

United States  
Department of  
Agriculture



Federal Crop  
Insurance  
Corporation



Board of Directors



# **FEDERAL CROP INSURANCE CORPORATION**

## **BOARD OF DIRECTORS**

### **APPROVED PROCEDURES FOR DETERMINING REASONABLENESS OF REIMBURSEMENT EXPENSES FOR 508(h) AND CONCEPT PROPOSAL SUBMISSIONS**

Effective Date: May 2010

Procedure Number: 17040

**(A) Basis, purpose and applicability.**

- (1) This procedure establishes the guidelines by which Federal Crop Insurance Corporation Board of Directors (Board) will determine the ‘reasonableness’ of requests for research and development and maintenance costs for the submission of policies, provisions of policies and rates of premium under:
  - (i) Section 508(h) of the Federal Crop Insurance Act (Act) and 7 C.F.R. part 400, subpart V (subpart V); and
  - (ii) Advance payments for concept proposals submitted under section 522(b).
- (2) The Board will approve only the amount of reimbursement or advance payment that it determines to be reasonable.

**(B) Definitions.**

The definitions from subpart V and the Approved Procedures for Submission of Concept Proposals Seeking Advance Payment of Research and Development Expenses Procedure Number 17030; apply to these procedures unless otherwise specified in this section. In addition to the definitions in subpart V and Procedure 17030, the following definitions apply:

**Actuarial costs** - Costs incurred by the submitter directly related to the determination of premium rates and prices, including costs to acquire and develop the data for the submission. Actuarial costs do not include costs to certify the submission as actuarially appropriate which are reimbursable independent of actuarial costs.

**Board** - Federal Crop Insurance Corporation Board of Directors.

**Copy** - Extension of terms of a current Federally reinsured or previously reinsured plan of insurance with only minor revisions as the basis for the submission, such as introducing new or modified definitions. An example of a copy would be modifying the definitions in an existing Group Risk Plan to provide coverage to a new crop or area but the rest of the policy terms and coverages do not change.

**FCIC** - Federal Crop Insurance Corporation.

**Modification** - A revision to a Federally reinsured or previously reinsured plan of insurance that includes revision of the policy, underwriting procedures, and loss adjustment procedures. The modification must be more substantial than adding definitions to accommodate the submission. An example of such would be modifying the policy terms, pricing, rating, underwriting or loss adjustment procedures of an existing plan of insurance to add a new coverage not previously provided. For example, adding Dairy to the Livestock Gross Margin plan of insurance.

**Non-actuarial costs** - All costs, excluding actuarial costs, that are directly related to the development of the policy and include but are not limited to conducting feasibility studies, policy writing, underwriting, reviewing insurance documents, directing work, etc.

**Original** - A unique or original plan of insurance that is not based on or otherwise closely related to an existing Federally reinsured or previously reinsured plan of insurance. An extension of an existing plan of insurance to a new crop does not qualify as an original submission. Rather, the basis of the coverage must be fundamentally different than that provided under existing Federally reinsured or previously reinsured plans of insurance. Examples would be the Livestock Gross Margin and Livestock Risk Protection plans of insurance.

**Other costs** – These costs include costs associated with preparation of the submission to present to the Board, legal and actuarial reviews, travel, responding to comments from the Board, RMA, and independent expert reviewers, preparation for the submission for sale, etc.

**Risk Management Agency (RMA)** – An agency of the United States Department of Agriculture responsible for the administration of all programs authorized under the Federal Crop Insurance Act and other authorities.

**Similar submissions** - Previously approved submissions in the same category (e.g., copy, modification or original) that most closely approximates the submitter's submission.

**(C) Submitted expenses for reimbursement of 508(h) submissions.**

- (1) Subpart V provides guidance to applicants on the types of costs, verifiable documentation necessary and the time frame to submit expenses to be considered by the Board for reimbursement. However, the Board has determined that these regulations need to be clarified to allow it to conduct a meaningful review of the reasonableness of any request for reimbursement or advance payment.
- (2) As stated in subpart V, actual costs submitted may be adjusted at the sole discretion of the Board. In addition, in accordance with section 522(b)(6) of the Act, section 400.712(f) makes it clear that reimbursements will be adjusted based on the complexity of the policy or plan of insurance and size of the area the policy will be sold.
- (3) To assist the Board in determining reasonableness in accordance with the Act and subpart V:
  - (a) The Board will determine the category of the submission in order to be able to compare other similarly approved submissions, as either a:
    - (i) Copy:

- (ii) Modification; or
  - (iii) Original.
- (b) All costs must be placed into one of three categories:
- (i) Actuarial costs,
  - (ii) Non-actuarial costs; and
  - (iii) Other costs.
- (c) The submitters must break down each of the categories of costs into one of the tasks listed below.
- (i) For each task, the submitter must include the number of hours needed to perform the task, the name and occupational classification of the person performing task using the Bureau of Labor Statistic (BLS) Categories located at [http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm). If the number of hours for any of the categories of costs exceeds the average for similar types of submissions, please provide a detailed explanation of why the additional work was necessary
  - (ii) If a classification is not listed in the document, please provide a detailed description of the work done.
  - (iii) Include the hourly wage rate as determined by the BLS Occupational Employment and Wage Statistics Survey for each occupation located at [http://www.bls.gov/oes/current/oes\\_nat.htm](http://www.bls.gov/oes/current/oes_nat.htm) and benefits as determined by the BLS Employer Costs for Employee Compensation Survey located at <http://www.bls.gov/ncs/ect/home.htm> for each person for each task. If the hourly wage rate exceeds two times the hourly wage rate or benefits provided by the Bureau of Labor Statistic, please provide a detailed explanation of why the tasks could not be performed at the listed rates.
  - (iv) All submitters are given an opportunity to explain to the Board how their submission is different from existing plans of insurance.
  - (v) The tasks required to be performed may include but are not limited to:
    - (I) Non-Actuarial
      - 1. Assess need by contacting commodity organizations/producers;
      - 2. Search for like or similar programs;

