

## NIH POLICY MANUAL

### 2300-892-1 - REIMBURSEMENT FOR PROFESSIONAL LIABILITY INSURANCE

Issuing Office: OD/OHR Webmaster, 301-402-3392

Release Date: 11/04/99

1. **Explanation of Material Transmitted:** This issuance updates the policies and procedures for qualified NIH employees to obtain reimbursement for professional liability insurance. This update is needed because the statute authorizing reimbursement for professional liability insurance has been changed. The original statute made reimbursement for this type of insurance optional at the discretion of each agency. That law has been changed to make reimbursements for this type of insurance mandatory.

#### 2. **Filing Instructions:**

**Remove:** NIH Manual 2300-892-1 dated 07/15/98.

**Insert:** NIH Manual 2300-892-1, dated 11/04/99.

**PLEASE NOTE:** For information on:

- Content of this chapter, contact the issuing office listed above.
- NIH Manual System, contact the Division of Management Services, OMA on 496-2832, or enter this URL: <http://www3.od.nih.gov/oma/manualchapters>.

#### **A. Purpose:**

Section 636 of the Treasury Postal Service, and General Government Appropriations Act, 1997, as amended by Public Law 106-58, Section 642 effective October 1, 1999, requires agencies to use funds appropriated for salaries and expenses to reimburse employees electing to purchase professional liability insurance for not to exceed half the cost of their insurance policies. This chapter states the policy and procedures that ICs are to follow when reimbursing one-half of the cost of professional liability insurance policies purchased by qualified NIH managers, supervisors and law enforcement officers.

#### **B. Policy:**

ICs are required to reimburse qualified employees electing to purchase professional liability for half of the cost of their policies.

### **C. Coverage:**

The statute specifies that employees are qualified for the reimbursement of professional liability insurance if they meet the definition of supervisor, management official and law enforcement officer.

### **D. Definitions:**

The terms referred to in this statute have the following specific meanings:

1. **Professional Liability Insurance** means insurance which provides coverage for:
  - a. "Legal liability for damages due to injuries to other persons, damage to their property, or other damage or loss to such other persons (including the expenses of litigation and settlement) resulting from or arising out of any tortious act, error, or omission of the covered individual (whether common law, statutory, or constitutional) while in the performance of such individual's official duties as a qualified [eligible] employee; and"
  - b. "The cost of legal representation for the covered individual in connection with any administrative or judicial proceeding (including any investigation or disciplinary proceeding) relating to any act, error, or omission of the covered individual's official duties as a qualified [eligible] employee, and other legal costs and fees relating to any such administrative or judicial proceeding."
2. **Supervisors and Management Officials** have the respective meanings given them by section 7103(a) of Title 5. This section defines these terms as follows:
  - a. Supervisors are "... individuals employed by an agency having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgement, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority."
  - b. Management Officials are "...individuals employed by the agency in positions the duties and responsibilities of which require or authorize the individuals to formulate, determine, or influence the policies of the agency."
3. **Law Enforcement Officers** are "... employees, the duties of whose positions are primarily the investigation, apprehension, prosecution, or detention of individuals suspected of, or convicted of offenses against the criminal laws of

the United States, including employees engaged in these activities who are transferred to supervisory or administrative positions or whose positions that involve the protection of officials of the United States against threats to personal safety."

4. **Qualified Employees** are employees who may be reimbursed for half of the cost of professional liability insurance, provided they meet the definitions contained in paragraphs D. 2 and D. 3 above. Since the cost of professional liability insurance is relatively inexpensive, requests for reimbursements in excess of \$500 per 12 month period should be carefully reviewed to make sure that policies purchased by employees do not contain additional insurance benefits than permitted by the authorizing statute.

**Note:** PHS Commissioned Officers are eligible for reimbursement for the purchase of professional liability insurance, if they meet the definitions provided in paragraph D2 above.

#### **E. Considerations:**

Qualified employees must make personal judgements concerning their liability and need for the coverage and purchase of personal liability insurance. Employees may consult with the staff of the Office of General Counsel at NIH for information that might assist them in reaching their decisions.

#### **F. Procedures for Obtaining Professional Liability Insurance:**

ICs will adhere to the following procedures to reimburse the partial cost of professional liability insurance for qualified IC employees:

1. ICs will identify at least two different officials to handle different aspects of the reimbursement process.
  - a. The first is a certifying official will be responsible for determining employee eligibility for reimbursement.
  - b. The second is a payment official will authorize reimbursement of the designated amount to the employee upon presentation of adequate documentation of purchase of the insurance by employees.
2. Employees who want to purchase professional liability insurance must contact their IC official responsible for determining whether they are qualified for reimbursement for the purchase of professional liability insurance. The IC certifying official will make the determination based on whether employees meet the definitions in this instruction. The certifying official also notifies the IC payment official of which employees have been certified as qualified for reimbursement for professional liability insurance policies. The IC certifying official will also keep a record of employees who are qualified for reimbursements.

