



**CA Department of Insurance Investigatory Hearing on
THE CALIFORNIA FAIR PLAN ASSOCIATION, IH-2022-00001**

July 13th, 2022

Written comments supplementing oral testimony presented by

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This year marks United Policyholders' ("UP") 31st year as a non-profit that advocates for fair insurance practices and helps solve problems that impede consumers' ability to be indemnified in case of loss through insurance products.

We commend Commissioner Lara and CDI staff for the comprehensive CA Fair Plan Market Conduct examination of 2017-2021 claims that was summarized in a May 2022 exam report, and for convening today's hearing.

We commend the Commissioner and CDI staff for their ongoing efforts to bring Fair Plan's products up to basic coverage standards, and eliminate the need for people to have to shoulder the financial burden of paying for a CFP **and** a D.I.C. premium in order to adequately protect their homes and assets.

We sincerely hope the Exam report, Judge Strobel's July, 2021 Minute order and today's testimony will result in redress for the unacceptable claim handling that United Policyholders, the consumers we serve and our stakeholder partners have been observing and reporting on an ongoing basis for many decades.

We hope the result will be concrete CFP improvements voluntarily adopted by Fair Plan's Governing Board and management in compliance with the Judge's order and insurance industry best practices.

It is our hope that today's hearing and related proceedings will result in strengthening our state's insurer of last resort to where it sells basic, adequate coverage, respects the Commissioner's authority and pays covered claims fairly, promptly and in full.

As today's hearing notice so aptly stated:

The FAIR Plan must be held to the highest standards of service and consumer protection and continue to evolve with the changing times to fulfill its mission of financially protecting real property assets and promptly and fairly indemnifying its customers in the event of a loss under the terms of the policies they sell and applicable law.

The positives:

- The California Fair Plan (CFP) is a vital backstop for the private competitive home insurance marketplace. CFP allows people to meet their mortgage obligations. It facilitates home ownership and sales. It provides an essential safety net for homeowners without burdening taxpayers at large. During property insurance availability crises such as the one we're now navigating – it is invaluable to California's economy.
- The CFP's "recipe" spreads property damage risk across all licensed and admitted insurers doing business in the state of California. It is a fair way of requiring all CA licensed and admitted insurers to take a modest amount of risk they don't otherwise want, but only in proportion to their overall voluntary market share.

In comparison to other state-run insurers of last resort such as the Texas Windstorm Association and Florida Citizens, California's Fair Plan's rates are actuarially sound and there has been a minimum of legislative involvement in their operations. In some ways its structure is a model for effective risk spreading and sharing.

- The basic financial protection a CFP policy provides has helped many thousands of wildfire victims repair and rebuild, and with the enhanced coverages ordered by Commissioner Lara, a CFP policy will be an even more effective safety net and recovery tool for Californians in regions throughout the state.
- California Fair Plan's immediate past President, Annelise Jivan and representative Phil Irwin have cooperated with United Policyholders' staff by contributing to our online and print educational materials and webinars that help homeowners understand the options Fair Plan currently offers. (See "The Lowdown from UP on the California Fair Plan, The Last Resort for Insuring Your Home", <https://uphelp.org/buying-tips/the-lowdown-from-up-on-the-california-fair-plan-the-last-resort-option-for-insuring-your-home/>) Mr. Irwin assisted with two shopping help webinars that UP curated and hosted to help homeowners who've been non-renewed and need help replacing coverage.

Needed Improvements:

CFP must improve its operating transparency and accountability, product quality, claim handling, consumer service and respect for the authority of the Department of Insurance.

As set forth in the MCE report published in May, 2022, significant improvements in CFP claim handling must be made. The report findings mirror complaints that United Policyholders routinely gets from Fair Plan customers about poor claim handling... inaction, inability to reach an adjuster at all...let alone an adjuster's superior to resolve a claim dispute or delay.

If the Fair Plan needs more staff to meet its obligations to policyholders, that should be management's priority. Fair Plan needs to become more customer-centric, similar to the improved procedures the National Flood Insurance Program adopted after being widely criticized for improper claim handling in the aftermath of Superstorm Sandy.

