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May 17, 2010

Michael Tancredi, Senior Staff Counsel
California Department of Insurance
Legal Division
300 South Spring Street, 12th Floor
Los Angeles, CA 90013

Sent via email to: tancredim@insurance.ca.gov

RE: Proposed Regulation 2010-00001, Concerning the Standards and Training for Estimating Replacement Value on Homeowners' Insurance—*Written Comments from the Personal Insurance Federation of California (PIFC)*

Dear Mr. Tancredi:

On behalf of the members of the Personal Insurance Federation of California ("PIFC"), we appreciate the opportunity to provide written comments to the California Department of Insurance ("Department") regarding the above-referenced proposed regulations ("proposed regulations").

PIFC member companies provide home, auto, flood and earthquake insurance for millions of Californians. Our member companies, State Farm, Farmers, Allstate, Liberty Mutual Group and Progressive, write more than 60 percent of the home and auto insurance sold in this state. They are committed to California despite the oftentimes difficult regulatory climate. We are hopeful to work productively with the Department on the draft regulations, which harm the business climate in California.

PIFC has been pleased to participate in several meetings and an informal workshop to discuss the draft regulations. We believe we have communicated a consistent message throughout those discussions, as well as in a comment letter dated February 26, 2010.

We have acknowledged the Department's desire for a more rigorous training curriculum for brokers and agents and have indicated, in our previous communications, support for additional training.

Also clearly communicated in the February letter, were our serious concerns with Section 2695.183. Those concerns, both legal and practical, remain and are set forth below. The standards specify detailed, yet open ended, criteria that imply a shift in responsibility for determining coverage amounts – in effect treating customers as if they are incapable of making adult decisions. As drafted, the regulations' detailed standards, limitations and prohibitions are not only impractical, but lie outside the scope of authority of the commissioner by attempting to regulate underwriting and imposing new duties and liabilities on the insurer.

In short, the draft regulation would make it much more difficult to do business in California and create new theories for enterprising trial lawyers to exploit. We support the Department's interest in a better informed customer, but not government "solutions" that make things worse for all California homeowners based upon uncertain complaints from a tiny percentage of the population.

We request consideration of our comments.

General Comments

Because of the nature of the type of construction, manufactured homes are generally not reconstructed but replaced following a total loss. Consequently, the reconstruction value estimation process for manufactured homes is significantly different as compared with site-built homes. Specifically, replacement value estimators for manufactured homes generally do not provide for provisions for cost of foundation, architect's plans/engineering reports/permits, whether the structure is located on a slope, the type of frame, or nonstandard wall heights.

Since estimating programs are not generally available for manufactured homes that incorporate all of the provisions required by 2695.183 and because the training required for manufactured homes is significantly different than site-built homes, it would seem appropriate to exempt manufactured homes from the proposed regulations.

Proposed Section 2188.65 (d) (3)

The "including but not limited to" language is problematic. There are thirteen items that must be included in any training on how to estimate replacement cost. Since not all items may be included, how will licensees know whether or not the training they pay for meets the requirement of the regulation?

Proposed Section 2695.182 (a) (3)

Delete the term "determined" and insert the term "estimated." Again, information that carriers provide to the applicant or insured is only an estimate. Applicants and insureds, not carriers, determine the amount of coverage to purchase.

Proposed Section 2695.182 (a) (4)

Many applications are declined or quoted but the applicant chooses not to pursue. It is not relevant to keep information on an application that has never been issued. This would be a very burdensome requirement for insurers and should be deleted.

Proposed Section 2695.183

I. <u>The proposed regulation does not meet the requirements of Government Code Section 11349.1</u>

PIFC believes the proposed regulation fails to meet the standards set out in Government Code Section 11349.1 (a), specifically, (a)(1) Necessity, (a)(2) Authority, (a)(3) Clarity and (a)(4) Consistency.

