United Policyholders
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California Assembly Insurance Committee Hearing on

THE CALIFORNIA FAIR PLAN ASSOCIATION

March 8th, 2023

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This year marks United Policyholders' ("UP") 32nd year as a non-profit that educates and assists insurance consumers, helps solve insurance-related problems and advocates for fair insurance practices, laws and regulations.

A brief history of property insurance availability and affordability challenges in CA:

Ever since the first availability crisis impacted California consumers in 1992, UP has been helping residents keep their homes insured when marketplace conditions presented availability and affordability challenges. The current crisis has been developing since 2016, and clearly requires our collective focus. As with most problems, this one requires compromises and innovation combined with moderation.

We are fortunate to have the CA Fair Plan in place, and must preserve its capacity to continue to be a reliable safety valve for periods like this when insurers stop competing, which historically, has happened before, though not to the degree we're seeing currently.

When a region experiences one or more catastrophic events that give rise to high dollar losses, insurers always react. After the 1991 Oakland/Berkeley firestorm, several prominent insurers non-renewed customers in the area, so UP built a "Match UP" program. Working in partnership with the City of Oakland and local insurance agents and brokers, we served as a matchmaker and helped people find new policies. Within less than a year, competition had restored access to insurance in the area and we disbanded the program.

But that was before a dramatic increase in companies selling risk models and predictive analytics to insurers and all the technologies insurers are now using to accept and reject risks. That was before the advent of Fire Line Scores, drone surveillance, the CLUE database and all the ways that insurers are scaring themselves out of taking risks. That was before people really began to accept the reality of extreme weather and droughts associated with climate change, and California was hit by a series of record-breaking wildfires. And that was before the largely unregulated reinsurance sector reacted to having to pay out on mega-fires and hurricane events by raising prices and squeezing their primary insurer customers.

Mitigation rewards are a critical part of the solution

Fast forward to 2016. The revelation that drought associated with climate change had led to the death of over a hundred million trees in the Sierras caught insurers attention, and foothills residents began experiencing what Oakland/Berkeley residents experienced back in 1992. Non-renewal notices, premium increases, difficulty finding replacement coverage. Again, UP launched a working group, (https://uphelp.org/whats-a-jilted-policyholder-to-do) and began searching for solutions. That early effort morphed into our current initiative: the Wildfire Risk Reduction and Asset Protection Working Group.

Through monthly convenings of local and state firefighting professionals, fire scientists, Firewise and Fire Safe groups, the Institute for Home and Business Safety, the CA Department of Insurance and other stakeholders, UP has been helping advancing the goal of helping households and communities be pro-active in reducing their wildfire risk and qualifying for insurance discounts and renewal rewards.

We commend Commissioner Lara and his team for going out in person to so many communities to engage with those being impacted by the current home insurance crisis, for the wildfire mitigation rate regulations that will start providing those rewards relatively soon, and for the shopping tools his agency is offering that complement the shopping help webinars that UP is offering. https://uphelp.org/home-insurance-shopping-help/ And we commend CDI for all their efforts to make the Fair Plan more responsive to the needs of California property owners.

United Policyholders' Recommendations

As documented in a recent CDI Market Conduct Examination, the Fair Plan's claim handling practices need improvement, their refusal to sell a home insurance equivalent policy remains a big problem, but UP does not recommend sweeping, systemic changes, beyond adding transparency to their Governing Board's proceedings, a vote for the public member of that Board, and continued oversight of their operations by the Commissioner. For more details, see "A Fairer Fair Plan" at "https://uphelp.org/a-fairer-california-fair-plan/, and **Fair Plan Insights** below.

Despite being an insurer of last resort, the FAIR Plan can and should be a model that operates transparently and provides basic – meaning *adequate* protection for property owners, (including condominium owners) at a fair price. Actuarially sound, but fair, not excessive. We look forward to the Fair Plan setting an example for other insurers by rewarding property owners who reduce risk by giving them meaningful mitigation discounts and by allowing customers to pay their premiums in installments. Many insurers have stopped giving consumers that option – though it's needed now more than ever with the premium increases people are dealing with.

We don't believe that Fair Plan rates should be artificially higher than what insurers are charging. If, as Fair Plan President Victoria Roach testified at last week's Senate hearing, there is a region where a Fair Plan policy costs less than a policy offered by an admitted or non admitted insurer – logic dictates that the insurer is over-charging.

United Policyholders supports the Fair Plan insuring condominium unit owners and HOAs with increased limits of up to $20M or higher if feasible.

United Policyholders does not support allowing insurers or the Fair Plan to get full credit for reinsurance or to make unlimited use of catastrophe models to set rates, *especially if insurers don't commit to resume writing risks in WUI and brush regions.* If this body and the Commissioner and his staff deem it safe for to allow insurers to take a limited amount of credit for reinsurance and/or make limited use of catastrophe models, we will respect that decision.

But given that home insurance rates have already increased substantially in many parts of the state, and reinsurance rates are unregulated, and given that catastrophe models have contributed to very extreme price increases in hurricane-prone states, elected officials in California should proceed cautiously and not grant either of these two longstanding insurance company wishes without limitations and a firm commitment from insurers to start writing business again in brush regions.

Fair Plan Insights:

- 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 representatives have coordinated 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 Fair Plan 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, 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.

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[1] https://www.uphelp.org/sites/default/files/blog/2017hosurveyca.pdf

These are the coverages that more than 8 million California homeowners purchase every year in the private market.

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.

<u>Conclusion</u>

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,

Amy Bach, United Policyholders

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