3. Conduct feasibility study to determine if program is possible;
4. Conduct listening sessions with producers to determine interest; and
5. Create or modify the policy provisions, loss adjustment procedures, handbooks, actuarial documents, Special Provisions, or any other necessary documents.

(II) Actuarial

1. Gather data (number of producers, acres, states, rating and pricing data, etc.);
2. Determine appropriate rating and pricing methodologies for the risks covered and the available data; and
3. Using the approved methodologies, provide rates, factors, and prices to RMA;

(III) Other

1. Review statutes to determine if legally plausible;
2. Certify that the rating and pricing methodologies are in accordance with acceptable insurance principles;
2. Produce submission according to subpart V and submit document to the Board;
3. Present the submission to the Board;
4. Address issues raised by the Board, RMA, OGC and the independent expert reviewers;
5. If submission is approved, finalize all policy provisions, loss adjustment procedures, handbooks, actuarial documents, Special Provisions, and any other necessary documents;
6. Work with RMA, as needed, for their review of rates, factors, and prices and in development of any programs needed to validate numbers; and
7. Work with RMA to set up data acceptance records and edits, and the appropriate calculations for the premium

calculator, indemnity calculation, or any other calculations necessary to implement/support the approved submission.

- (d) Placement into one of the labor categories will be determined by the nature of the work, not the title of the task.
- (e) The rules applicable to determining compensable costs and hourly rates under the Equal Access to Justice Act shall be applied by the Board to these submissions. For example, ministerial tasks, travel, etc. performed by underwriters or project managers may receive less than the hourly wage provided by Bureau of Labor Statistics.
- (f) When examining reasonableness, the Board will first compare the reimbursement request with the average cost for similar submissions. Attachment 1 is provided to give a general guide based on average costs of 508(h) submissions approved as of this publication.
  - (i) To the extent that the reimbursement request exceeds such average cost, the submitter should provide detailed information justifying the additional costs.
  - (ii) In determining reasonableness, the Board will look at:
    - (I) The occupational classification of the person used to perform the task;
    - (II) The number of hours claimed for each task;
    - (III) The hourly wage rate claimed for each task; and
    - (IV) The explanation, if necessary, for the number of hours and hourly wage rate.
  - (iii) If the justification appears reasonable, the submitted costs may be approved.
  - (iv) If, in the Board's sole discretion, the costs do not appear to be reasonable, the Board will determine a reasonable reimbursement by determining the appropriate reimbursement based on comparison to other similar submissions.
- (g) If a submission is determined to be of insufficient quality to refer to expert review, or is considered incomplete and is subsequently resubmitted and approved, the costs to perfect the submission may not be considered reimbursable costs depending on the level of insufficiency or incompleteness of the submission, as determined by the Board.

- (h) Reimbursement of costs associated with addressing issues raised by the Board, expert reviewers and RMA will be evaluated based on the substance of the issue and the amount of time necessary to address the specific issue raised. Delays and additional costs caused by the inability or refusal to adequately address issues may not be considered reimbursable.
- (i) While the Board may consider the average costs of similarly approved products to determine reasonableness, the Board may also consider one or more specific similar approved plans and may request RMA to provide its estimate of time and level of effort required for a similar product developed under contract in its determination of the reasonableness of any requested reimbursement.
- (j) It is incumbent upon each submitter to provide as much information as possible to justify the costs claimed in the submission and the submitter will be provided the opportunity to explain and articulate to the Board the costs and hours submitted for reimbursement.

**(D) Advance payments for Concept Proposals.**

In considering advance payments for concept proposals, the Board will:

- (1) Determine the category of the submission in order to be able to compare other similarly approved submissions, as either a:
  - (a) Copy;
  - (b) Modification; or
  - (c) Original.
- (2) Determine reasonableness of estimated costs based on the costs associated with similar products.
- (3) Request, as necessary, RMA to provide its estimate of time and level of effort required for a similar product developed under contract in its determination of the reasonableness of any requested reimbursement.
- (4) If the submitters request for an advance payment exceeds the amount determined to be reasonable, as determined by the Board, the submitter may be required to further justify and substantiate their costs. An advance payment is at the Board's sole discretion.

## Attachment 1

### 508(h) Research and Development Average Cost Adjusted for Inflation<sup>1</sup>

Category	Actuarial Costs	Non-Actuarial Costs	Other Costs	Total Costs
Copy	\$67,677	\$126,372	\$13,403	\$207,452
Modification	\$219,323	\$137,380	\$22,360	\$379,063
Original	\$161,140	\$266,952	\$222,589	\$650,681

<sup>1</sup>General guide based on average costs of 508(h) submissions approved for reimbursement as of September 20, 2009.