<u>Necessity</u>

"Necessity" means the record of the rulemaking proceeding demonstrates by "substantial evidence" the need for a regulation to effectuate the purpose of the statute, court decision, or other provision of law that the regulation implements, interprets or makes specific, taking into account the totality of the record. For purposes of this standard, evidence includes, but is not limited to, facts, studies and expert opinion.

The Department has presented no evidence, other than anecdotal reference, establishing a need for defining in regulation a sole set of standards to be strictly adhered to for estimating replacement cost. The Department appears to be relying on its stated experience, following wildfires, of complaints by some insureds that their coverage was inadequate. While there will, unfortunately, always be some who do not purchase adequate coverage prior to a disaster, the Department jumps to the conclusion that inadequacy following a fire is directly the result of a deficiency in the original replacement value estimate. "After each of these fires, fire survivors complain about problems including their experience that after the fire they learned that the replacement value estimates made in setting coverage limits for their homes was too low, causing underinsurance issues to arise during efforts to rebuild or replace their residences." *(The Department's Initial Statement of Reasons, Specific Purpose and Reasonable Necessity of Regulation).*

The Department offers no actual evidence, specific facts, studies or expert opinion to justify dramatically altering the process of estimating replacement cost. No evidence is offered to justify imposing a single detailed, yet open-ended, set of standards on an entire population of homeowners and their broker-agents, based upon a small percentage of homeowners who may experience coverage issues - and which issues may or may not be resolved by this regulation.

As to the statement, "The Commissioner believes that the proposed regulation is necessary to implement, interpret and make specific Section 1749.85," the Department cites the statute as authority for promulgating this regulation and does not distinguish the sections that apply to training and those that would require the strict application of specified standards for estimating replacement cost. PIFC raises no objection to, nor do we challenge, the draft regulation to implement the training curriculum as specified in Insurance Code Section 1749.85(a). This code section however, does not support a necessity standard as applied to proposed Section 2695.183.

<u>Authority</u>

The rulemaking power of an administrative agency is limited by the substantive provisions of the law governing that agency. To be valid, an administrative regulation must be within the scope of authority conferred by the enabling statute or statutes. *(Terhune v. Superior Court (1998) 65*

Cal.App.4th 864). The authority of an administrative agency to adopt regulations is limited by the enabling legislation. *(Bearden v. U.S. Borax, Inc., (2006) 138 Cal.App.4th 429)*. Agencies do not have discretion to promulgate regulations that are inconsistent with the governing statute, or that alter or amend the statute or enlarge its scope. *(Slocum v. State Board of Education (2005) 134 Cal.App.4th 429).*

The Department cites a string of general authority without reference to specific sections of the proposed regulation. None of these statutes provides the Department the authority to impose a single formula that must be used by an insurer to estimate replacement cost, nor to impose restrictions on communication between an insurer and its insured - including the prohibition of certain words and phrases, nor to impose underwriting requirements. The Department appears to rely primarily on two provisions of the Insurance Code: Section 1749.85 and Section 790.03.

Section 1749.85

The department cites the statute as authority for promulgating this regulation and does not distinguish the sections that apply to training and those that would require the strict application of specified standards for licensees estimating replacement cost.

The origin of Insurance Code Section 1749.85 is legislation passed in 2005 (SB 2), creating subsections (a) and (b):

> **1749.85.** (a) The curriculum committee shall, in 2006, make recommendations to the commissioner to ***instruct*** fire and casualty broker-agents and personal lines broker-agents and applicants for fire and casualty broker-agent and personal lines broker-agent licenses ***in proper methods of estimating*** the replacement value of structures, and of explaining various levels of coverage under a homeowners' insurance policy. Each provider of courses based upon ***this curriculum*** shall submit its course content to the commissioner for approval.
> (b) A person who is not an insurer underwriter or actuary or other person identified by the insurer, or a licensed fire and casualty broker-agent, personal lines broker-agent, contractor, or architect shall not estimate the replacement value of a structure, or explain various levels of coverage under a homeowners' insurance policy.
> *(emphasis added).*

The committee analysis of the legislation confirms the intent was to develop curriculum and improve training:

