



Independent Insurance Agents & Brokers of California
4683 Chabot Drive, Suite 240, Pleasanton, CA 94588 • syoung@iiabcal.org | 415-378-9300

Stephen L. Young | Senior Vice President & General Counsel

July 13, 2022

Abigail Meraz
Staff Services Analyst
California Department of Insurance
300 Capitol Mall, 17th Floor
Sacramento, CA 95814
Email: Abigail.Meraz@insurance.ca.gov

Re: Investigatory Hearing Into the California Fair Plan Association: IH-2022-00001

Dear Ms. Meraz,

On behalf of the Independent Insurance Agents and Brokers of California (IIABCal), I am pleased to submit the following comments into the record of the “Investigatory Hearing Into the California Fair Plan Association” convened by the California Department of Insurance.

IIABCal is a non-profit trade association representing several hundred independent insurance agencies and brokerages that sell all forms of insurance, but do most of their business in personal and commercial lines of property and casualty insurance. Our members range from small, one-person agencies to large brokerages that operate nationally, and even globally. IIABCal members live and work in virtually every city and town in our state.

Our members have been severely harmed by the enduring crisis of availability and affordability in property insurance. Unlike insurers, most of whom have the ability to do business in other states if they so choose, our members aren’t going anywhere. They live in and they work for their neighbors in Eureka, and El Centro, and Merced, and Los Angeles, and Oakland, and everywhere else. Our members are struggling financially, because they can’t find insurance to sell, at any price, but in many ways the emotional toll is even greater—because they can’t help their policyholders and neighbors adequately protect their homes and businesses.

For many of our members, the California FAIR Plan has been a Godsend—as the *only* market for basic property insurance for many of their customers. But because of extreme coverage limitations and other structural deficiencies in FAIR Plan policies and procedures—which we will enumerate below—the FAIR Plan is also a mechanism that leaves consumers insufficiently protected in far too many cases, and exposes brokers to significant errors-and-omissions liabilities.

So, our members, and their policyholders, are vitally interested in how the FAIR Plan is doing its job, and we would respectfully suggest several steps the Plan and the Commissioner could take to be of greater help to California property owners.

As it happens, we polled members three months ago, asking them to tell us about their FAIR Plan experiences, problems, suggestions and questions. We've shared that feedback with the Plan, and we'll share it here in just a moment

First, though, IIABCal would like to publicly express our confidence in Victoria Roach, the new president of the Plan, and in the leadership team she has assembled. She has been in this position for only a "hot minute," but has already demonstrated a deep recognition of opportunities for improvement, and an abiding leadership talent and passion to make the Plan better.

Second, we recognize the tremendous difficulty of the job the California FAIR Plan is being asked to do right now. This is a program designed as a market of last resort for basic property insurance; it was never intended as, or engineered to be, the only or main source of property insurance in all of California. Under the circumstances of this extraordinary flood of applications and desperate need for insurance coverage, the Plan has done a remarkably good job.

But independent agents and brokers do voice a consistent set of complaints and suggestions for improvement.

The most frequent complaint we hear is that brokers cannot get timely answers to their questions or solutions to their problems. More often than not, time is of the essence when coverage is needed, so anything short of contemporaneous response can be a problem. Because brokers have no authority to bind coverage, and the Plan will effect coverage only when all its application requirements are fully documented, it is imperative for underwriting and application issues to be addressed in real time, wherever possible. We strongly support the CFP leadership's recognition of their need to upgrade customer and broker service.

The next complaint we hear frequently is closely related to the first—that brokers need CFP to implement technology that will permit electronic interface, not only for communicating with CSRs, but also for uploading and downloading all of the documents that are necessary components of property insurance transactions. Brokers spend a lot of money on agency management software systems that permit accurate and highly efficient data exchanges with insurance companies. Most insurance applications are long and detailed, and require detailed attachments. The last thing you want to do as a broker is to re-key-in all of this data; but that's largely what is now required, because CFP has no electronic interface with the software programs.

The FAIR Plan leadership is aware of this need, and we know they are working to address it. We would welcome efforts to expedite this enhancement.

Another suggestion we hear frequently is that brokers would like to be able to download and inspect a complete set of all the Plan's underwriting guidelines. They used to be available on the website, but they were removed. The Plan has built relevant aspects of those guidelines into their application form, tied to specific questions where a broker has to provide the information that is required by the guidelines. But brokers want to see the entire document, so they can better understand how the Plan works and what their customers need to know.

We also receive many inquiries from brokers who have not had to utilize the Plan in the past, and are simply not as familiar with the contracts of insurance that are issued by CFP as they want to be. Fortunately, the Plan recognized this need and is now offering detailed training, which the Department has approved for CE credit. Kudos to the Plan and to the Department for that successful initiative.

Let me turn now to more important changes we believe the Commissioner could take to improve not only the coverage the FAIR Plan provides, but also position the Plan better to enable the standard insurance markets to provide higher limits of coverage and fill coverage gaps.

IIABCal continues to strongly support the mission of the CFP to be an insurer of last resort for basic property insurance. We applaud the Commissioner for his recognition of the vital need to expand the availability of property insurance policies for CA homeowners and businesses. But ordering the FAIR Plan to start writing full HO coverages—assuming for the sake of argument he has the authority to enforce that order—is a “cure” that utterly ignores the “disease.”

