addition to the Adjuster Fee Schedule but are not eligible for reimbursement as a special allocated loss adjustment expense. Currently, WYO companies are entitled to an expense payment of 3.3 percent of the incurred loss, exclusive of "incurred but not reported" losses, as compensation for settling losses. An expense payment based on the percent of the incurred loss may operate as an incentive to pay questionable or disputed claims. We encourage you to provide information on the costs incurred settling NFIP losses, how claims handling practices affect your company's costs, and how the frequency of disasters affect these costs.

Confidential Information

Business entities who choose to submit confidential information protected from disclosure under the Freedom of Information Act (5 USC 552(b)(4)) should identify that information clearly as such, segregate it from the body of the comment, and include a summary of or reference to it in the comment.

Public Meeting

We intend to hold a public meeting for oral submissions in early 1999. We will publish notice in the **Federal Register** with the date and location of the public meeting after the comment period expires for this advance notice of proposed rulemaking. Please indicate in your comments whether you wish to participate in this meeting, and if so, the name and title of the speaker. If several respondents have substantially similar comments, a preliminary hearing may be necessary to align interests.

Dated: November 4, 1998.

Jo Ann Howard,

Federal Insurance Administrator.

[FR Doc. 98-30409 Filed 11-12-98; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 62

RIN 3067-AC92

National Flood Insurance Program; Determining the Write-Your-Own Expense Allowance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: We, FEMA, propose to change our method for establishing the Write-Your-Own (WYO) expense allowance percentage for arrangement years beginning on or after October 1, 1999. We would use a new formula to derive the expense ratios used in determining the operating portion of the expense allowance. This formula would use direct, as opposed to net, premium and expense information for the property/casualty industry and would have the effect of lowering the expense allowance.

DATES: We invite your advice and comments on the proposal. Please send your comments on or before January 12, 1999.

We intend to hold a public meeting for oral submissions in early 1999. We will publish a notice in the **Federal Register** with the date and location of the meeting after the comment period expires for this proposed rule.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (telefax) (202) 646-4536, (email) rules@fema.gov.

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Background

The WYO program is a cooperative venture between the Federal Government and private insurance companies. The goals of the program are: to increase the flood insurance policy base and the geographic distribution of policyholders; to improve service to policyholders and agents; to increase the NFIP's ability to settle claims promptly in catastrophe situations, and to give private insurers experience operating the NFIP. The duties and responsibilities of the Federal Government and the private