> [This bill] "would create pre and post licensure ***education requirements for agents and brokers…***" "This bill would require the DOI to ***develop a curriculum*** to instruct broker-agents and other personnel in the office in proper estimation of the replacement cost of the structure, ***require continuing education in this subject, and prohibit untrained persons from doing estimates***, as specified." "***Better training and continued training*** of personnel in how to estimate the replacement cost of a home is therefore critical." (Senate Banking, Finance and Insurance Committee analysis. Chair, and author, Senator Speier). *(emphasis added).*

The statute was amended the following year (SB 1847), adding subsections (c) and (d):

> (c) This section shall not be construed to preclude licensed appraisers, contractors and architects from estimating replacement value of a structure.
> (d) However, if the Department of Insurance, by adopting a regulation, establishes standards for the calculation of estimates of replacement value of a structure ***by appraisers***, then on and after the effective date of the regulation ***a real estate appraiser's estimate of replacement value shall be calculated in accordance with the regulation***. *(emphasis added).*

This section - specifically (a) – gives the Department authority to promulgate regulations related to the curriculum and training of broker-agents on "proper methods of estimating replacement value of structures..."

Subsection (b) specifies those who shall <u>not</u> estimate the replacement value: "A person who is not an insurer…or a licensed fire and casualty broker-agent….shall not estimate…or explain various levels of coverage…" and therefore states who may in fact estimate and explain - including broker-agents.

Subsection (c) clarifies that the section shall not preclude licensed appraisers and others from estimating replacement value of a structure, however, (d) states that if the Department adopts regulations establishing standards for estimating, "a ***real estate appraiser's estimate*** of replacement value shall be calculated in accordance with the regulation." *(emphasis added).*

Nothing in the legislation or its history can be read to allow the Department the authority to promulgate regulations applicable to broker-agents for any purpose other than to establish a training curriculum. Section 2695.183 attempts to regulate well beyond curriculum by prohibiting insurers (including broker-agents) from estimating or relying on an estimate unless each and every component of the specified standards as specified are met.

<u>Section 790.03</u>

This statute is cited by the department as authority, generally, for the proposed regulation, and specifically, as to 2695.183 (j), which reads:

> "When setting, recommending or communicating about a policy limit on a homeowners' insurance policy, to characterize using any form of the word "replace" or "replacement" any estimate of construction costs not comporting with subdivisions (a) through (e) of this Section 2695.183 constitutes making a statement with respect to the business of insurance which is misleading and which by the exercise of reasonable care should be known to be misleading, pursuant to Insurance Code Section 790.03. Notwithstanding the preceding sentence, a licensee that provides an applicant or insured with any estimate of construction costs that does not satisfy all of the requirements of subdivisions (a) through (e) of this Section 2695.183 shall indicate that it is not an estimate of replacement cost and shall identify and explain in the estimate each of the ways in which the estimate of construction costs that is provided fails to meet the requirements for a replacement cost estimate that are stated in said subdivisions (a) through (e)."

Insurance Code Section 790.03 defines unfair methods of competition and unfair and deceptive acts or practices in the business of insurance. Included in that definition is any statement which is misleading and which is known, or which by the exercise of reasonable care should be known, to be, misleading. The list of prohibited behavior in the Unfair Practices Act was established by the state legislature, with no formal granting of broad discretion to the Department to expand the scope of the Act. Any effort to specify prohibited behavior must be done through legislative action and attempts to do so through regulation exceed the scope of authority of the Department.

For the Department to declare a prohibition on terms in any communication with an applicant/insured is, in addition to being invalid for lack of authority, an infringement upon free speech rights. The prohibition is also impractical given the very terms are required in disclosure documents from the insurer to the applicant/insured.

AIA v. Garamendi

An agency has no authority to promulgate a regulation that is inconsistent with controlling law. *(Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98).*

No statute cited for purposes of Section 2695.183 provides authority to the Department to regulate underwriting, because the legislature and courts have affirmed that no such authority exists.

