

United States Senate

WASHINGTON, DC 20510

December 1, 2014

The Honorable Gene L. Dodaro
Comptroller General of the United States
Government Accountability Office
441 G Street, NW
Washington, DC 10548

Dear Mr. Dodaro:

We write to bring to your attention a matter concerning the litigation practices of counsel hired by insurance companies participating in the National Flood Insurance Program (NFIP)'s "Write Your Own" program (WYOs). We ask that you use your statutory authority under 31 USC 717 to conduct an immediate audit of third-party legal fees arising from Hurricane Sandy cases.

A GAO report titled, *Opportunities Exist to Improve Oversight of the WYO Program*, published on August 21, 2009, found that between 2005 and 2007, FEMA payments to WYOs "exceed actual expenses by \$327.1 million, or 16.5 percent of total payments made." The same report also found that between fiscal years 2000 and 2007, FEMA conducted zero audits of WYO litigation expenses, and recommended that FEMA revise its fiscal Control Plan to include "oversight of all functions of participating WYOs, including customer service and litigation."

Of immediate concern to us are statements made during the course of legal proceedings before the United States District Court for the Eastern District of New York that, "The current prediction of the cost of FEMA's legal bill from Hurricane Sandy is that the total defense fees from just this one event are likely to exceed the total costs incurred by the NFIP for all flood events for the 20 years that preceded Sandy, including Katrina" and estimating a "nine figure NFIP defense bill for this one event of flooding."

This concern has been heightened by evidence that suggests that an engineering firm hired by defense counsel in the case of *Deborah Raimsey and Larry Raisfeld v. Wright National Flood Insurance Co.*, fraudulently altered an engineering report, a fact that appears to have been concealed by the insurance company and its attorneys. We are also aware of concerns that defense counsel may not be adhering to FEMA's guidelines that require litigation costs to be reasonable. In FEMA's "Guide for Write Your Own Counsel" issued on July 11, 2014, states: "Inappropriate litigation costs 'include, but are not limited to, excess expenses, redundant work done within one firm or by different firms handling the case, and multiple/redundant depositions.'" The guide also states: "Travel costs must be reasonable... Where possible, the FIA recommends that WYO Companies hire experienced NFIP attorneys located in the state in which the lawsuit originates to minimize costs." It therefore makes us concerned that one firm, located in Metairie, Louisiana, serves as counsel for at least 17 WYOs involved in Sandy cases.

We do not believe that a cost to the federal taxpayers of \$100 million or more to defend against the claims filed by our constituents is in the public interest as this would likely cost more than simply paying out the claims. Further, while we appreciate Administrator Fugate's willingness to refer issues involving irregularities in the claims process and litigation practices to the DHS Office of Inspector General for further investigation, we believe that these concerns and irregularities must be reviewed immediately and the results of this investigation must be publicly available in the near future. Therefore, given the urgency of this matter and the importance of an objective investigation by a neutral third-party, it is clear that a GAO audit is necessary to determine whether WYO carriers and their hired legal counsel are following all of the necessary laws and guidelines for controlling litigation expenses, and whether FEMA is providing the proper oversight to control costs.

Thank you for your attention to this urgent matter, and we look forward to a favorable reply. Should you wish to discuss this request further, please do not hesitate to contact our offices.

Sincerely,



Kirsten Gillibrand
United States Senator



Charles E. Schumer
United States Senator