



May 22, 2019

To Our Local Government First Responders:

The State of California has faced and will continue to face unprecedented, catastrophic wildfires and other climate driven events. Each and every time our collective communities have experienced an emergent need, you have risen to the occasion and responded to help your neighbors. The California mutual aid system is unlike any other in the world and we will continue in our efforts to ensure that it remains this way. We are writing to share our concerns about the current status of the California Fire Assistance Agreement (CFAA or Agreement) and what we know related to outstanding invoices and future responses to requests for assistance.

In a letter to State Fire and Rescue Chief Brian Marshall dated April 17, 2019, from Regional Forester Randy Moore, the United States Forest Service (USFS) has taken the position that all outstanding invoices, as well as future invoices, will not be paid in accordance with the terms of the CFAA, the agreement that governs payment to local agencies for responding to State and Federal emergencies. We believe the unilateral actions by the USFS to change this agreement, which has been negotiated, bargained for, and reviewed and signed by all signatories' leadership, counsel and contracting officer, is outside the provisions of CFAA Recital 15.3 which requires the Agreement Committee to negotiate procedural changes, and is an action in bad faith that undermines the trust that Federal agencies had built with local government over many years.

To be absolutely clear, it will not be business as usual following a response to a USFS incident. The historic, simple use of a submitted F-42 will no longer be sufficient to support reimbursement. The USFS has stated all invoices submitted for reimbursement must include supporting documentation, such as cancelled checks and/or the payroll summary for each employee that reimbursement is being requested for. The long-standing practice of using "average actual salary" rates is being disallowed by the USFS, who now will require an actual salary expense accounting prior to reimbursement

CALFIRE, who is also signatory to the agreement, has not expressed any concerns regarding the CFAA in its current form, and intends to continue processing outstanding invoices. They intend to continue to order and pay resources for future emergencies under the provisions of the agreement as written and intended.

Currently, the only issue is reimbursement to local agencies from the USFS. To date, the remaining Federal Fire Agencies signatory to the Agreement have not officially indicated how they will process reimbursements under the CFAA, however, it is reasonable to expect they will take a similar approach as the USFS.

For those that have outstanding invoices, you are in a predicament. It appears the USFS is unwilling to pay you as required under the CFAA. They have offered to pay you under their own, self-imposed terms. It is possible that, under their terms, you may be reimbursed for either more or less than the invoice you originally submitted. Your decision to submit to the Forest Service's new rules and substantiation requirements is up to your organization. Most agencies cannot afford to stand on principle and ask the USFS to adhere to the Agreement, which they signed, and to which we responded to their fires in good faith. Local governments have little leverage to force the USFS to pay in accordance with the Agreement under which they responded.

If you so choose to comply with the USFS's request for documentation, we would highly recommend that you track all additional time and expense and submit a supplemental bill charging them for your actual costs in preparing any documentation that is not required by the CFAA. Additionally, you should document any shortfall between what you originally billed under the CFAA and what the USFS is now willing to reimburse. There is a possibility that you may be able to recoup the difference at some point in time in the future.

One of our biggest concerns is the USFS's new requirement that, in order to qualify for reimbursement, the requesting agency must have already expended the requested funds. The CFAA, as written, expressly allows agencies to bill and seek reimbursement prior to actually paying their employees. A significant part of our mutual aid system is supported by volunteer fire departments that do not have cash reserves to pay their employees in advance of invoicing the USFS. Instead, they have historically paid their employees *after* being reimbursed under the CFAA. The CFAA allows any signatory to audit a payee to ensure that the expense is supported and can be substantiated. This is an *after the fact* audit provision, not a provision that can be required pre-payment. The parties to the CFAA contemplated, negotiated, and drafted to allow for this exact scenario. It appears that the USFS is now unwilling to comply with this provision in the CFAA, thus causing an unresolvable stalemate in the payment system and, possibly, leaving certain expenses unreimbursed.

Please also be aware that, moving forward, if you respond to a USFS incident, and potentially any Federal incident, you will be reimbursed under the rules that the USFS has unilaterally imposed and be required to submit the required documentation for reimbursement. The USFS intends to require you to track individual specific costs for each employee as opposed to the average actual rates that are simply applied and allowed under the CFAA. On your behalf, we have previously and will continue to inform the USFS that we believe these new requirements are cumbersome, onerous, and inconsistent with the negotiated Agreement.

Successful response to Federal and State fires is dependent on a robust and seamless response from local government. The CFAA was designed to support that response. There are adequate provisions within the Agreement to renegotiate changes to the appendices annually. We encourage the USFS to reconsider the unilateral imposition of reimbursement requirements and process outstanding invoices and future response under the agreement in accordance with the CFAA, until such time that the decades old practice of negotiating changes has been agreed to by all signatory agencies as well as local government.

Sincerely,



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President, California Fire Chiefs Association



Steve M. Kovacs  
President, Fire Districts Association of California



David Rocha  
Chairperson, California Metropolitan Fire Chiefs



Dan Stefano  
President, League of California Cities  
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