Rather than forcing the CFP to sell HO-3 policies, the Commissioner would be better served—and so would California consumers—by taking steps to incentivize insurers to return to the market, thereby permitting the Plan to depopulate and return to its highest and best use as a market of last resort for basic property coverage.

IIABCal respectfully urges Commissioner Lara to take the following two steps to help restore the standard property insurance markets:

- (1) Support creation of a new Joint Underwriting Authority that would allow for catastrophic wildfire surcharges, where actuarially supported and approved by the Commissioner, in the Wildland Urban Interface (WUI) areas, where the risk of wildfire catastrophe is highest;

- (2) Permit insurers to include reinsurance costs and prospective loss modelling tools in their rate filings—just as the FAIR Plan and California Earthquake Authority, and insurers in other states, are now allowed to do.

If Commissioner Lara took these actions, we believe the dwelling and commercial property marketplace could be restored to health almost as quickly as CDI could approve new rate filings from insurers willing to resume writing California property risks.

The unfortunate reality is that property insurance rates—because of the confluence of severe draught and global warming, significant forest mismanagement, utility company negligence, massive population growth in WUI areas, escalation in property values, and now inflationary pressure—are never going to be as low as they once were. And the current crisis in availability and affordability is likely continue indefinitely if regulators suppress rate adequacy.

There are at least two additional actions we urge Commissioner Lara to take regarding current FAIR Plan contracts of insurance.

First, eliminate or greatly limit the application of the “co-insurance clause” in the dwelling property policy.

At present, the Plan will insure “Coverage A” exposures on **either**: (1) an Actual Cash Value basis, which subjects claim payments (on partial and total losses) to reductions for depreciation; **or** (2) a Replacement Cost Value basis, which is subject to a “co-insurance” clause that is triggered if the Coverage A-Dwelling limit is less than 80 percent of “the full cost to reconstruct or replace the building immediately before the loss.” Both are also subject to the maximum cap of \$3 million on all covered claims.

A replacement cost policy requires an estimate of what the replacement cost would be in the event of a total loss. The higher the estimate, the higher the premium. The co-insurance clause was designed to penalize homeowners who deliberately underestimated their replacement cost in order to get a lower premium. The penalty is applied at the time a claim is made, by imposing a pro rata reduction in what the Plan will pay.

Here’s how it works:

- Home with a replacement cost valuation of \$6 million at the time of loss;
- FAIR Plan policy purchased with the maximum combined limits of \$3,000,000 in coverage;
- No supplemental coverages or policies in force from other insurers;
- Homeowner selected “replacement cost” option over the ACV option.

In this example, because the home was insured only 50 percent to value at the time of loss, the FAIR Plan would pay only the actual cash value of the damaged property, or 50 percent of the replacement cost for the damaged property, whichever is greater.

And because California law requires that replacement cost policies include Building Code Upgrade coverage in an equal to 10% of the Coverage A – Dwelling limit, the maximum Dwelling Coverage wouldn't even be \$3 million; it would be closer to \$2.7 million, with the building code upgrade endorsement.

In this example, the homeowner isn't trying to underestimate replacement cost. But the FAIR Plan application system won't let brokers or homeowners enter any replacement cost values higher than the \$3 million limit. So the current system essentially forces many homeowners to underestimate replacement cost, and then penalizes them in the event of a total loss for following the Plan's rules.

The co-insurance clause should be eliminated, at least in cases where the replacement cost is at or above the FAIR Plan's combined coverage limits. And on properties where the estimated replaced cost falls below the combined limit—as determined at the time of policy application, not covered loss--we believe CFP should be required to ratify the homeowner's estimate and delete the co-insurance clause, or notify the homeowner that the Plan will provide only an ACV policy. It is critical for homeowners to know at policy inception what they are buying, and what level of protection they are receiving.

Second, eliminate subsection (b) of the “Other Insurance” clause in the dwelling and commercial property contracts of insurance.

This enigmatic clause provides:

- a) You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this policy. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable limit of insurance under this policy bears to the limits of insurance of all policies covering on the same basis.
 - b) If there is other insurance covering the same loss or damage, other than that described in a) above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not, but we will not pay more than the applicable Limit of Insurance.
-

There should be no ambiguity, in cases where a homeowner has a basic property insurance policy from CFP, and supplemental coverages or higher limits from one or more other insurance companies, as to which policy is “primary,” i.e., which insurer is on the hook for the first-dollar of insured losses.

Subsection (b) is not exactly a model of clarity. We believe it should be deleted, and new language added to make it absolutely clear the FAIR Plan policy is primary, to the extent of its combined limits and covered exposures.

We believe these changes would make admitted and non-admitted companies far more willing to supplement the basic FAIR Plan policy, and at substantially lower rates.

On behalf of IIABCal and its members, thank you for the opportunity to submit these comments. We would be happy to answer any questions, and provide any other assistance to the Department of Insurance as it evaluates these issues and our recommendations.

Very truly yours,

Stephen L. Young

Stephen L. Young

Senior Vice President & General Counsel