The Governing Board of the Fair Plan essentially operates behind closed doors. It's almost impossible to find the names of its current members, let alone access meeting minutes or operating procedures. Given that the Board is comprised of insurance executives whose companies rejected risks that are now in the Fair Plan, it is logical to assume that on some level they have less concern about Fair Plan customer satisfaction than the customers they competed to acquire.

CFP must reduce its reliance on private insurance defense attorneys for management and claim handling.

Instead of adopting measures to improve customer satisfaction, the Fair Plan is continuing to finance hardball litigation such as in California Fair Plan Association v. Marlene Garnes, 11 Cal. App. 5th 1276 (May 26, 2017), and California Fair Plan Association v. Ricardo Lara, Appeal No. B316058.

CFP must process smoke damage claims and pay for necessary mitigation and restoration promptly and fairly.

The Fair Plan should revise its policy language related to smoke damage and bring it into compliance with the California Insurance Code section 2071 requirement to cover the peril of fire. Smoke is fire debris – the two are inseparable. The language purporting to only cover smoke damage that can be seen or smelled unaided is illegal. Plain and simple.

CFP should lead by example by educating its customers on wildfire risk reduction and by adjusting its rates to reward those who follow the action steps endorsed by the Inter-Agency Wildfire Partnership, the Institute for Home and Business Safety and UP's Wildfire Risk Reduction and Asset Protection Working Group.

Given that the majority of the risks it insures are in WUI and brush regions, the Fair Plan should lead the way in facilitating and rewarding wildfire risk reduction. Given the extent to which private insurers have retreated from insuring homes throughout the state, it is clear the Fair Plan Association's market share will continue to grow for the foreseeable future.

The most proactive way to improve insurance conditions throughout the state is to financially incentivize property owners to take steps to reduce their wildfire risk by hardening their homes and creating defensible space. The logical way to do that is by promoting the value of risk reduction, educating the public and rewarding those who mitigate with premium discounts. Given the high number of their customers living in WUI regions, Fair Plan can and should be a leader in this regard.

There are many communities creating their own local programs, working through Fire Safe Councils, COPE volunteers, and/or the Firewise program to clear brush and help residents be pro-active. According to a UP statewide survey of over a thousand homeowners, 80% said their insurance company had not made any suggestions for home improvements to reduce risk, insurance costs, or keep their coverage in place.¹

CFP should sell basic, essential coverage

Homeowners need comprehensive coverage that protects them from the most common and severe risks to their homes and financial security - this includes fire, water damage, and premises liability. These are the coverages that more than 8 million California homeowners purchase every year in the private market.

¹ <https://www.uphelp.org/sites/default/files/blog/2017hosurveyca.pdf>

Homeowners should not have to purchase a separate Difference In Conditions policy just to have basic protection. The rapidly growing DIC market is creating confusion, inefficiencies, possible coverage gaps, and additional expenses and brokers fees that result from having two policies instead of one. These are the very problems the homeowners package policy was created to solve.

As to commercial coverage, our concerns are largely the same: Businesses need the same coverages they typically purchase in the admitted market. For many businesses, the typical business owners package policy or BOP commonly available for certain merchants, offices and apartments would fill their needs. Other businesses, such as those involved in agriculture or construction, need the fundamental structure, contents, equipment, and liability coverages they typically purchase in the commercial market. The Fair Plan coverage offering should reasonably mirror basic commercial coverages that are widely available in the voluntary market.

Policyholders in the Fair Plan pay premiums that are aligned with the loss history of the coverages provided - the same as policyholders in the voluntary market pay for their coverages. There is no reason for coverage limitations to continue for the most basic of coverages and perils.

Conclusion

There needs to be collaboration – not litigation – between CFP and CDI. California leads the nation in many ways. There is no reason our insurer of last resort can't be a model program. Today, more than ever, we need the Fair Plan to be just that.

Respectfully submitted,

A handwritten signature in black ink that reads "Amy Bach". The signature is written in a cursive, flowing style.

Amy Bach, United Policyholders

July 13, 2022