"The Insurance Code provides no express authority for regulating the underwriting of homeowners' insurance, nor can such expansive authority be implied. Unlike automobile insurance, homeowners' insurance is subject to only a few restrictions, all clearly set forth in the Insurance Code. Reading the Insurance Code to give the Commissioner broad authority to regulate underwriting beyond these specific provisions is inconsistent with the legislative scheme as a whole." *(AIA v. Garamendi).*

The only statutes that restrict an insurance company's underwriting decisions with respect to homeowners' insurance are Insurance Code sections 676 and 791.12. Other sections set out the basis for canceling a policy (sections 675, 675.5, 676), or prohibit when a policy may be non-renewed (section 675, 676.9, 676.10, 676.1), or prohibit discriminatory practices (section 679.7-679.73). These restrictions are exclusive. The Commissioner and Department have no authority to expand them to include restrictions on estimating replacement costs. As the court noted in *AIA v. Garamendi*, which is binding upon the Department, "An insurer does not have a duty to do business with or issue a policy of insurance to any applicant for insurance. Whether an insurer should be required to offer a particular class of insurance or insure a particular risk are matters of complex economic policy entrusted to the Legislature." Citing *Quelimane Co. v. Stewart Title Guaranty Co.* 19 Cal.4th 26, 43 (1998).

No legal basis exists for the Department to restrict insurance companies from estimating and communicating replacement costs, activities that are critical and essential to underwriting decisions.

It may be that the Department was attempting to negate the underwriting issue with the language in subdivisions (l) and (m). What is not recognized nor addressed by the draft regulation is that insurance companies are obligated by their underwriting standards, and by the Department's enforcement of those standards, to estimate a replacement cost - which is fundamental to the risk

assessment process - and to communicate that cost to the insurance applicant. A simple example will illustrate this reality.

Insurance companies offer extended coverage that is usually some percentage above the basic coverage amount. Extended coverage provides a cushion for the unexpected, rapid increases in construction costs, upgrades, additions and other changes that did not trigger the insured to increase the basic coverage. In fact, the Department on several occasions has considered and even pursued requiring insurance companies to offer a 50% extended coverage to policyholders owning homes in areas prone to wildfires. Requiring insurers to offer policyholders extended coverage remains a priority of the Department as outlined in their 2010 Strategic Plan. The stated purpose for the 50% extended coverage proposal is to cover increased costs resulting from, among other things, what the Department calls "demand surge."

Extended coverage is based on a basic coverage amount that is equal to or greater than the estimated replacement cost. In fact, extended coverage cannot be provided unless the basic coverage is at least as great as the replacement cost estimated by the insurance company.

Hence, to even discuss extended coverage, the insurance company has to estimate the replacement cost and communicate that amount to the insurance applicant. Estimating and communicating the replacement cost is integral to making an underwriting decision, that is, whether extended coverage can be provided or not. Section 2695.183 prohibits an insurance company specifically from estimating or communicating a replacement cost unless it complies with subdivisions (a) through (e) of section 2695.183. As such, it directly regulates underwriting.

The provisions in subdivisions (l), exempting the requirements of Section 2695.183, from communications between an insurer and contractor concerning underwriting decisions that never come to the attention of the applicant or insured, and subdivision (m) specifying that there is no requirement on the licensee to estimate replacement cost or advise of the sufficiency of such an estimate, have no practical impact on the ability of a licensee to choose an alternative to the standards as set out in (a) though (e) and therefore, the Department has no legitimate claim that the proposed regulations do not regulate underwriting.

<u>Everett v. State Farm</u>

An agency has no authority to promulgate a regulation that is inconsistent with controlling law. *(Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98).*

PIFC is very concerned that the draft regulation will have the impact of shifting the responsibility for establishing policy limits from the insured to the insurer, in conflict with established California law. "It is up to the insured to determine whether he or she has sufficient coverage for his or her needs." *(Everett v. State Farm General Insurance Co. (162 Cal.App.4th 649).* The court in *Everett* also affirmed that Insurance Code sections 10101 and 10102 do not require an insurer to set policy limits that equal the cost to replace the property, nor is an insurer duty bound to set policy limits for insureds.