3. Qualified employees are responsible for finding insurers and negotiating insurance policies and extensions. They are also responsible for assuring that their insurance policies do not lapse. Finally, employees are responsible for paying insurance premiums and obtaining the information needed to show proof of purchase of insurance policies so that reimbursements can be made. Proof of purchase will include:
  - a. A copy of the insurance bill in the employee's name, indicating that it is for professional liability insurance, the period of the policy, the full amount of the policy, and
  - b. A paid receipt for the full cost of the insurance. If a check is used as the paid receipt, a copy of both sides of the canceled check is required.
4. IC officials will assist employees to locate insurance carriers by informing employees of companies from whom other employees have purchased policies.
5. Employees who purchase insurance must present proof of purchase to their IC payment official. If all documentation is proper, the payment official will approve the reimbursement using an SF-1034, "Public Voucher for Purchases and Services Other Than Personal." See Appendix 1 for specific instructions on the use of the SF-1034. The Office of Financial Management should be consulted on the process for reimbursement.
6. Employees are also responsible for purchasing extensions to insurance policies to avoid breaks or gaps in coverage. Renewals and extensions of professional liability insurance policies will follow the same procedure as the initial purchase. Employees must be certified as still meeting the legal definition to be qualified for reimbursements.

#### **G. Records Retention and Disposal:**

All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of NIH Manual [1743](#), "Keeping and Destroying Records, Appendix 1, "NIH Records Control Schedule," Item 2300-200-1 "Personnel Records and Subject Files."

NIH e-mail messages. NIH e-mail messages (messages, including attachments, that are created on NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. These records must be maintained in accordance with current NIH Records Management guidelines. Contact your IC Records Officer for additional information.

All e-mail messages are considered Government property, and, if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of Inspector General may request access to or copies of the e-mail messages. E-mail messages must also be provided to Congressional oversight committees if requested and are subject to Freedom of Information Act requests. Since most e-mail systems

have back-up files that are retained for significant periods of time, e-mail messages and attachments are likely to be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

## **H. Management Controls:**

The purpose of this manual issuance is to provide policies and procedures for IC management and employees to use in making reimbursements for those who elect to purchase professional liability insurance.

1. Office Responsible for Reviewing Management Controls Relative to this Chapter: The OHRM in conjunction with OFM share responsibility for ensuring that appropriate management controls are in place for this chapter.
2. Frequency of Review: Management Control Reviews will be conducted every three years.
3. Method of Review: OHRM will review IC policies for reimbursing half of the cost of professional liability insurance purchased by IC employees to make sure that there is adequate communication on this issue within ICs and that employees are provided the opportunity to purchase these types of policies if they so chose. This review will also determine if there is a division of responsibilities within ICs for determining employee qualification for reimbursement and the authorization of the reimbursements. OHRM/OFM will spot check records to ensure that employees have been reimbursed for no more than half of the cost of purchasing professional liability insurance and that all documentation is accurate and meets established requirements.
4. Management Control Review: MCR-892.
5. This report will be submitted to the Deputy Director for Management, OD.

## **Appendix 1. Instructions for Completing the SF-1034 Public Voucher for Purchases and Services Other Than Personal:**

1. Reimbursement of half of the cost of professional liability insurance must be reimbursed by the employee's Institute or Center (IC).
2. The SF-1034 requires the IC purchasing official to assign a "voucher number" (e.g., CC01 or NCI0001, etc.). This number is used for tracking purposes and should be unique for each voucher.
3. ICs should ensure that all of the employees receiving reimbursements have signed the SF-1034 and have had their ACH numbers entered into the Administrative Database (ADB) system through the EIN screen. Employees should also have direct deposits or they should complete the SF-3881 (ACH form) to receive reimbursement.
4. A copy of the insurance bill, indicating that it is for professional liability

insurance, must be attached to this form.

5. A paid receipt must also be attached for reimbursement. If a canceled check is used as a paid receipt, a copy of both sides of the canceled check must be attached.
6. Completed forms should be sent to OFM, Building 31, Room B1B-39 for payment by electronic means.
7. In addition to the payment official signing the form authorizing reimbursement, the certifying official must also sign the form as a means of keeping a record that the employee was determined to be eligible for reimbursement.
8. Any questions concerning the processing of reimbursements should be addressed to the Office of Financial Management.

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