The Department appears to have drafted the regulation to counter this argument from *Everett* with the inclusion of subdivision (m), which provides, "No provision of this article shall be construed as requiring a licensee to estimate replacement cost to set, or recommend to an applicant or insured, a policy limit on a homeowners' insurance policy. No provision of this article shall be construed as requiring a licensee to advise the applicant or insured as to the sufficiency of such an estimate."

However, the alternatives for an insurer who does not comply with (a) through (e) are fraught with liability risks. Using the wrong word or phrase in a discussion with an applicant/insured, inadequately detailing in what way they "fail to meet the requirements" in (a) through (e) – there is an almost unlimited number of ways in which an insurer could be found to have not complied strictly with the detailed standards or with the applicable restrictions if not using the standards, and therefore would be held liable in some way.

The absence of a requirement, however, does not speak to the potential liability of an insurer if an estimated replacement cost is given. While the responsibility to determine adequate coverage lies with the insured *(Everett),* there is a recognized exception to that general rule that may apply if an agent makes an affirmative representation of adequate coverage, misrepresents to the insured that an amount is adequate under all circumstances, or fails to provide coverage requested by the policyholder.

We read Section 2695.183 as implicitly, directly, or practically, shifting the responsibility of establishing adequate coverage from the insured – where it is today under California law – to the insurer, and contend this exceeds the scope of the Department's authority.

Clarity

Clarity is defined as "written or displayed so that the meaning of the regulations will be easily understood by those persons directly affected by them."

An ambiguous regulation that does not comply with the rulemaking procedures of the Administrative Procedures Act (APA) is void. *(Capen v. Shewry (2007) 65 Cal.Rptr.3d 890).*

Section 2695.183 creates ambiguities, including the critical issue of which party is responsible for determining adequate coverage. Currently, the applicant/insured has full responsibility for providing to the insurer all information necessary for a non-binding estimate of coverage. The broker-agent assists the applicant/insured by utilizing that information to estimate replacement cost, sharing that information, but relying on the applicant/insured to determine the coverage amount best for them. It is very unclear to us how the process would work under the proposed regulations.

Section 2695.183(a) reads in part, "the estimate of replacement cost shall include all expenses that would ***reasonably be incurred*** to rebuild the insured structure(s) in its ***entirely***, ***including but not limited to***:" and goes on to specify a list. (*emphasis added*). These terms are not only vague, but applied in combination with the other requirements of the regulations, create an impractical scenario for an applicant/insured and their broker-agent in a real-life setting by limiting the words and phrases that can be used, by restricting the ability of the licensee to communicate essential information in order to be able to offer a range of options and products.

Subdivision (j) is particularly unclear and yet the consequences of failing to comply create a de facto violation of Section 790.03.

Consistency

Consistency is defined in Government Code Section 11349 (d) as "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.

There is no agency discretion to promulgate a regulation which is inconsistent with the governing statute. *(Pulaski v. California Occupational Safety and Health Standards Board (1999) 75 Cal.App.4th 98).* An agency has no authority to promulgate a regulation that is inconsistent with controlling law. *(Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98).*

As discussed above, Section 1749.85, applies to ***training curriculum for broker-agents*** (subdivision (a) and does place a requirement on ***real estate appraisers to calculate an estimate of replacement value in accordance with regulations***, if adopted by the Department (subdivision (d). The proposed regulations are inconsistent with the statute in that they go beyond training and curriculum and set out standards for estimating replacement cost for licensees (including broker-agents).

Also discussed above, the proposed Section 2695.183, is inconsistent with both *Everett v. State Farm* and *AIA v. Garamendi*.

II. <u>Questions and issues on specific components of proposed Section 2695.183</u>

Proposed Section 2695.183 (a)

The terms, "all expenses that would reasonably be incurred" and "including but not limited to" are open to interpretation and subjective. How can a broker-agent ever be sure of compliance when that judgment will be made at a time of loss that could be far removed from the original process of estimating replacement cost?

Currently, the applicant/insured has full responsibility for providing all information necessary for a non-binding estimate of coverage. The broker-agent may assist the applicant/insured by utilizing that information to estimate replacement cost, sharing that information, but relying on the applicant/insured to determine the coverage amount best for them. Does the Department intend that the proposed regulations will require a change in this practice?

Current practice also includes situations where an applicant/insured provides a contractor or other estimate of replacement cost prepared by a third party. Would that communication, which would likely include the terms "replace" or "replacement" trigger all of the requirements of this section and put the broker-agent in the position of having to verify that estimate by attempting to comply with subdivisions (a) through (e)?

Also, the terms "set" and "recommend" policy limits appear throughout this section inappropriately. The broker-agent does not set policy limits – the broker-agent may use the information provided by the applicant/insured to provide a non-binding estimate of replacement cost. The applicant/insured ultimately determines the appropriate coverage amount.

Proposed Section 2695.183 (e)

The language requires the licensee to "take reasonable steps to verify that the sources and methods used to estimate replacement cost are kept current to reflect changes…" This subdivision also requires, "The estimate of replacement cost shall be created using such current sources and methods." We would appreciate the Department explaining how a licensee can safely comply with this requirement. Particularly given that this section places the liability for failure to comply with any part of the regulation on the insurer, even if a third party estimate is

used. Is it the Department's unstated intent to stop broker-agents from giving non-binding estimates using existing software tools?

We also question whether this subdivision, or perhaps subdivision (a), is meant to apply to renewals each year. This would create a new and burdensome requirement on insurers, essentially shifting the responsibility of determining coverage from the insured to the insurer – in direct violation of the *Everett* decision. It creates a situation where simply by sending the renewal notice, which includes the terms "replace" and/or "replacement" the requirements of complying with the standards (a) through (e) would apply or place the insurer at risk for being found to have violated Section 790.03 (per subdivision (j)). Can the Department explain what is intended? Does the Department intend to change existing law to force insurers to determine coverage upon renewals, even if a customer does not want this?

Proposed Section 2695.183 (h)
Many broker-agents handle the initial discussions of a transaction over the phone. This proposed section would require a written copy of any estimate – even a construction cost estimate - to be provided if the discussion included any communication about a policy limit. Many consumers make such calls initially to get a general quote. Would a request for a quote trigger the written requirements of this section?

Also within this subdivision is a requirement to maintain records of estimates for applicants to whom a policy is never issued. We fail to understand the need for such record retention.

Proposed Section 2695.183 (j)
We find this among the most troubling and confusing subdivisions in the proposed regulation. Discussed above, we question the restrictions on the communication – and the specific terms – between a broker-agent and an applicant/insured. The terms "replace" and "replacement" are terms contained in the required California Residential Property Insurance Disclosure (Insurance Code Section 10102). The Department is sponsoring a bill in the current legislative session, AB 2022 (Gaines), which we believe is in direct conflict with the proposed regulation.

The regulation prohibits a licensee from using the term "replace" or "replacement" if they choose to provide an estimate to the applicant or insured and fail to adhere to the specific and onerous standards outlined in Section 2695.183 subdivisions (a) through (e). The current California Residential Property Insurance Disclosure and AB 2022 (Gaines) is riddled with these terms and are included in the descriptions of each type of coverage listed in the disclosure form. Placing restrictions on how insurers, agents and brokers discuss the different coverage options listed in the disclosure form with the applicant/insured is inconsistent with the terminology outlined in the current statute and pending changes to that statute. Insurers are required by law to provide their policyholders with this disclosure form (which specifically uses the term "replacement")—this regulation clearly restricts communication between agents and their insureds. How is a licensee to describe the different coverages listed in the current statutory form if they are prohibited from using such terms as "replace" or "replacement"? Would the proposed regulation actually require broker-agents to give estimates of replacement cost – a requirement which is not supported anywhere in California law?

PIFC and its member companies are currently working with the Department to improve upon the existing California Residential Property Insurance Disclosure Form and Homeowners' Bill of Rights in an attempt to make it easier for the consumer to understand the types of coverage that are offered in the marketplace. Providing consumers with information that helps them understand the types of coverage that are available will help the consumer make a better choice when

purchasing homeowners' insurance. This is the type of communication that all interested parties including the Department, consumer advocates and industry should continue to support.

Proposed Section 2695.183 (l)

We would simply reiterate here our concerns, expressed repeatedly above, that restricting "communication" will be of no assistance to the applicant/insured. And though the Department may be attempting here to insulate itself from the contention that this section attempts to regulate underwriting in violation of existing law, the argument fails because a company's underwriting guidelines will dictate the need to communicate with an applicant/insured regarding the estimate in order to be able to offer the applicant/insured appropriate options, as illustrated in the example above.

Proposed Section 2695.183 (m)

Similar to the concern described for subdivision (l), underwriting guidelines will generally require some type of estimate be prepared by the insurer if options such as extended coverage may be appropriately offered. And while this subdivision may offer liability protection to an insurer who does not provide an estimate, it does not appear to offer any protection to an insurer who provides an estimate whether in accordance with the standards set out in this section or an alternative estimate. Without such liability protection, many carriers would likely cease offering extended coverage, which the Insurance Commissioner has repeatedly stated he wants to encourage.

Proposed Section 2695.183 – Other Comments

PIFC has legal and practical concerns over the proposed regulation and the ability of the broker-agents and applicant/insured interaction to be effective should they be implemented. If the Department continues to move forward with the regulations as proposed, however, we would suggest an implementation date of no sooner than one year after the effective date. It will take at least that long for the training and the changes to the business operations that will be necessary.

III. The proposed Section 2695.183 fails to recognize the practical implications of the proposed regulations on the relationship and interaction between a broker-agent/insurer and the applicant/insured

The Department is proposing to drastically alter the way homeowners purchase insurance and what help and options may be offered to them. PIFC companies have attempted to simulate the discussions under the requirements and constraints of the proposed regulation. Strictly adhering to the standards as prescribed leads us to believe that companies will, in effect, be offering Guaranteed Replacement Cost Coverage, a coverage, as the Department points out, that is not generally offered in the market due to the inability to price the associated risk – and certainly not required by law to offer. Choosing not to estimate replacement cost in adherence to the standards, leaves the insurer in a position of having the communication with the applicant/insured severely restricted and because of those restrictions, being unable to offer certain coverage options – such as extended replacement cost – due to underwriting guidelines which require communication regarding replacement cost.

Broker-agents have no motivation to sell a lower amount of coverage than is needed to their customer. The implications that agents and insurers do anything less than try to work with the customer to meet their needs is a constant source of frustration felt by the industry. The simple fact is that there is no guarantee under the proposed regulations of any fewer claims of underinsurance that will inevitably arise after each disaster compared to the number the complaints the Department receives under current law. With recognition of the impact to any

homeowner who finds themselves with inadequate insurance at a time of loss – due to any number of reasons – the number of insureds in that situation are few compared to the overall insured homeowner population and even to those who suffer a loss. Yet, this proposal would disrupt the relationship and responsibilities of everyone who applies for and purchases homeowners' insurance.

PIFC supports improved and additional training requirements for broker-agents. We also support the Department's efforts to better educate homeowners on the importance of choosing adequate coverage limits. We look forward to continuing to work with the Department on ways to decrease the likelihood of insureds having inadequate coverage. The proposed regulation Section 2695.183, however, will not achieve that goal. We respectfully request that the Department withdraw this section from the proposed regulations and instead continue to support the current collective effort by the Department, consumer advocates and industry of AB 2022 (Gaines), a bill that we believe will provide consumers with the knowledge necessary to choose adequate coverage limits.

Respectfully,

Kimberley Dellinger Dunn
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PIFC Legislative Advocate